



# YARA'S GENERAL CONDITIONS OF PURCHASE

## 1 GENERAL PROVISIONS

1.1 The following definitions shall apply for these General Conditions of Purchase:

- a) **"Agreement"** shall mean the purchase agreement, Buyer's purchase order, these General Conditions of Purchase and any other appendices, and agreed amendments or variations to said documents, as a whole.
- b) **"Buyer"** shall mean the entity identified in the Agreement as the buyer of the Deliverables.
- c) **"CLP"** shall mean classification, labeling and packaging.
- d) **"Confidential Information"** shall mean the business or affairs of a party, including but not limited to information relating to a party's operations, processes, plans, product information, intellectual property rights, trade secrets, software, market opportunities and customers.
- e) **"Control"** shall mean the ability to direct the affairs of another person, whether by virtue of the ownership of shares, contract or otherwise.
- f) **"Deliverables"** shall mean all goods, services, works, documents, certificates and packaging, as appropriate, to be delivered by Supplier pursuant to the Agreement.
- g) **"Force Majeure"** shall mean an occurrence beyond the control of the party affected, provided that such party could not reasonably have foreseen such occurrence at the time of entering into the Agreement and could not reasonably have avoided it or overcome its consequences.
- h) **"HESQ"** shall mean health, environment, safety and quality.
- i) **"Losses"** shall mean all direct losses, claims, charges, costs, penalties and expenses (including, without limitation, damages, legal and other professional fees and costs).
- j) **"REACH Regulation"** shall mean the EU REACH Regulation (EC 1907/2006).
- k) **"Supplier"** shall mean the entity that is the counterparty of the Buyer according to the Agreement.
- l) **"Yara Group"** shall mean Yara International ASA and/or any other entities which it directly or indirectly Controls.

1.2 In the event of any conflict between the provisions of the Agreement, the various contract documents shall be given priority in the following order:

- a) the purchase agreement;
- b) these General Conditions of Purchase;
- c) Buyer's purchase orders; and
- d) all other appendices to the Agreement.

1.3 Buyer is not bound by any terms or conditions submitted or otherwise communicated by Supplier unless Buyer expressly has accepted such terms and conditions in writing. Receipt of any Deliverables shall not be deemed as such acceptance.

1.4 The Agreement constitutes the entire agreement between the parties and supersedes all previous discussions, correspondence and negotiations between them relating to the Deliverables.

1.5 If delivery has been agreed according to INCOTERMS, the latest version in force at the date the Agreement was entered into shall apply.

1.6 Notices, claims, etc. which the Agreement requires to be presented in writing, shall be sent by letter, fax or e-mail to the other party's appointed representative without undue delay.

1.7 In case of any divergence between the English version of these General Conditions of Purchase and any translated version, the English language version shall prevail.

## 2 GENERAL OBLIGATIONS OF SUPPLIER

2.1 Supplier shall without undue delay prepare and provide offer documentation and order confirmations free of charge, and any deviations from Buyer's orders/requests shall be expressly specified.

2.2 The Deliverables shall in all respects meet the specifications of the Agreement, and shall in addition be of high quality, incorporating first class workmanship as well as fit for their intended purpose.

2.3 Supplier shall in addition perform any professional services with that degree of skill, care, diligence and good judgment normally exercised by recognized professional firms performing work of the same or similar nature.

2.4 Buyer will normally provide a purchase order to Supplier in respect of the Agreement. If such purchase order has not been received by Supplier before delivery or performance of the Deliverables, Supplier shall request that Buyer provides such purchase order.

2.5 The Deliverables shall be properly labeled and packaged according to the nature of the Deliverables, and the contract and purchase order numbers and other agreed references shall be quoted on the accompanying delivery note.

2.6 The Deliverables shall be in compliance with all applicable laws and regulations. In particular, Supplier is responsible for ensuring that the Deliverables comply with all relevant and applicable laws and regulations relating to CLP.

2.7 Supplier shall obtain and maintain all public permits necessary to deliver the Deliverables, and shall upon Buyer's request produce documentation showing that the necessary permits have been obtained.

2.8 Supplier shall not assign any obligations with regard to any part of the Deliverables to subcontractors without Buyer's prior written consent. Such consent does not exonerate Supplier from any obligations pursuant to the Agreement, and Supplier shall ensure that all HESQ requirements and all of Buyer's rights pursuant to these General Conditions of Purchase are made applicable and binding for all subcontractors. Buyer may request that Supplier obtains collateral warranties from subcontractors for the benefit of Buyer or other third parties.

2.9 Supplier shall at all times comply with applicable rules and regulations relating to HESQ and have a satisfactory system for HESQ assurance and quality assurance suitable for the Deliverables. Buyer is at any time entitled to carry out, and Supplier shall assist in carrying out, inspections of the Deliverables and HESQ audits at Supplier's or any subcontractors' premises.

## 3 INSURANCE

3.1 Supplier shall procure and maintain at its own expense an appropriate insurance coverage (including but not limited to liability insurance) adapted to Supplier's operations and the nature of the Deliverables.

3.2 The coverage and duration of the insurance policies shall cover all potential liabilities associated with the Agreement and Deliverables.

3.3 Upon Buyer's request, Supplier shall provide relevant insurance certificates as well as the relevant conditions of any such insurance policies, and shall promptly ensure similar cooperation from its subcontractors.

## 4 PERSONNEL

4.1 Buyer shall not be deemed to be the employer of Supplier or Supplier's personnel, even if such personnel are to perform all or parts of the Deliverables in cooperation with Buyer or otherwise.

4.2 If the Agreement appoints key personnel in Supplier's organization, such personnel shall not be replaced without Buyer's prior written approval. Such approval shall not be unreasonably withheld.

4.3 Supplier shall, at its own expense, immediately replace personnel who in Buyer's sole opinion conduct themselves in an improper manner or are unsuitable to perform or produce the Deliverables.

## 5 INSTALLATION AND TESTS

5.1 The provisions of this condition 5 only apply if it has been agreed that the Deliverables shall include installation work and/or tests to be carried out at Buyer's premises.

5.2 Supplier shall prior to any work being performed request and familiarize itself with Buyer's HESQ rules, and shall ensure that work at Buyer's premises are carried out in compliance with any and all rules in force relating to HESQ.

5.3 Delivery occurs when the installation work and/or tests have been completed and Buyer has confirmed in writing that the Deliverables have been accepted. Such confirmation shall be given without undue delay.



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- 5.4 Supplier shall in due time before commencement of the installation work and/or tests provide a list of any goods and/or services which Buyer shall provide to assist in the installation according to the Agreement.
- 5.5 The contract price to be paid for the Deliverables includes costs of installation work and/or tests.
- 5.6 Supplier shall procure and maintain at its own expense a liability insurance with a minimum coverage of EURO 2,000,000 per incident for damages caused on Buyer's or any third party's property or personnel in connection with installation work and/or in performance of tests at Buyer's premises.
- ## 6 PROGRESS AND DELIVERY
- ### 6.1 Progress
- 6.1.1 Supplier shall deliver and perform the Deliverables according to the agreed delivery date(s). If such delivery dates have not been agreed, Supplier shall deliver and perform the Deliverables within a reasonable time according to normal business practice.
- 6.1.2 If Supplier should have cause to believe that it will be unable to meet the delivery date(s), Supplier shall immediately notify Buyer in writing stating the reason for the delay, the effect on the agreed delivery date(s) and furthermore include a proposal on how the delay can be minimized. Supplier shall bear its own costs incurred to minimize the delay unless the delay is wholly caused by Buyer.
- 6.1.3 In addition to liquidated damages, Supplier is liable for Losses suffered by Buyer which could have been avoided if Supplier had given notice of the delay in due time.
- ### 6.2 Delivery
- 6.2.1 Supplier shall in due time before delivery obtain delivery instructions from Buyer. As soon as possible and at the latest at shipment, Supplier shall notify Buyer of the effected shipment so that the receipt of the Deliverables may be properly prepared.
- 6.2.2 If the Deliverables include goods, delivery shall be deemed to have taken place when the Deliverables have been handed over to Buyer or delivered according to the agreed INCOTERMS, and agreed installation work and tests have been completed and accepted by Buyer (if applicable).
- 6.2.3 If the Deliverables include services, Supplier shall notify Buyer in writing as soon as possible when Supplier considers the services provided as completed. Without undue delay after receiving such notice, Buyer shall in writing either accept the services as completed, or declare that the services are not accepted as completed and the reason for this. Delivery will not be deemed to have taken place before all Deliverables have been accepted in writing by Buyer.
- ## 7 VARIATIONS OF THE DELIVERABLES
- 7.1 The provisions of this condition 7 shall only apply to the extent the Deliverables are manufactured especially for Buyer and for work mentioned in condition 5.
- 7.2 Buyer may at any time order variations with regard to the quality and/or the quantity of the Deliverables as well as the delivery date(s).
- 7.3 Supplier shall immediately notify Buyer in writing and request Buyer to issue a variation order if Supplier is of the opinion that:
- a variation to the Agreement is required; or
  - Buyer requests the performance of specific work which is not part of its obligations under the Agreement.
- 7.4 Any variation order request shall be approved by Buyer by means of a written variation order before Supplier initiates the variation work (unless a delay will cause a disadvantage to the Deliverables or Buyer).
- 7.5 When Buyer requires a variation, Supplier shall, without undue delay, submit a written confirmation describing the variation work together with an estimate of any effects on the contract price, the work schedule and the agreed delivery date(s). If such confirmation is not received by Buyer within 30 calendar days after submission of the variation order, Supplier may not claim any changes to the Agreement to its advantage.
- 7.6 Compensation for variation work shall be in accordance with the prices, norms and rates contained in the Agreement, or otherwise in accordance with the original price level of the Agreement. If a variation entails cost savings for Supplier, Buyer shall automatically be informed and credited accordingly.
- 7.7 If the parties disagree as to the amount to be added to or deducted from the contract price or any other consequences due to a variation, Supplier shall upon receipt of a variation order implement the variation without awaiting the final outcome of the dispute. Undisputed amounts shall be paid by the Buyer as normal.
- ## 8 SUSPENSION OF WORK/SERVICES
- 8.1 Buyer may at any time and without cause temporarily suspend any work/services, or parts thereof, with immediate effect by written notification to Supplier. Following such notification Supplier shall, without undue delay, inform Buyer of the effects the suspension will have on the delivery and/or performance of the work/services. Supplier shall resume the work/services without undue delay after notification by Buyer.
- 8.2 If the suspension period exceeds 90 calendar days, Supplier is thereafter entitled to cancel the Agreement by a 14 calendar days' written notice to Buyer.
- 8.3 During the suspension period, Buyer shall only:
- pay for delivered or performed Deliverables; and
  - compensate Supplier for direct, documented and necessary expenses incurred as a result of the suspension, such as expenses in connection with demobilization and mobilization of personnel.
- ## 9 CANCELLATION
- 9.1 Buyer may at any time and without cause cancel the Deliverables or parts thereof with immediate effect by written notification to Supplier.
- 9.2 Following cancellation, Buyer shall only:
- pay for delivered or performed Deliverables; and
  - compensate Supplier for direct, documented and necessary expenses incurred as a result of the cancellation, such as expenses in connection with demobilization of personnel.
- ## 10 PAYMENT AND PRICES
- 10.1 Supplier shall submit a final invoice without undue delay after Buyer has accepted the Deliverables as completed. The final invoice shall include all claims to be made by Supplier pursuant to the Agreement. Claims not included in the final invoice cannot be submitted later.
- 10.2 Payments will be made within 45 calendar days after receipt, subject to:
- complete delivery of the Deliverables by Supplier;
  - the invoice complying with Buyer's policies; and
  - receipt of any agreed bank guarantee or parent company guarantee (or similar) from Supplier.
- 10.3 The Agreement and purchase order numbers and other agreed references shall be quoted on all invoices, which shall also clearly indicate what the invoiced amount relates to. All customs invoices and proofs of origin (if applicable) shall be attached to the relevant invoice. Buyer is entitled to return invoices that do not meet these requirements.
- 10.4 The agreed prices are fixed for the term of the Agreement. Buyer does not accept and will not pay any additional handling, packaging or invoice fees (or similar).
- 10.5 If Buyer is to pay for the Deliverables based on time and/or quantities spent, Supplier shall ensure continuous registration by Supplier and approval by Buyer of such time and/or quantities. Details of the registered and approved time and/or quantities shall be attached to the relevant invoice.
- 10.6 Buyer is entitled to deduct any prepayments and accrued liquidated damages against Supplier's invoices. Disputed or insufficiently documented amounts, as well as any amounts owed by Supplier to an entity within the Yara Group may also be set-off against Supplier's invoices.



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- 10.7** Supplier's failure to evidence that tax and other levies relevant for Buyer have been paid in accordance with applicable laws and regulations entitles Buyer to withhold payment until Supplier either produces such documentation, or provides satisfactory security for payment of such taxes and levies. Buyer may recover from Supplier at any time any liability incurred by Buyer as a consequence of Supplier failing to pay in the required taxes and levies.
- 10.8** Buyer is entitled to audit at Supplier's premises all payments for reimbursable work for up to two years after receipt of the final invoice. Such audits shall be carried out by an independent third party that has undertaken customary confidentiality undertakings.
- 11 BREACH OF THE AGREEMENT**
- 11.1 Delay**
- 11.1.1** Delay exists when Supplier or someone Supplier is responsible for fails to comply with the deadlines set out in condition 6.1.1, unless the delay is wholly caused by Buyer.
- 11.1.2** If the Deliverables are defective at delivery, Buyer may in its sole discretion elect to treat this as delay for the period the Deliverables may not be used for their intended purpose.
- 11.2 Liability for delay**
- 11.2.1** Without prejudice to the right to claim indemnification for additional damages, liquidated damages shall accrue at a rate of 0.5 % of the total contract price per day by which the delivery date is delayed. Liquidated damages shall, however, not exceed 15 % of the total contract price.
- 11.2.2** If the Deliverables are manufactured especially for Buyer, and Supplier therefore is unable to dispose of the Deliverables without incurring considerable Losses, Buyer may without any liability terminate the Agreement with immediate effect only if the maximum of liquidated damages have accrued or the delay constitutes a substantial breach of the Agreement, or it is evident that such delay will take place.
- 11.3 Defects**
- 11.3.1** Neither Buyer's inspection pursuant to condition 2.9 nor the fact that Supplier has sent drawings, goods or samples for Buyer's inspection limits Supplier's responsibility for ensuring that the Deliverables are in compliance with the contractual requirements.
- 11.3.2** Buyer shall inspect the Deliverables within a reasonable time after delivery, and thereafter issue written notices of defect to Supplier pursuant to condition 11.3.4 if required. Buyer's obligation to perform inspection of the Deliverables applies correspondingly where Supplier has performed rectification work.
- 11.3.3** Buyer is under no obligation to inspect or approve the Deliverables prior to delivery. If Supplier shall carry out installation work, the obligation to perform inspection does not arise until the Deliverables are ready for acceptance pursuant to condition 5.3.
- 11.3.4** Buyer shall issue a written notice of defect to Supplier within a reasonable time following discovery of any defect and its causes, and in no event later than 24 months after delivery. The same time limit applies in respect of any replaced or repaired parts, calculated from the time the replacement or repair took place. The time limit for making a notice of defect does not commence as long as the Deliverables may not be used for their intended purpose or rectification work or other activities necessary to comply with the contractual requirements are performed.
- 11.4 Liability for defects**
- 11.4.1** When Buyer notifies Supplier of a defect, Supplier shall commence rectification of the defect without delay. The rectification work shall entail that the Deliverables are rectified to the contractual level as quickly as possible. The rectification work shall be postponed upon Buyer's request provided that Buyer has a justified reason for requiring such postponement. Rectification work shall be performed at Supplier's risk and expense.
- 11.4.2** If Supplier fails to remedy the defect(s) within reasonable time, Buyer is entitled to remedy the defect himself or employ a third party to do so at Supplier's expense, or to demand redelivery or reduce the contract price accordingly. The same shall apply if awaiting Supplier's remedy will cause substantial inconvenience to Buyer. In such event, Supplier shall be notified in writing prior to initiating of the rectification work.
- 11.4.3** Buyer is entitled to claim compensation for all Losses suffered due to defects to the extent possible pursuant to applicable law.
- 11.4.4** Buyer may terminate the Agreement if a defect (or failure to rectify such defect) constitutes a material breach of the Agreement. In such event, Buyer is entitled to reject Supplier's offer to remedy the defect and/or reperform or substitute the Deliverables.
- 11.5 Termination**
- 11.5.1** Either party may without any liability give notice in writing to the other terminating the Agreement with immediate effect if:
- the other party commits a material breach of the Agreement and (if such breach is remediable) fails to remedy that breach within a period of twenty (20) business days of being notified in writing to do so;
  - the other party repeatedly breaches any of the terms of the Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of the Agreement;
  - a petition is filed, a notice is given, a resolution is passed, or an order is made for the winding up or bankruptcy of the other party; or
  - the other party suspends or ceases, or threatens to suspend or cease, performing all or a substantial part of its business.
- 11.5.2** Furthermore, the Buyer may without any liability give notice in writing to the Supplier terminating the Agreement with immediate effect if:
- Supplier is in breach of any of conditions 2.7, 2.9, 4.2, 11.1.1, 15, 16.2 or 17;
  - the maximum amount of liquidated damages has been accrued;
  - part or all of Supplier's assets intended or useful for the performance of the Agreement are seized, attached, frozen or have in any way become unavailable;
  - Supplier undertakes any act, deed or matter which would result in the creation of any lien or encumbrance of any kind whatsoever on Buyer's property; or
  - there is a change of Control of Supplier.
- 11.5.3** Termination of the Agreement shall not affect the accrued rights, remedies, obligations or liabilities of the parties existing at termination.
- 11.5.4** Termination entails that the parties shall return at Supplier's risk and expense all deliveries and payments made as at the time of termination without undue delay. Buyer may, however, in its sole discretion elect to demand delivery of or keep:
- work-in-progress at the time of termination for a reasonable price (not including loss of anticipated profits or any consequential loss); and/or
  - non-defective Deliverables for a proportionate part of the agreed price.
- 11.5.5** Furthermore, each party shall promptly, upon request from the other:
- return to the other party all equipment, materials and property belonging to the other party that the other party had supplied to it in connection with the supply of the Deliverables under the Agreement; and
  - return to the other party or erase (to the extent possible) all documents and materials (and any copies) containing the the other party's Confidential Information.
- 11.5.6** Conditions which expressly or by implication survive termination of the Agreement shall continue in full force and effect.
- 11.6 Indemnification**
- 11.6.1** Supplier shall indemnify Buyer if the Deliverables constitute an infringement of any third party rights (except when this is necessary due to Buyer's specifications and Supplier did not know or ought to have known that such an infringement would occur) and for any claim made by a third party for death, personal injury or damage to property arising out of or in connection with defects in the Deliverables.



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## 11.7 Limitation of liability

11.7.1. Neither party shall under any circumstances whatsoever, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, be liable to the other party for any trading losses, loss of profit, loss of goodwill, loss of production, or any other indirect or consequential damage suffered.

## 12 FORCE MAJEURE

12.1 A party shall not be considered in breach of the Agreement to the extent it is proven that it was unable to fulfill its contractual obligations due to Force Majeure. Each party shall cover its own costs resulting from Force Majeure.

12.2 The party invoking Force Majeure shall notify the other party thereof without undue delay. Such notice shall also include the cause of the delay and the presumed duration thereof.

12.3 Each party is entitled to cancel the Agreement without any liability and with immediate effect if the Force Majeure situation continues, or it is obvious that it will continue, for more than 60 calendar days.

## 13 TRANSFER OF TITLE AND RISK

13.1 If the Deliverables are manufactured or performed specifically for Buyer, the Deliverables are Buyer's sole property as and when the Deliverables are produced or performed. Other Deliverables become Buyer's sole property as and when the Deliverables are paid for or delivered (whatever happens first).

13.2 All risk associated with the Deliverables will remain with the Supplier until delivery has taken place according to condition 6.2.

13.3 Supplier shall clearly mark Deliverables in its possession that are Buyer's property and, if possible, keep such Deliverables separate from other goods.

## 14 INTELLECTUAL PROPERTY RIGHTS

14.1 Each party reserves all rights in its Confidential Information. No rights or obligations in respect of a party's Confidential Information other than those expressly stated in the Agreement are granted to the other party or to be implied from the Agreement.

14.2 Intellectual property rights, reports, drawings, specifications and similar documents, including computer programs, constitute part of the Deliverables and are Buyer's sole property to the extent they are:

- a) specifically prepared by Supplier in connection with the Deliverables; and
- b) are necessary for the use of the Deliverables.

14.3 Buyer shall be granted appropriate licenses of use to those rights which are necessary for the completion, operation, maintenance, repair and modification of the results of the Deliverables, or of the product to which the Deliverables are related.

14.4 The Supplier warrants that the Deliverables are not subject to any retention or title or any other (limited) rights of third parties.

## 15 CONFIDENTIALITY

15.1 All information exchanged or otherwise transferred between the parties shall be treated as confidential, not be disclosed to any third parties and only exploited commercially for the purposes and within the scope of the Agreement according to the terms of this Agreement.

15.2 A party may nevertheless make such information available to third parties provided that the information was already known to that party at the time the information was received, or that the information is or becomes part of public domain other than through a fault of either of the parties, or is rightfully received from a third party without an obligation of confidentiality or it is necessary due to applicable laws and regulations.

15.3 Information may be disclosed to third parties to the extent necessary for execution of the Agreement or utilization of the Deliverables, provided that the receiver of such information shall be bound by a confidentiality obligation similar to this condition 15.

15.4 Without Buyer's written consent, Supplier shall not issue any press release, refer to or use Buyer's business name(s) and logo(s) or otherwise advertise that this Agreement has been entered into.

15.5 The obligations in this condition 15 shall survive termination of this Agreement and shall remain in force for 5 years after any such termination.

## 16 ASSIGNMENT AND CHANGE OF CONTROL

16.1 Buyer is entitled to assign its rights and obligations pursuant to the Agreement, fully or partly, to any entity within the Yara Group.

16.2 Supplier may not assign any of its rights and obligations pursuant to the Agreement without Buyer's prior written consent.

16.3 Supplier shall notify Buyer without undue delay once a change of Control of Supplier has taken place.

## 17 STANDARDS OF BUSINESS CONDUCT

17.1 The Supplier shall apply standards of business conduct in the conduct of its business which are consistent with Buyer's Business Partners Code of Conduct, a copy of which is available upon request from Buyer to the Supplier or details of which are referenced at link as follows: [http://www.yara.com/about/corporate\\_governance/ethics\\_program\\_and\\_conduct/index.aspx](http://www.yara.com/about/corporate_governance/ethics_program_and_conduct/index.aspx).

17.2 Buyer may perform an integrity due diligence review of any of its suppliers to ensure compliance with Buyer's Code of Conduct. Supplier shall fully cooperate with Buyer in the performance of such review, and (if applicable) comply with any and all reasonable requests for information and documentation.

## 18 REACH REGULATION

18.1 The Supplier warrants that it, and all sub-suppliers of substances used in relation to the Deliverables, complies with the REACH Regulation.

18.2 The Supplier undertakes that all those substances used in the production of and/or incorporated in the Deliverables which are subject to registration under the REACH Regulation, have been pre-registered and either have been or shall be registered by Supplier and/or by its sub-suppliers covering the uses of Buyer, in each case in accordance with the requirements of the REACH Regulation. For the avoidance of doubt, this undertaking also applies to any ancillary substances and/or products, such as coatings, colors or micronutrients which may have been added to or incorporated in the Deliverables. For the avoidance of doubt, it is acknowledged that Supplier and/or its sub-suppliers shall not register the substances as intermediates.

18.3 The Supplier warrants that there are no substances of very high concern (SVHC) used in the production of and/or incorporated in the Deliverables.

18.4 The Supplier shall ensure at all times that Buyer is provided promptly with relevant and up-to-date Safety Data Sheet(s) in accordance with requirements of the REACH Regulation and the CLP Regulation (EC 1272/2008).

## 19 APPLICABLE LAW AND LEGAL VENUE

19.1 The Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of the Buyer's country. The applicability of the UN Convention on Contracts for the International Sale of Goods 1980 (CISG) is excluded.

19.2 The parties irrevocably agree that the court in which jurisdiction Buyer's registered office is located shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with the Agreement or its subject matter or formation (including non-contractual disputes or claims).