



TERMS AND CONDITIONS OF SUPPLY

1. APPLICATION OF THESE TERMS

- 1.1 These terms and conditions of sale ("**Terms**"), together with the Market Rules, Bidder Contracting Information and your Sales Confirmation in respect of a Trading Event, apply to the supply of Products by Darigold in the Sales Confirmation for which you are the Winning Bidder in that Trading Event.

2. SALES CONFIRMATION

- 2.1 Within 72 hours of completion of the Trading Event, Purchaser (Winning Bidder) shall provide Darigold with Purchaser's destination port, complete purchase order documentation, and any other information required by these Terms and/or the Market Rules.
- 2.2 Once an agreement for the sale of Products has been formed in accordance with the Market Rules, Darigold may invoice Purchaser for all of the relevant Products in accordance with clauses 6 and 7.
- 2.3 Darigold may from time to time enter into agreements with third parties under which those third parties (who may not be in USA) will manufacture and/or supply part or all of the Products referred to in a Sales Confirmation.

3. PRODUCT SHIPMENT

- 3.1 Darigold will, subject to clause 3.6, ship the Winning MT to the Winning Bidder at any time during the shipment period specified for the relevant Contract Period. Darigold will use commercially reasonable efforts to ensure that the Product is shipped ex-USA so that the Product arrives with 20 days prior to, and up to 30 days after the scheduled delivery month. Where there is no agreed delivery schedule, Darigold will use commercially reasonable efforts to supply the Products to the Purchaser at an even rate across the delivery period envisaged by the Sales Confirmation. Any claims from the Purchaser for overdue deliveries apply only upon receipt by Darigold of a notice of default. Any time quoted for delivery is an estimate only. No delay in the shipment or delivery of any Product relieves Purchaser of its obligations under this Agreement, including accepting delivery of any remaining installment or other orders of Products.
- 3.2 If Darigold is unable for any reason to supply any Product referenced in the Sales Confirmation, Darigold may offer to supply the Purchaser with substitute product having specifications which are not materially lower than provided in the Sales Confirmation or offer to supply an alternative product. If the Purchaser does not agree to Darigold supplying the Purchaser with a substitute or alternative product Darigold may cancel the relevant shipment without liability.
- 3.3 While the price specified in a Trading Event for Products will be stated on a FAS Incoterms Basis, supply of that Products will occur on the Incoterms Basis set out in the Sales Confirmation and the Purchaser will be required to pay additional amounts to Darigold in accordance with clause 6.2. for supply on this basis. Supply will only be made on an Incoterms Basis that is specified in your Bidder Contracting Information.
- 3.4 Unless the Incoterms Basis noted in the Sales Confirmation provides otherwise, the Purchaser shall be solely responsible, at its cost, for meeting all import and other regulatory costs and requirements relating to the Products shipped to the relevant territories, and for any damage or loss occurring whilst the Products are in transit. The Purchaser shall also be responsible for ensuring the Products meet all legal and regulatory requirements in the country or territory in which the Products are being shipped and/or used by the Purchaser.
- 3.5 The Purchaser must notify Darigold in writing within 30 days of first having access to the Product if there is a shortfall in volume or the Purchaser shall be deemed to accept that the volume is correct.



- 3.6 Darigold will round the quantity of Products in a shipment up or down as necessary, in Darigold's sole discretion, to ensure that Purchaser receives full container, truck, or railcar loads of the relevant Products (volume per vessel subject to change from time to time and can be confirmed with Darigold). To account for any rounding, Darigold shall proportionately increase or decrease the payment amount specified in the Sales Confirmation and/or shipment schedule for such Products. Delivery of such a rounded quantity of Products over or under the amount of a shipment shall be deemed to constitute Delivery in satisfaction of the amount purchased by Purchaser as per Sales Confirmation.
- 3.7 If the arrangements for the shipment and delivery of the Products becomes commercially impractical in Darigold's reasonable opinion, Darigold shall discuss alternative arrangements with the Purchaser, such as a commercially reasonable substitute location or using a commercially reasonable substitute method of supply. If this is not agreed to by the Purchaser, Darigold may cancel the relevant shipment without liability.
- 3.8 If the Purchaser requests Darigold to move an order out or bring it forward, or the Purchaser is otherwise delayed in taking delivery of the Product as agreed in the Sales Confirmation and/or delivery schedule, Darigold may recover from the Purchaser an administration fee, financial hedging costs/fees, product storage, logistics and any related holding costs resulting from such change in delivery or delay. If the Purchaser is unable to take delivery of the Product as agreed in the Sales Confirmation, Darigold may cancel the applicable shipment and any subsequent shipments without resulting liability. Darigold may then resell the Products to a third party, and the Purchaser shall indemnify Darigold for any loss or costs (including any product write-off costs) for any storage, disposal, write-down, transport, logistics and any other costs incurred by Darigold.
- 3.9 If Parties, mutually agree, (by exception) to a revision to the contracted shipping schedule, Purchaser will supply all required documents a minimum of three (3) weeks prior to shipment date.
- 3.10 If Darigold delivers Products in multiple shipments, any failure by Darigold to make any one or more of the shipments or any claim by Purchaser regarding any one or more shipments will not affect Darigold's rights regarding any Products already supplied or that remain to be supplied under the Sales Confirmation.
- 3.11 Darigold's weights, analysis, and condition, at origin, will govern.

4. DEFECTS AND ACCEPTANCE

- 4.1 The Purchaser must notify Darigold in writing within 30 days of delivery of the Product if there is any apparent physical damage or defect or a purported shortfall in volume of Product so delivered. In addition, the Purchaser must notify Darigold in writing as soon as the Purchaser becomes aware of any quality or latent defect issue in the Products (including any products of the Purchaser which incorporate any Darigold Products) that the Purchaser becomes aware of after the expiry of the 30 days delivery notification period.
- 4.2 If Purchaser believes the Products are not in conformity with the Specification, Purchaser shall deliver a written claim notice to Darigold specifying any non-conformity in respect of the Products. Such notice shall include (a) the reason(s) for non-conformity, (b) the documentary evidence upon which Purchaser relies in support of such asserted non-conformity (including any photographs), and (c) the protocol(s) and all related test documentation used in relation to any testing done by Purchaser or its agents in connection with the Products. If Darigold does not receive a written rejection of the Products within the time set forth in Section 10.1, Purchaser shall be deemed to have finally and unconditionally accepted the Products.
- 4.3 The Purchaser shall keep any claimed defective Product stored separately from all other products at a commercially appropriate core storage temperature and in the state or condition in which they were supplied so that Darigold has an opportunity to inspect them. The Purchaser shall provide all assistance reasonably requested by Darigold to assess the claim, including providing access to its premises and any analysis or test results carried out by the Purchaser. If Darigold accepts that it is responsible, the Purchaser will, at Darigold's cost, either destroy the Products or make them available for collection by Darigold (or its agent) in Darigold's sole discretion.



- 4.4 Except where contrary to legal requirements, the Purchaser shall notify Darigold in advance of the Purchaser making any notification to any government agency arising from or relating to any Product (defective or otherwise). Darigold shall not be liable for any defect in, or damage to, Products (including that relating to the inappropriate storage, use or care of the Products) or their packaging to the extent the Purchaser has done, or failed to do, anything that has caused or contributed to the claimed defect or damage, or if the claim is outside the Product warranty period. The Purchaser must not settle or compromise a claim by a third party concerning such Products without Darigold's prior written consent.
- 4.5 The Purchaser shall co-operate with, and provide all reasonable assistance to, Darigold in relation to any recalls or withdrawals from sale of Darigold Products (or any of the Purchaser's products which incorporate Darigold Products) for any reason, with the objective being to optimise the respective parties' reputation and goodwill whilst ensuring public health and safety is maintained at all times.
- 4.6 In the event that Products are determined to be non-conforming Products, Darigold shall, at its sole option: (a) require that Purchaser destroy the non-conforming Products at Darigold's cost and (i) replace the Products; or (b) provide Purchaser a refund or credit of the purchase price. The foregoing remedies shall not apply upon showing that the defect in the Products arises from Purchaser's fault after proper delivery. The remedy provided in this paragraph shall be Purchaser's sole remedy in relation to non-conforming Products.
- 4.7 If Darigold instructs Purchaser to destroy non-conforming Products, Purchaser shall provide written confirmation to Darigold of such destruction and shall use its best efforts to ensure that such non-conforming Product is (a) destroyed so as to make absolutely no reference to Darigold or any Darigold trademark, logo, or tradename, (b) securely disposed of in accordance with good industry practice and applicable laws, and (c) not resold to Darigold or any third party. Purchaser shall be fully responsible for any non-conforming Products and shall indemnify and hold Darigold harmless from and against any and all Claims arising from or in any way connected with the destruction, use and/or consumption of non-conforming Products contrary to Darigold instructions. Darigold agrees to be responsible for all reasonable costs of destruction related to non-conforming Products.
- 4.8 Purchaser agrees and acknowledges that Darigold is not liable for any defect in or damage to Products (or their packaging, storage, or supply of such Products), or in any other dispute regarding the Products, and those Products will be deemed to have been Delivered and supplied by Darigold and accepted by Purchaser in compliance with these Terms and the Sales Confirmation:
- (a) If Purchaser does not provide written notice to Darigold of that issue within the time periods provided in these Terms, and include in such written notice full details of the Products, the alleged defect or damage, and all documents associated with the relevant shipment;
 - (b) If Purchaser fails to comply with any of the inspection procedures set forth in Section 4.3;
 - (c) To the extent Purchaser has done anything that caused or contributed to (or reasonably could have caused or contributed to) the claimed defect;
 - (d) If Purchaser settles or compromises a claim by a third party concerning such Products without Darigold's involvement and prior written consent;
 - (e) Subject to the Incoterms Basis, if the claimed defect occurred during transit with a third party (whether or not a common carrier) and Delivery or supply has not occurred (even if Darigold arranged for that third party to transport the Products);
 - (f) If Purchaser does not reasonably assist Darigold with its inquiries and investigations concerning Purchaser's claim;
 - (g) If the Products have not been stored, cared for, or used in a proper manner, including if the Products have not been properly stored by Purchaser at the commercially appropriate core storage temperature;



- (h) If the Products are incorporated into, mixed with, or affixed to any other products, or used in any process; or
- (i) If the claimed defect or damage arose after the expiration date of the relevant Products.

5. RISK AND TITLE

- 5.1 Risk in all Products passes to the Purchaser on delivery (as per applicable Incoterms basis) even though title may not. Title in all Products remains with Darigold until such time as full payment is made in cleared funds for all amounts owing by the Purchaser for the Products supplied. Until the Purchaser has paid Darigold in full, Darigold may retake, sell or dispose of the Product supplied and unpaid, which shall not affect any other rights Darigold may have in connection with Purchaser's failure to perform.
- 5.2 Purchaser hereby grants Darigold a security interest in the Products supplied, Purchaser products in which the Products may be incorporated, and any proceeds of the foregoing for any amounts owing by Purchaser to Darigold from time to time and for the full performance by Purchaser of all of its obligations to Darigold from time to time. Purchaser authorizes Darigold to prepare and file a financing statement (Form UCC-1) or register or otherwise perfect its security interest as permitted by law in any relevant jurisdiction at Darigold's sole discretion. On Darigold's request, Purchaser agrees to promptly provide to Darigold all assistance and information (including, but not limited to, signing any documents) as requested by Darigold to enable Darigold to register or otherwise perfect its security interest with the priority it requires. Purchaser waives the right to receive from Darigold a copy of any financing statement, financing change statement, or verification statement filed at any time in respect of the security interest granted under these Terms or any renewal or replacement Terms. Purchaser shall be entitled to a release or discharge of the security interest granted upon Purchaser's full performance of these Terms and any other agreement between Purchaser and Darigold, including, without limitation, full payment, performance, and satisfaction of all amounts owing to Darigold under these Terms or any other agreement.

6. PRICE AND TAXES

- 6.1 Unless otherwise agreed in writing, the price for the Products supplied shall be the price specified by Rule A2.3(a) of the Market Rules as adjusted to incorporate any additional charges or other matters stated in the Bidder Contracting Information or Sales Confirmation, multiplied by the actual quantity of Products supplied, as rounded in accordance with clause 3.6. The price per the Sales Confirmation may be increased or decreased in case of changes in an order as per clause 3.6 of these Terms.
- 6.2 Unless the Incoterms basis expressly provides otherwise, the price shall exclude applicable sales taxes, customs, excise, duties, levies, value added or goods and services related tax. The price shall be increased to reflect any such costs being imposed on Darigold and the Purchaser shall hold Darigold harmless in respect of any such costs.

7. PAYMENT AND INVOICING

- 7.1 Darigold will not ship any Product unless payment arrangements have been agreed with the Purchaser, which may involve letter(s) of credit, documentary collection, bank guarantee or deposit. Any payments made pursuant to any such arrangement shall be made net of any bank charges and must equate to the amount invoiced for the applicable Products. If no such arrangements are in place shipment will be rolled to an agreed date and the Purchaser shall hold Darigold harmless against any direct costs incurred by Darigold resulting from such delay.
- 7.2 Where Darigold has agreed in writing that the Purchaser will pay for Products based on the date of the bill of lading for those Products, Darigold must receive payment by that agreed date or it may refuse to commence supply of any Products. Where Darigold has not extended credit to the Purchaser, Darigold will provide an invoice for the relevant price and fees applicable to each shipment. Any supply delays and associated costs incurred due to a delay in any payment being received by Darigold are the Purchaser's responsibility.
- 7.3 Darigold must receive payment of all invoices, in full without deduction (except to the extent required by These Terms are effective for Trading Events held after 1 May 2023



law), set-off, or counterclaim, on the earlier of (i) the specified due date, or (ii) within fourteen (14) days of invoice. Darigold will not supply any Product described in an invoice to Purchaser until it has received payment in full of such invoice. If Purchaser is legally required to make any deduction or withholding on account of tax from any sum payable to Darigold under these Terms, then Purchaser will increase the sum payable to the extent necessary to ensure that, after making such deduction or withholding, Darigold receives and retains (free of any liability in respect of any such deduction, withholding, or payment) a net sum equal to the sum that Darigold would have received and so retained had Purchaser not made such deduction or withholding. If for any reason Darigold does not obtain payment in full, Purchaser remains liable to pay Darigold the total amount payable for the Products under these Terms and all related charges (including, without limitation, Darigold's costs of recovering any amount due).

- 7.4 If Purchaser believes that any invoice is incorrect, Purchaser must give Darigold written notice within 7 days of receiving such invoice. This notice must include full details of any claimed error. If Purchaser has not given Darigold valid notice of any error within seven (7) days of receiving Darigold's invoice, Purchaser agrees and acknowledges that it shall treat such invoice as correct. Purchaser must make payment of the undisputed amount due on any disputed invoice by the due date. If an invoice is not disputed and remains unpaid after the due date for payment, or if an invoice is disputed but the undisputed part of that invoice is not paid by the due date for payment, Darigold may withhold or defer any future shipment pending payment, or supply only a quantity equal to the paid amount, at its sole discretion. Once any dispute is resolved, Purchaser must pay to Darigold the resolved amount due within fourteen (14) days.
- 7.5 If an invoice remains unpaid after the due date for payment Darigold may:
- (a) charge penalty interest at the rate of 1.5% monthly (or, if less, the maximum amount permitted by law), such interest to accrue daily and compound monthly from the due date until payment has been received by Darigold in cleared funds. Any collection charges, legal expenses (calculated on a full indemnity basis), commissions, and any other expenses incurred by Darigold in attempting to recover from Purchaser any payment due to Darigold are payable by Purchaser to Darigold on demand by Darigold;
 - (b) withhold or defer any future shipment pending payment without liability to Darigold; and/or
 - (c) use applicable remedies (other than arbitration referred to in clause 11.8) such as obtaining judgment in the Washington state courts that may be enforced against the Purchaser where this is available in accordance with local jurisdiction.
- 7.6 All references to amounts of money in these Terms are references to US Dollars unless specifically set out in the Sales Confirmation and are payable in that currency. Darigold may, at its discretion, accept payment in a different currency and convert such payment into the required currency. However, any costs associated with this conversion, or otherwise incurred by Darigold, shall be borne exclusively by Purchaser. If due to any currency exchange, Darigold nets an amount that is less than the amount due, Purchaser must immediately pay any further amount necessary to ensure that Darigold receives the full amount due in the relevant required currency.
- 7.7 If Purchaser owes Darigold money for any reason and Darigold owes Purchaser money in connection with these Terms, Darigold may set off the amount that Purchaser owes to Darigold against the amount that Darigold owes to Purchaser.
- 7.8 If Darigold agrees in writing to electronically transmit to, or receive from, Purchaser any documents or information relating to these Terms (including, without limitation, invoices) (collectively "Documents"), the following provisions shall apply:
- (a) All Documents shall be transmitted and received in accordance with standards specified by Darigold from time to time.
 - (b) Purchaser must, at its own expense: (i) provide and maintain the resources necessary to effectively and reliably transmit and receive Documents, and (ii) implement security



procedures which are necessary to ensure that transmissions of Documents are protected against improper access.

- (c) Each Party shall maintain a record of data exchanged pursuant to this clause 7.8 for not less than 12 months following the supply of Products to which the data relates and allow the other Party reasonable access to that record on request.
- (d) The Parties agree that the Documents shall be governed by the U.S. E-Sign Act.
- (e) Nothing in this clause 7.8 precludes the Parties from exchanging paper documents; provided, however, that where a Document is sent in both paper form and electronic form, the electronic form of the Document shall prevail.

8. DEFAULT AND REMEDIES

8.1 The following will be an Event of Default under these Terms:

- (a) Purchaser defaults in any payment due to Darigold (including under these Terms) or Darigold determines that Purchaser is likely to default in any payment, including, without limitation: (i) where Purchaser is unable, or states that it is unable, to pay its debts as and when they fall due; (ii) where a liquidator, receiver, manager, controller, trustee, or other insolvency administrator is appointed in respect of Purchaser or any (or all) of its assets, or a scheme of arrangement is proposed or approved in respect of Purchaser; (iv) where a mortgagee enters into possession of any of Purchaser's assets; or (v) any similar situation occurs;
- (b) Purchaser is otherwise in breach of these Terms, the Sales Confirmation, the Market Rules, the terms and conditions of any credit that Darigold has extended to Purchaser (including, without limitation, where Purchaser has exceeded its credit limit with Darigold), or any other agreement between the Parties or to which the Parties are bound.

8.2 If the Purchaser is in default, Darigold may:

- (a) withhold or cancel the relevant shipment and/or any subsequent shipment; and/or
- (b) retain any deposit the Purchaser may have paid and/or draw on any relevant L/C, bank guarantee or standby L/C; and/or
- (c) reclaim and/or resell the Products in the Purchaser's possession or under its control and may enter premises where Darigold believes that the Products are stored or held to do so, and recover from the Purchaser all costs of doing so; and/or
- (d) preclude Purchaser from participating in any Darigold purchasing event,

and all monies owing and outstanding by the Purchaser on any account whatsoever will become immediately due and payable (without the requirement for notice from Darigold). Darigold will not be liable to the Purchaser for any losses it incurs as the result of exercising the above rights.

8.3 All rights and remedies provided in this Agreement are cumulative and not exclusive, and the exercise of any right or remedy does not preclude the exercise of any other rights or remedies that may now or subsequently be available at law, in equity, by statute, in any other agreement between the Parties or otherwise.

9. WARRANTIES

9.1 Darigold warrants only (to the exclusion of any implied warranties or guarantees) that Product at the point of delivery meets the specifications (including as to residual shelf life) as set out in the Darigold selling specification for the Product type described, as supplemented by the Sales Confirmation and/or shipment schedule. To the maximum extent permitted by law, Darigold makes no other representations



or warranties in respect of the Products, including representations or warranties concerning fitness for purpose, compliance with any laws, regulations or rules of any market in which the Products are used, sold or otherwise dealt with, or appropriateness for the Purchaser's needs of any Product, and the Purchaser must assure itself of these matters.

9.2 THE WARRANTIES SET OUT IN THIS SECTION 9 SHALL BE THE SOLE WARRANTIES MADE BY DARIGOLD TO PURCHASER. AT THE RISK OF PURCHASER, THERE ARE NO REPRESENTATIONS, WARRANTIES OR CONDITIONS OF ANY KIND WHATSOEVER, WHETHER EXPRESS OR IMPLIED, ARISING BY STATUTE, IN LAW OR EQUITY, BY CUSTOM, OR FROM A COURSE OF DEALING OR USAGE OF TRADE, INCLUDING ANY IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ALL OF WHICH ARE EXPRESSLY DISCLAIMED BY DARIGOLD.

10. LIMITATION OF LIABILITY

10.1 Darigold will not in any circumstances be liable for any claim in contract, tort (including negligence) or equity, under statute or otherwise unless notice of the claim is given in writing to Darigold within 30 days of the Purchaser first becoming aware of a claim arising.

10.2 Darigold shall not be liable under any circumstances to the extent any Products have been, (a) subjected to abuse, misuse, neglect, negligence, accident, adulteration, improper testing, improper installation, improper storage, improper handling, improper transport, abnormal physical stress, abnormal environmental conditions or use contrary to any instructions issued by Darigold by persons other than Darigold or its authorized Representative; or (b) reconstructed, modified or altered by persons other than Darigold or its authorized Representative.

10.3 EXCEPT AS SET FORTH IN THIS AGREEMENT, DARIGOLD SHALL NOT UNDER ANY CIRCUMSTANCES BE LIABLE TO PURCHASER FOR ANY OTHER DIRECT DAMAGES. DARIGOLD SHALL NOT UNDER ANY CIRCUMSTANCES BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES, INCLUDING, WITHOUT LIMITATION, LOST PROFITS, REGARDLESS OF THE NATURE, TYPE OR FORM OF THE CLAIM, WHETHER BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, EQUITY OR ANY OTHER THEORY OF LIABILITY, EVEN IF DARIGOLD HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF SUCH DAMAGES WERE REASONABLY FORESEEABLE. DARIGOLD'S AGGREGATE LIABILITY ARISING FROM OR RELATING TO THIS AGREEMENT IS LIMITED TO THE AMOUNT PAID BY PURCHASER FOR THE PRODUCTS UNDER THE APPLICABLE PURCHASE ORDER.

10.4 WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, PURCHASER ASSUMES ALL RISK AND LIABILITY FOR THE RESULTS OBTAINED BY THE USE OF ANY PRODUCTS IN THE PRACTICE OF ANY PROCESS, WHETHER IN TERMS OF OPERATING COSTS, GENERAL EFFECTIVENESS, SUCCESS OR FAILURE, AND REGARDLESS OF ANY ORAL OR WRITTEN STATEMENTS MADE BY SUPPLIER, BY WAY OF TECHNICAL ADVICE OR OTHERWISE, RELATED TO THE USE OF THE PRODUCTS.

10.5 THE PROVISIONS OF THIS SECTION 13 SHALL SURVIVE THE TERMINATION OR EXPIRATION OF ANY AGREEMENT BETWEEN THE PARTIES.

10.6 There are no intended third party beneficiaries to this Agreement.

10.7 If the Products are delayed in being shipped to the Purchaser due to circumstances within Darigold's reasonable control, Darigold's maximum aggregate liability for any direct costs incurred by the Purchaser as a direct result of such delay is limited to five percent (5%) of the invoice value of the shipment the subject of the delay. This is the Purchaser's sole remedy in the event of delay.

10.8 Where the Purchaser contends that costs or damages arising from any third-party claim are Darigold's liability (and as a precondition to Darigold accepting any such liability), the Purchaser irrevocably grants Darigold the sole control of the defence and all related settlement negotiations and other proceedings, and the Purchaser shall assist and co-operate with Darigold as reasonably requested regarding any



third-party claim in relation to the Products.

- 10.9 Without limiting anything in this Section 10, Darigold may from time to time provide advice, recommendations, and statements with respect to the Products. However, Darigold does not warrant or guaranty the accuracy or completeness of such advice, recommendations, or statements, or the results obtained through the use of the Products. Darigold expressly disclaims any liability for any damage to Purchaser from reliance on such advice, recommendations, or statements. Purchaser relies on such advice, recommendations, and statements at its own risk and Purchaser should make other appropriate inquiries regarding the Products with respect to Purchaser's own circumstances.
- 10.10 As specified elsewhere in these Terms, Darigold is not and will not in any circumstances be liable for any claim by Purchaser under or in connection with these Terms for: (i) any of the instances of deemed compliance specified in clause 4.8; (ii) failure to consent to commercially reasonable alternatives under clauses 3.2 and 3.7; (iii) failure to receive or accept Products according to these Terms; or (iv) in exercising its enforcement rights provided in these Terms.
- 10.11 The Purchaser shall indemnify Darigold for any liability, costs, damages or claims suffered by Darigold and caused directly or indirectly by the Purchaser's handling, storage, use or sale of the Products, or by any negligent act or omission or breach of any law applicable to the handling, storage, use or sale of the Products (including as incorporated into another good or service) by the Purchaser.
- 10.12 Force Majeure
- (a) Darigold shall not be liable or responsible to Purchaser, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement, if such failure or delay is caused by or results from acts beyond Darigold's control, including: (a) acts of nature; (b) flood, fire, earthquake or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) requirements of applicable law; (e) actions, embargoes or blockades in effect on or after the date of this Agreement; (f) action by any governmental authority (whether or not having the effect of law); (g) national or regional emergency; (h) strikes, labor stoppages or slowdowns or other industrial disturbances; (i) shortages of or delays in receiving raw materials; or (j) shortage of adequate power or transportation facilities (each, a "Force Majeure Event"). Changes in market conditions, demand, and/or other events which adversely affect Purchaser's desire to take the Products at agreed upon times, prices and or quantities shall not constitute a Force Majeure Event. Purchaser's obligation to make payment shall not be subject to any Force Majeure Event.
- (b) In the event that Darigold is unable to Deliver or supply Products to Purchaser due to events beyond its reasonable control, Darigold will notify Purchaser as soon as reasonably practicable, and if the Parties cannot mutually agree to alternative supply arrangements, Darigold may cancel the relevant shipment(s) or any part thereof and, without resulting liability, resell the relevant Products and/or allocate the available Products among Purchaser and any of Darigold's other Purchasers as it deems appropriate in its sole discretion. This Section does not excuse Purchaser from any obligation to make a payment when due.

11. GENERAL

- 11.1 All notices under these Terms must be in writing and delivered by one party to the other at the address that the other specifies from time to time. Where any notice is required to be given by the Purchaser to Darigold under these Terms in respect of any damage, defect or shortfall in the contracted volume of Products, the Purchaser shall do so within the time period stated in these Terms or Darigold shall not be liable in respect of any claim or potential claim. The Purchaser shall provide full details of the alleged problem with the Products, and subsequently any other information reasonably requested by Darigold.
- 11.2 The Purchaser agrees that any packaging accompanying the Products which identifies the Product as being manufactured or supplied by Darigold must be disposed of in a manner that prevents its re-use. Unless expressly otherwise agreed in writing, the Purchaser acknowledges and warrants that any



Products purchased under these Terms are purchased solely for its own use and that the Purchaser will not on-sell the Products in any market.

- 11.3 Any confidential information or intellectual property provided by Darigold in connection with the Products, including any price list, the Sales Confirmation and shipment schedule, remains at all times Darigold's confidential and proprietary information and may be used by the Purchaser solely to complete the relevant shipment and for no other purpose and must otherwise be kept in strict confidence by the Purchaser. The Purchaser agrees that damages are not an adequate remedy for any breach of this clause and that Darigold may seek an injunction or other interim relief to protect its rights. Darigold will hold in confidence any information which the Purchaser identifies in writing to Darigold as being confidential.
- 11.4 All intellectual property which is owned by, or is proprietary to, or which is created as a result of or in connection with the provision of the Products, shall remain owned exclusively by Darigold. The Purchaser has no right or interest in or licence to use any of Darigold's intellectual property (including trademarks) without Darigold's prior written consent.
- 11.5 The Purchaser shall not give or make any undertaking, assertion or representation in relation to the Products without Darigold's prior approval in writing.
- 11.6 The United Nations Convention on Contracts for the International Sale of Goods does not apply to these Terms or any transaction conducted in accordance with, or pursuant to, these Terms.
- 11.7 These Terms supersede and exclude all discussions, representations, terms and/or conditions of trade, and all written or oral agreements, arrangements and understandings between Darigold and the Purchaser. In no event may any preprinted terms or conditions found on any proposal, purchase order, work order, invoice, or similar document be considered an amendment or modification to this Agreement. Any proposal for additional or different terms or any attempt by either party to vary in any degree this Agreement is hereby objected to and rejected. Darigold retains the right to reject any Purchaser purchase order or other document which purports to impose additional or different terms.
- 11.8 This Terms shall be governed by the law of the State of Washington, exclusive of its choice of law provisions. All legal actions in relation to this Agreement shall be heard exclusively in the state or federal courts located in Seattle, Washington, USA. PURCHASER HEREBY APPOINTS THE SECRETARY OF STATE OF WASHINGTON, USA AS ITS AGENT FOR SERVICE OF PROCESS IN WASHINGTON, USA. The prevailing party in any legal action in relation to this Agreement shall be entitled to its reasonable attorney fees and costs in relation to such legal action.
- 11.9 Any personal information collected by the Purchaser or Darigold in connection with these Terms must only be used or disclosed for the purposes of ensuring performance of these Terms and any future like arrangement. This may include disclosure within the parties' respective organisations and to other parties involved in performing these Terms. Darigold and the Purchaser agree to comply with relevant privacy laws in respect of any personal information collected in connection with these Terms, any shipments and any future like arrangement.
- 11.10 Any notice given by a party, or failure by a party to insist on strict compliance with, or any delay in exercising a party's rights under, these Terms is not a variation or waiver of any provision or of any right available to that party.
- 11.11 The Purchaser may not assign or novate any or all of its rights or obligations under these Terms to a third party or purport to do so without Darigold's prior written consent (which may be given or withheld in Darigold's complete discretion). Darigold may assign or transfer the benefits and burdens of this agreement to any affiliate of Darigold at its discretion and without the Purchaser's consent.
- 11.12 The parties agree to take reasonable steps to mitigate any loss or damage that party may suffer under these Terms.
- 11.13 Clerical errors or omissions, whether in compilation or otherwise in any information contained in the Information Website or Bidding Website, Bidder Contracting Information Sales Confirmation or shipment schedule, invoice or other such documentation, are subject to correction by Darigold.



11.14 Darigold may amend these Terms at any time and the amended Terms will apply in accordance with the Market Rules.

12 DEFINITIONS

12.1 In these Terms, unless the context otherwise requires:

- (a) “Darigold means” Darigold, Inc. and its officers, employees, agents, contractors and advisers.
- (b) “Bidder Contracting Information” means the bidder specific information made available to you in accordance with the Market Rules prior to the Trading Event at which the Products were purchased.
- (c) “Incoterms” means the international rules for the interpretation of trade terms as published by the International Chamber of Commerce, Paris, France, in effect at the time of the contract.
- (d) “Incoterms Basis” means, in respect of any Product, the basis for delivery in Incoterms which is specified in relation to that Product in the Sales Confirmation for that Product, or which is otherwise agreed between us. If no Incoterm is so specified or agreed by us, then the applicable Incoterm will, at our election, be either:
 - (i) the Incoterm held in Darigold’s customer information system in respect of Purchaser’s previous shipment; or
 - (ii) CFR.
- (e) “Market Rules” means the rules governing the Trading Platform and Trading Events as published on the Global Dairy Trade Website at www.globaldairytrade.info/en/resources/gdt-market-rules/
- (f) “Participation Agreement” means the Participation Agreement described in Part A, Section 1.2 of the Market Rules and in the form set out in Appendix 1 of the Market Rules.
- (g) “Product” or “Products” means any goods or products in respect of which you are the Winning Bidder in a Trading Event, including any services supplied or deemed to be supplied by us incidental to the Products and/or under these Terms.
- (h) “Purchaser” means the purchaser or intending purchaser of the Products from Darigold and includes any agent, contractor, or representative of Buyer (including its storage service provider, any carrier commissioned by Purchaser, or anyone who transports Products for Purchaser or on Purchaser’s behalf, or processes, on-sells, or on-provides goods or services that incorporate or in any way involve the Products).
- (i) “Sales Confirmation” means the Sales Confirmation or other such written documentation or communication issued which confirms, supplements, or modifies the details of Buyer’s contract with Seller. If no Sales Confirmation is issued, then the Sales Confirmation will comprise those provisions that Darigold selects to apply, at its sole discretion, to the supply of the Product. Unless expressly modified or supplemented by Darigold, in writing, the Sales Confirmation shall include these Terms.
- (j) “Specifications,” in respect of a Product, means the product description or specifications listed on the Sales Confirmation and/or Information Website for the Trading Event in which the Product was purchased by Buyer, as confirmed, supplemented or modified by the Individual Bidder Terms, Bidder Contracting Information.
- (k) “Trading Event” means the Global Dairy Trade trading events at which Darigold offers dairy



products for sale via the Bidding Website in accordance with the Market Rules (www.globaldairytrade.info/en/). It includes the period of time starting from when the Trading Manager opens the Bidding Website for Qualified Bidders to log on to enter their first round quantity bids through to after the last round when all Bidders have exited the Bidding Website.

- 12.2 Terms which are capitalised in these Terms but which are not defined in these Terms shall have the meaning given to those terms in the Market Rules.