

European Model Clauses, third draft

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Definitions

Adverse Impact: Adverse Environmental Impact and/or Adverse Human Rights Impact which one or both parties have either caused, contributed to, or are directly linked to their products, services, and business relationships.

Adverse Environmental Impact: means an adverse impact on the environment [which brings about an Adverse Human Rights Impact][resulting from the violation of one of the prohibitions and obligations pursuant to the international environmental conventions listed in the Annex, Part II of the EU Corporate Sustainability Due Diligence Directive][resulting from the violation of one of the prohibitions and obligations pursuant to Schedule P].

Adverse Human Rights Impact: means an adverse impact on protected persons resulting from the violation of one of the rights or prohibitions listed in the Annex, Part I Section 1, as enshrined in the international conventions listed in the Annex, Part I Section 2 of the EU Corporate Sustainability Due Diligence Directive][Schedule P].

Agreement: this agreement.

Buyer: Party [X] to this Agreement.

CSRD: Corporate Sustainability Reporting Directive, Directive (EU) 2022/2464 of 14 December 2022 amending Regulation (EU) no. 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU, Official Journal of the European Union of 16 December 2022, L 322/15.

Effective Date: the date on which obligations implemented in this Agreement become effective.

Human Rights and Environmental Due Diligence: a process appropriate to the size and circumstances of the party implementing it to identify, prevent, mitigate, cease, minimize, track and communicate Adverse Impact.

ESRS: European Sustainability Reporting Standards, Commission Delegated Regulation supplementing Directive 2013/34/EU and annexes 1 and 2.

Goods: the products or materials provided by Supplier as listed in Annex [x] to this Agreement.

Living Wage: the higher of the minimum wage (if applicable), or wages required for the basic needs of workers and their families as determined using a reputable benchmark to be agreed between the parties.

Representatives: [officers, directors, employees,] agents and all subcontractors, consultants and any other person providing staffing for Goods or services to Buyer required by this Agreement.

[Schedule P: a list attached to this Agreement with international environmental and human rights conventions non-compliance with which may cause environmental degradation or pollution and/or human rights abuse].

[Schedule Q: a list attached to this Agreement setting forth the responsible purchasing practices the Buyer shall make a best effort attempt to implement.]¹

Severe Adverse Impact: an Adverse Impact which is large scale, has a big impact by its nature or is irreversible.

SME: means a micro, small or a medium-sized enterprise, irrespective of its legal form, that is not part of a large group, as those terms are defined in Article 3(1), (2), (3) and (7) of Directive 2013/34/EU.

Supplier: Party [Y] to this Agreement.

¹ An example of such a list can be found in Schedule Q of the ABA Model Clauses accessible at https://www.americanbar.org/content/dam/aba/administrative/human_rights/contractual-clauses-project/scheduleq.pdf.

Article 1 Mutual Obligations with Respect to Due Diligence in Supply Chains

As of the Effective Date of this Agreement, Buyer and Supplier each agree:

1.1 Environmental and Human Rights Due Diligence

(a) Buyer and Supplier each covenants to cooperate with each other to establish and maintain a Human Rights and Environmental Due Diligence process in connection with the Goods and services governed by this Agreement appropriate to its size and circumstances to identify, prevent, mitigate, cease, minimize, track and communicate how each of Buyer and Supplier addresses the potential and actual Adverse Impacts of its activities directly or through their supply chains. In case the Supplier is an SME, he is only required to participate in environmental and human rights due diligence measures of the Buyer. Such human rights and environmental due diligence shall be consistent with the 2011 United Nations Guiding Principles on Business and Human Rights and with guidance from the Organisation for Economic Cooperation and Development for the applicable party's sector [or, if no such sector-specific guidance exists: shall be consistent with the 2018 OECD Due Diligence Guidance for Responsible Business Conduct (the OECD Due Diligence Guidance)]. Such due diligence shall not prejudice due diligence requirements included in specific European and member state legislation.

(b) In establishing and maintaining the Human Rights and Environmental Due Diligence process set out in Clause 1.1, Buyer and Supplier must, meaningfully engage stakeholders such as workers, local communities, as well as other individuals or groups potentially or actually affected by an Adverse Impact, including by violations of Schedule Q ("Stakeholders"). Such stakeholder engagement must be on-going, responsive, and effective. They may prioritize engagement according to severity and likelihood of adverse impacts.

- (i) To identify their Adverse Impacts accurately, Buyer and Supplier shall seek to understand the concerns of Stakeholders by consulting them directly in a manner that takes into account language and other potential barriers to effective engagement. Where such consultation is not possible, the parties shall consider reasonable alternatives such as consulting credible, independent expert resources, including human rights defenders and others from civil society.
- (ii) As part of the consultation process, Buyer and Supplier shall take steps to provide Stakeholders with pertinent information regarding their human rights and environmental position, Schedule Q, and other relevant information necessary for Stakeholders to meaningfully engage in the parties' Human Rights and Environmental Due Diligence process.
- (iii) Where Stakeholders reasonably request additional information from Buyer and Supplier, each party shall, within a reasonable time frame, either provide such information or submit a written justification for not doing so.
The parties shall determine which Stakeholders to engage and the intensity of the engagement based on the degree of the Adverse Impact on such Stakeholders.

Buyer and Supplier shall adequately document the Stakeholder consultation process to enable Buyer to comply with the relevant reporting requirements under applicable law.

(c) [Buyer and Supplier each] [Supplier] shall cause each of its employees and shall make best efforts to cause other Representatives to disclose on a [yearly or other timeframe] basis both forward looking and retrospective for a period of [six] months, as well as qualitative and quantitative information, regarding due diligence measures implemented by the Supplier and disclosure of actual or potential severe Adverse Impacts on the Supplier level when they occur or the Supplier becomes aware of a potential Severe Adverse Impact. The foregoing obligation does not apply if [the party which shall provide information][Supplier] is governed by sustainability reporting obligations under domestic law implementing the CSRD and has published such a report.

As far as allowed under the applicable laws, each party may request the other to provide additional due diligence-related information, so long as such requests are reasonable and necessary for the requesting party to effectively carry out its own due diligence obligations under this Agreement and applicable law.

All of the information provided in relation to this Agreement shall be accurate, provided in a digital format, and enabling the receiving party to comply with the CSRD and the ESRS [and any other applicable reporting obligations], to conduct risk analyses and to adapt the due diligence process if required. [Buyer has the right to annually and ad hoc request information in relation to potential and actual adverse impacts by way of a questionnaire. The questionnaire must be based on the Buyer's findings from their risk analysis. Such questionnaires shall be reasonable in scope and, whenever possible, designed to reduce the administrative burden for the responding party and to be consistent with the questionnaires developed by relevant industry associations or used by other companies operating in the same industry and in the same capacity as [Buyer] [Buyer and Supplier, respectively], Article 1.3 (i) applies.

(d) For the avoidance of doubt, each party is independently responsible for upholding its obligations under this Section 1.1, and a breach by one party of its obligations under this Section 1.1 shall not relieve the other party of its obligations under this Agreement.

(e) Environmental and Human Rights Due Diligence hereunder shall include implementation and monitoring of a risk-assessment, prevention and, if applicable, remediation plan commensurate with Article 2.3 to address issues identified by due diligence that was conducted before the Effective Date.

1.2 Compliance Throughout the Supply Chain

Supplier shall make a best effort to ensure that each of its Representatives acting to provide Buyer with Goods and/or services in connection with this Agreement shall engage with its own Suppliers and any other Representative in due diligence in accordance with Section 1.1. [Supplier shall make a best effort to ensure that its own suppliers and any other Representative implement the [same][comparable][at least as protective] obligation on their suppliers and/or any other representatives. Such relationships shall be formalized in written contracts.] [Any subcontracting (including hiring of subsuppliers or the like) after the effective date is permitted only after Supplier has conducted Human Rights and Environmental Due Diligence risk analysis on such subcontractor, and such subcontractor has agreed to the Human Rights and Environmental Due Diligence responsibilities stated herein. [All subcontracting [where the total contract price for such subcontract or in aggregate with related subcontracts is greater than above Euro[___]] must be approved in advance in writing by Buyer. Such approval is not to be unreasonably withheld, delayed,

or conditioned, provided that Buyer may withhold such approval if it reasonably determines that such subcontracting would, individually or in aggregate with related subcontracts, materially increase the risk of Adverse Impacts][Supplier shall promptly inform Buyer of all subcontracting [where the total contract price for such subcontract or in aggregate with related subcontracts, is greater than Euro[___]].

Supplier shall keep records of such written contracts to demonstrate compliance with its obligations under this Agreement. Supplier shall deliver such records as well as relevant information regarding an Adverse Impact to Buyer to the extent Supplier avails over such information and as far as allowed by law if Buyer has substantiated reasons to believe a human rights or environmental issue has emerged or is informed of such issue in the value chain the Supplier is part of and where relevant to Buyer's due diligence as far as legally allowed.

1.3 Buyer's Commitment to Support Supplier Compliance

(a) Commitment to Responsible Purchasing Practices

Buyer commits to support Supplier's implementation of Human Rights and Environmental Due Diligence by engaging in responsible purchasing practices [in accordance with Schedule Q] and only imposing fair, reasonable and non-discriminatory obligations on SMEs.

(b) Reasonable Assistance

If Buyer's risk analysis determines Supplier requires assistance to implement Human Rights and Environmental Due Diligence, or after a reasonable and substantiated request from the Supplier for this assistance, Buyer shall employ commercially reasonable efforts to provide such assistance[, which may include Supplier training, upgrading facilities, advice on measures to verify compliance [and] strengthening management systems [, and financing, for example, through direct financing, low-interest loans, guarantees of continued sourcing, and assistance in securing financing]²] to the extent legally permitted. Buyer's assistance shall not be deemed a waiver by Buyer of any of its rights, claims or defenses under this Agreement or under applicable law. Supplier shall collaborate with Buyer and provide reasonable assistance to Buyer to the extent required to implement the due diligence process as referred to in Section 1.1.

(c) [Pricing

(i) Buyer and Supplier shall collaborate to agree on a price [, taking into account the size of the contract ,] that accommodates the costs associated with implementing and upholding Human Rights and Environmental Due Diligence, including payment of the applicable minimum wage or a Living Wage, whichever is higher, that is appropriate to the region, sector, and skill level. If the payment of a Living Wage is not immediately feasible, then Buyer and Supplier shall commit to a progressive, evolving pricing schedule to pay a living wage within a reasonable time. Supplier shall ensure that the funds being paid by Buyer to ensure the payment of the Living Wage are used solely for that purpose. Supplier shall document that such funds are being used as agreed, and in the absence of satisfactory documentation, such funds shall be reimbursed to Buyer. If necessary, Buyer may set off

² The CSDDD especially mentions this for SME Suppliers.

any unreturned funds against any amount that Buyer owes Supplier. [Where possible, Buyer and Supplier shall cooperate to utilise open book costing approaches to determining price.]

(ii) If there is a material increase in input costs that increases the risks of any Adverse Impacts [and Supplier is an SME], Buyer and Supplier shall collaborate to agree on alternative terms to mitigate and prevent such Adverse Impacts. Such alternative terms may include price adjustments, advance payments, credit facilities, schedule changes, or extended contract terms. Buyer may require Supplier to provide documentation of the increase in input costs. In the event of a price adjustment, Supplier shall document that the funds are being used as agreed, and in the absence of satisfactory documentation, such funds shall be returned to the Buyer. If necessary, Buyer may set off any unreturned funds against any amount that Buyer owes Supplier.

(d) Commercial Terms (Payment and Delivery)

Buyer shall collaborate with Supplier to agree on commercial terms, including payment and delivery terms, that will support Buyer and Supplier's performance of their obligations under this contract, prevent and mitigate Adverse Impacts and which commercial terms are in alignment with Schedule Q. The terms will clearly indicate the time and place for (a) the transfer of ownership; (b) the transfer of risk of loss; (c) the Buyer's obligation to accept the Goods; and (d) the Buyer's obligation to pay.

(e) Commercial Compliance

Whereas the parties understand that noncompliance with commercial terms can result in Adverse Impacts, the parties shall abide by the terms of this contract, including with respect to terms on price, payment, delivery, or orders. To further ensure that commercial conduct does not result in Adverse Impacts, and in keeping with the obligation of good faith, Buyer shall not vary the terms of this contract unilaterally, nor shall Buyer impose additional costs or employ other commercial devices to obtain unnegotiated benefits.

(f) Order Changes

For any material change of an order (including, but not limited to, change orders, quantity increases or decreases, or changes to design specifications) requested by Buyer or Supplier, Buyer and Supplier shall consider the potential environmental and human rights impacts of such change and take action to avoid or mitigate any Adverse Impacts, including by amending the change [consistent with Schedule Q]. If Buyer and Supplier fail to agree upon modifications and/or amendments that would avoid an Adverse Impact, then either party may [insist on performance as agreed upon in this Agreement][initiate dispute resolution in accordance with Article 7].

(g) Excused Non-Performance

If (i) Supplier provides notice and reasonably satisfactory evidence to Buyer that an Adverse Impact is reasonably likely to occur because of a requested modification or because of a reasonably unforeseeable, industry-wide or geographically specific, material change to a condition affecting Supplier; (ii) the parties cannot agree on a solution that avoids this Adverse Impact (which may include subcontracting); and (iii) Supplier elects not to perform in order to avoid this Adverse Impact, then the parties hereby agree that this Agreement or a specific purchase order hereunder

may be terminated in whole or in part by Supplier and that Supplier shall not be in default of its obligations under this Agreement as a result of such non-performance.

(h) Responsible Exit

In any termination of this Agreement,³ whether due to a failure by a party to comply with this Agreement or for any other reason (including the occurrence of a force majeure event or any other event that lies beyond the control of the parties), the terminating party shall (i) consider the potential Adverse Impacts [, including meaningful consultation of (representatives of) impacted stakeholders,] and employ achievable, proportionate and reasonable efforts to avoid or mitigate them; and (ii) provide reasonable notice to the other party of its intent to terminate this Agreement, unless the non-compliance with this Agreement by the other party is intentional and/or section 2.5 applies. Termination of this Agreement shall be without prejudice to any rights or obligations accrued prior to the date of termination, including, without limitation, payment that is due for acceptable Goods produced by Supplier pursuant to Buyer's purchase orders before termination.

(i) Recognition

Where Buyer seeks to employ due diligence measures such as, but not limited to, questionnaires, audits, and scorecards in its Human Rights and Environmental Due Diligence processes, Supplier may to the extent allowed by law provide Buyer with a recent equivalent document, and Buyer shall accept such equivalent document [or a portion of the equivalent document to the extent that it meets the Buyer's minimum standards], unless it reasonably considers that such equivalent document [entirely] fails to satisfy Buyer's minimum standards. A recent CSRD report is recognized as a recent equivalent document. At the request of Supplier, Buyer shall, to the extent permissible under competition laws, coordinate with Supplier and other buyers to minimise inconsistencies between various due diligence measures employed.

(j) Positive incentives for compliance

Buyer and Supplier shall collaborate to establish benchmarks to assess sustainability performance. If possible, given the state of business commitments and market demand, Supplier shall be rewarded for satisfactory or superior human rights performance. Rewards may include, without limitation, contract renewals, further or expanded orders, contracts of a longer term, investment in increasing Supplier's capacity, or the payment of bonuses. Buyer's evaluation of Supplier with respect to such matters as potential expansion or continuation of the commercial relationship shall give weight to human rights performance [equal] [as well as] to criteria such as quality, price, timely delivery, and the like.

1.4 Grievance Mechanism

During the term of this Agreement, Supplier shall maintain an adequately funded and governed non-judicial Operational-Level Grievance Mechanism (OLGM) in order to effectively address, prevent, and remedy any adverse environmental and human rights impacts that may occur in connection with this Agreement or participate in the complaint mechanism of Buyer or in an external (multi-stakeholder) grievance mechanism.

³ The term 'agreement' refers to the underlying commercial relationship of which these model clauses are part, and, thus, not only to these model clauses as implemented in this relationship.

Supplier shall ensure that the OLGGM or this external mechanism, if it participates in an external mechanism, is legitimate, accessible, predictable, equitable, transparent, rights-compatible, a source of continuous learning, and based on engagement and dialogue with a reasonable number and/or selection of whistle-blowers and/or affected stakeholders and/or those who have reasonable grounds to believe that they may be affected by a (future) adverse impact, including workers of the Supplier, its subsidiaries and in its supply chain, their representatives, other companies in its supply chain and civil society organizations active in its supply chains in connection with environmental rights or the rights of workers or other affected stakeholders regarding the establishment and functioning of the OLGGM on a regular basis.

Supplier shall maintain open channels of communication with those individuals or groups of stakeholders that are likely to be adversely impacted by potential or actual environmental or human rights violations, or which represent these stakeholders and/or whistleblowers, so that the occurrence or likelihood of Adverse Impacts may be reported without fear of retaliation and these individuals or groups and their representatives are informed of the existence and functioning of the OLGGM. The Supplier shall uphold a policy to prevent such retaliation, which includes an option for anonymous complaints.

Supplier shall at the Buyers' request demonstrate to the extent allowed by the applicable law that the OLGGM is functioning by providing [monthly] [quarterly] [semi-annual] written reports to Buyer on the OLGGM's activities, describing, at a minimum, the number and nature of grievances received and processed over the reporting period, documentary evidence of consultations with affected stakeholders, and all actions taken to address such grievances.

Supplier shall ensure that resignation of the right to file a grievance in another mechanism or to commence legal proceedings is not a requirement for access to the OLGGM, nor that the use of the OLGGM is a prerequisite for the filing of grievances in other mechanisms or the initiation of legal proceedings. Complainants in the abovementioned mechanisms shall be entitled to (a) request an appropriate follow-up regarding the complaint and (b) meet with the Supplier's Representatives at an appropriate level to discuss potential or actual severe adverse impacts which are the subject matter of the complaint.

Article 2 Remediating Adverse Environmental and Human Rights Impacts Linked to Contractual Activity

2.1 Detailed summary of Potential or Actual Adverse Impacts

(a) Within ____ days of (i) Buyer having reason to believe and informing Supplier there is any potential or actual [Severe] Adverse Impact, or (ii) receipt of any oral or written notice of any potential or actual Adverse Impact, Supplier shall provide to Buyer a detailed summary of (1) the factual circumstances surrounding such impact; (2) the specific environmental or human rights issues implicated; (3) the investigation and remediation that has been conducted and/or that is planned as informed by implementation of the grievance process set forth in Section 1.4. Buyer is legally bound to disclose this summary as required by law.

(b) Supplier hereby designates (name) (title) at (email address) and Buyer designates (name) (title) at (email address) to send/receive all notices provided under this Section 2.1 and Section 2.3 [and in

addition notices shall be given as specified in Section ____ for general notices under this Agreement].

2.2 Investigation

(a) Upon receipt of the detailed summary under Section 2.1, Buyer and Supplier shall to the extent legally allowed fully cooperate with any investigation by the other party or their representatives. Without limitation, such cooperation shall include, upon request of a party, working with governmental authorities to enable both Supplier and Buyer or their agents to enter the country, to be issued appropriate visas, and to investigate fully. If Supplier is a SME and a third party is engaged to conduct the investigation, Buyer shall bear the cost of this investigation.

(b) Each party shall provide to the extent legally permitted the other with a report on the results of any investigation carried out under this Section; provided that any such cooperation in the investigation does not require Buyer or Supplier to waive attorney-client confidentiality, nor does it limit the defenses Supplier or Buyer may raise.

2.3 Remediation of Adverse Impacts

(a) This section applies if a party (the “Non-Connected Party”) forms the view that the other party (the “Connected Party”) has caused or contributed to an actual Adverse Impact. For purposes of this Agreement, a party can be deemed to have contributed to an actual Adverse Impact if it violated Articles 1.1-1.3 and such violation was a significant contributing factor to the actual Adverse Impact in question.

(b) If this clause applies, the Non-Connected Party shall notify the Connected Party of the following matters:

- (i) that the Non-Connected party has formed the view that the Connected Party has caused or contributed to an actual Adverse Impact;
- (ii) reasonable details of the actual Adverse Impact; and
- (iii) that the Connected Party must prepare and implement a remediation plan (the “Remediation Plan”) in accordance with this clause.

(c) In the event that both parties have caused or contributed to the same actual Adverse Impact, and each party provides the other party with a notice under the preceding clause, then each party:

- (i) will be a Connected Party with respect to its own involvement in the actual Adverse Impact, and a Non-Connected Party with respect to the other party's involvement in the actual Adverse Impact; and
- (ii) agrees that it will cooperate with the other in good faith to satisfy all the requirements of this clause.

(d) Upon receiving notice, the Connected party shall prepare, and submit to the Non-Connected Party within [____] days, or such other timeframe as agreed, a Remediation Plan, which shall:

- (i) be designed to ensure that the affected stakeholders, including those who have filed a complaint regarding the Adverse Impact in the mechanism referred to in Article 1.4,

are, to the extent possible, put in the position they would have been in had the actual Adverse Impact not occurred;

- (ii) enable remediation that is proportionate to the actual Adverse Impact, which may include apologies, restitution, rehabilitation, financial and non-financial compensation, as well as prevention of additional Adverse Impacts;
- (iii) indicate the steps that the Connected Party proposes to take (the “Remediation Steps”) to:
 - (A) assess its connection to the actual Adverse Impact;
 - (B) remedy the actual Adverse Impact in accordance with (d)(i) and (d)(ii) above;
 - (C) develop or use its leverage over any third parties that are also connected to the actual Adverse Impact to influence the third parties to remedy their own involvement in the actual Adverse Impact;
- (iv) include a timeline for the completion of the Remediation Steps, to be agreed between the parties;
- (v) include quantitative and/or qualitative indicators for determining when the Remediation Steps are completed; and
- (vi) include a timeline to prepare and publish one or more written [public] reports on the Remediation Plan implementation.

(e) The Connected Party shall take all reasonable steps to implement the Remediation Plan within the timeframe agreed between the parties and provide to the Non-Connected Party reasonably satisfactory evidence of the Remediation Plan's implementation.

(f) The Connected Party shall demonstrate to the Non-Connected Party that affected Stakeholders and/or their representatives [and/or a third party acting on behalf of such Stakeholders] have participated in the development of the Remediation Plan and are being regularly consulted in the implementation of the Remediation Plan.

(g) Before the Remediation Plan can be deemed fully implemented, the Connected Party shall provide evidence that affected Stakeholders [and/or their representatives] have participated in determining that the Remediation Plan has met the standards developed under this clause. Where applicable, such evidence shall include verification that the Remediation Plan has been implemented in a manner that is reasonably satisfactory to the adversely impacted Stakeholders.

(h) Article 1.1 (b) applies regarding any engagement with Stakeholders and/or their representatives [and/or a third party acting on behalf of such stakeholders].

(i) The Non-Connected Party shall provide reasonable assistance to the Connected Party in preparing and implementing the Remediation Plan, which may include, to the extent reasonable, in-kind contributions, capacity-building, and technical or financial assistance.

(j) A failure by the Connected Party to prepare, or properly implement, a Remediation Plan is a material breach of this Agreement, and the Non-Connected Party shall have the right to exercise its

remedies, including termination. If the Non- Connected Party elects to terminate this Agreement, it shall do so in accordance with Section 1.3(h) on responsible exit.

(k) If the Adverse Impact has occurred at the level of a supplier or subcontractor of Supplier and if either Supplier or Buyer have become aware of this Adverse Impact, Supplier shall require its supplier or subcontractor to prepare a Remediation Plan to which sections 2.3(b)-(i) of this agreement apply. If the Adverse Impact has occurred in the supply chain beyond the supplier or subcontractor of Supplier level, Buyer and Supplier shall collaborate, after they have become aware of this Adverse Impact, to exercise leverage over the entity where the Adverse Impact has occurred to the extent possible and incentivize prevention, mitigation and remedying the Adverse Impact.

(l) The Remediation Plan may include the termination of an agreement or affiliation of Supplier with a specific factory, termination of a subcontract or removal of an employee or employees and/or other Representatives as far as and to the extent allowed by law if the Adverse Impact cannot be remedied by implementing other due diligence measures as referred to in Article 1.1(a) and which the relevant factory, subcontractor, employee or Representative has caused or to which the relevant factory, subcontractor, employee or Representative has contributed. Article 1.3 (h) applies to this termination.

(m) For the avoidance of doubt, to the extent the actual Adverse Impact results from a Human Rights and Environmental Due Diligence related breach, both this Clause and Article 5 shall apply. A Remediation Plan under this Article 2.3 shall be a fully binding part of this Agreement.

2.4 Excess of Cure Period or Impossibility of Cure

If a severe Adverse Impact is not cured or adequately minimized within the period designated under Section 2.3(d)(iv) or is incapable of being cured, Buyer may in accordance with section 1.3(h) terminate this Agreement if Buyer has not contributed to the Adverse Impact and the Adverse Impact is caused or contributed to by Supplier. If the previous condition for termination is not met, parties shall negotiate in good faith in order to find a solution to address the Adverse Impact. If they fail to reach a solution, the dispute resolution mechanisms set forth in Article 7 will apply.

2.5 Right to Immediate Termination

Notwithstanding any other provision of this Agreement, this Agreement may be immediately terminated by Buyer under 5.2(e), without providing a cure period as referred to in Section 2.3(d)(iv), if Supplier has engaged in a Zero Tolerance Activity to which Buyer has not contributed. A “Zero Tolerance Activity” shall be any of the following activities if they were not disclosed promptly by Supplier to Buyer during due diligence under Section 1.1(a) activities that would expose Buyer to criminal liability . Such termination shall be effectuated in compliance with Section 1.3(h) on responsible exit. Buyer shall not source with Supplier for a period of at least two years after a termination under this section.

Article 3 Rejection of Goods

3.1 Rejection of Nonconforming Goods

In the event of a severe Adverse Impact that Supplier has caused or to which Supplier has contributed that renders the Goods Nonconforming Goods, Buyer shall have the right to reject them unless Buyer's breach of its obligations under Section 1.3 [and/or Schedule Q] materially caused or contributed to the Adverse Impact. Goods are Nonconforming Goods if the goods cannot pass without objection in trade or if the Goods are associated with a Zero Tolerance Activity. Article 1.3 (h) applies to this rejection.

3.2 Timely Notice

Notwithstanding any provision of this Agreement or applicable law (including without limitation [the Inspection Period in Section ____ of this Agreement and]), Buyer's rejection of any Goods as a result of an Adverse Impact shall be deemed timely if Buyer gives notice to Supplier within [8 days] [period agreed by parties] [a reasonable time] after Buyer's discovery of same, and, in any case, to the extent such discovery is communicated within one year from the delivery of the Nonconforming Goods.

Article 4 Nonvariation of Matters Related to Adverse Impacts

4.1 Course of Performance, Established Practices, and Customs

Course of performance and course of dealing (including, without limitation, any failure by Buyer to effectively exercise any audit rights) shall not be construed as a waiver and shall not be a factor in Buyer's right to reject Nonconforming Goods, terminate this Agreement, or exercise any other remedy. Supplier acknowledges that with respect to Adverse Impacts, any reliance by Supplier on course of performance, course of dealing, or similar conduct would be unreasonable. Supplier acknowledges the fundamental importance to Buyer of the prevention and/or mitigation of Adverse Impacts and understands that no usage or practice established between the parties should be understood otherwise, and any apparent conduct or statement to the contrary should not be relied upon. [Buyer acknowledges the fundamental importance to Supplier of the matters in Schedule Q and understands.] Parties understand that no usage or practice established between them should be understood otherwise, and any apparent conduct or statement to the contrary should not be relied upon.

4.2 No Waiver of Remedy

Buyer's acceptance of any Goods in whole or in part will not be deemed a waiver of any right or remedy nor will it otherwise limit Supplier's obligations, including, without limitation, those obligations with respect to indemnification.

Article 5 Remedies

5.1 Breach and Notice of Breach

(a) Both parties may be in the position of an aggrieved party and a defaulting party if both parties caused or contributed to a breach of due diligence obligations set forth by Article 1 or a failure to establish or implement a Remediation plan in accordance with Article 2.3, in which case each party has the rights and duties of both an aggrieved party and a defaulting party.

(b) Upon becoming aware of a breach of due diligence obligations set forth by Article 1 or a failure to establish or implement a Remediation plan in accordance with Article 2.3 Human Rights and Environmental Due Diligence (“Default”), the aggrieved party shall promptly notify the other party of the following matters:

- (i) that the party has formed the view that a Default has occurred and the party's reasons for that view;
- (ii) reasonable details of the breach;
- (iii) that the defaulting party must prepare and implement a corrective action plan (the “Corrective Action Plan”) in accordance with this clause.

(c) Upon receiving notice, the defaulting party shall prepare, and submit to the other party within [] days, or such other timeframe as agreed, a Corrective Action Plan that includes:

- (i) the steps that the defaulting party proposes to take (the “Corrective Steps”) to cure the breach;
- (ii) a timeline for the completion of the Corrective Steps, to be agreed between the parties;
- (iii) an explanation as to how the Corrective Steps will correct the Default; and
- (iv) quantitative and/or qualitative indicators for determining when the Corrective Steps are completed.

(d) The defaulting party shall take all reasonable steps to implement the Corrective Action Plan within the timeframe agreed and provide to the aggrieved party reasonable evidence of the implementation of the Corrective Action Plan.

(e) The aggrieved party shall provide reasonable assistance to the defaulting party in preparing and implementing the Corrective Action Plan. Assistance may include, to the extent reasonable, in-kind contributions, capacity-building, and technical or financial assistance. If the aggrieved party has caused or contributed to the breach related to not implementing or not undertaking Human Rights and Environmental Due Diligence, it shall provide such assistance in amounts that are at least proportionate to its own contribution.

(f) In the event of a breach related to not implementing or not undertaking Human Rights and Environmental Due Diligence that is attributable to a factory or company designated by Buyer or an employee of Buyer, Buyer shall be responsible for ensuring that the designee cures this breach. If cure is not reasonably possible within an appropriate timeframe or is not accomplished in the timeframe set by Buyer, Supplier shall have the right to require that it is granted the right to source from another supplier. Article 1.2 and 1.3 (h) applies to this termination and consecutive sourcing.

(g) A failure by the defaulting party to prepare, or properly implement, a Corrective Action Plan is a material breach of this Agreement, and the aggrieved party shall have the right to exercise its remedies under Section 5.2.

5.2 Exercise of Remedies

(a) Remedies shall be cumulative. Remedies shall not be exclusive of, and shall be without prejudice to, any other remedies provided hereunder or at law. A party's exercise of remedies and the timing thereof shall not be construed in any circumstance as constituting a waiver of its rights under this Agreement. This party's remedies include, without limitation:

(i) Demanding adequate assurances from the other party of due performance in conformity with this Agreement. Such assurances shall be fair, reasonable and non-discriminatory.

(ii) Obtaining specific performance and/or interim measures, such as but not limited to injunctive relief with respect to a party's noncompliance with the obligations mentioned in section 5.1.

(iii) Suspending payments, whether under this Agreement or other agreements, until a party determines, in this party's reasonable discretion, that the party in breach has taken appropriate remedial action following the expiration of the cure period indicated in Section 2.3(d)(iv).

(iv) Terminating this Agreement if permitted by Sections 2.4(b), 2.5, or 3.3 and in accordance with Article 1.3(h) on responsible exit.

(v) Obtaining damages caused by the breach; provided, however, that if Buyer's breach of Section 1.3 [and/or Schedule Q] caused or contributed to the Adverse Impact, damages shall be reduced according to the contribution of Buyer to this Adverse Impact.

(vi) If a party has reasonable grounds for insecurity with respect to the other party's performance of this Agreement, this party may demand adequate assurances that the other party will perform. This party may suspend its performance until adequate assurances are received. If adequate assurances are not received in a reasonable time, the other party has breached, and this party may terminate this Agreement.

5.3 Damages

Buyer and Supplier acknowledge:

(a) Neither Buyer nor Supplier should benefit from an Adverse Impact occurring in relation to this Agreement. If damages are owed that would result in a benefit to Buyer or Supplier, such amounts should go toward supporting the remediation processes set out in Section 1.4 and Article 2. A "benefit" is here understood to mean being put in a better position than if this Agreement had been performed without an Adverse Impact. Nothing herein limits the right of a party to be put in the position it would have been in had this Agreement been performed without an Adverse Impact.

(b) [If there are insufficient funds to pay damages and complete the remediation processes set out in Section 1.4 and Article 2, remediation shall take priority.]

5.4 Return, Destruction or Donation of Goods; Nonacceptance of Goods

(a) Buyer may, in its sole discretion and if permitted under applicable law, destroy or donate the Nonconforming Goods, except to the extent that Buyer has caused or contributed to the nonconformity by breach of Section 1.3 [and/or Schedule Q]. Article 1.3 (h) applies.

(b) Buyer is under no duty to resell any Nonconforming Goods produced by or associated with Supplier or its Representative who Buyer has reasonable grounds to believe that Supplier has not implemented or undertaken Human Rights and Environmental Due Diligence in compliance with Article 1.1 or has not established or executed a Remediation Plan in accordance with Article 2.3, whether or not such noncompliance was involved in the production of the specific Nonconforming Goods. Buyer is entitled to discard, destroy, export or donate any such Nonconforming Goods. Notwithstanding anything contained herein to the contrary or instructions otherwise provided by Supplier, destruction or donation of Nonconforming Goods rejected, and any conduct by Buyer required by law that would otherwise constitute acceptance, shall not be deemed acceptance and will not trigger a duty to pay for such Nonconforming Goods. Buyer and Supplier agree that this Section and any related Sections are an effort to mitigate damages, as selling, profiting from, and being associated with tainted goods or Nonconforming Goods is likely to be damaging to Buyer, including to Buyer's reputation.

(c) If, in default of this Agreement, Buyer fails to accept and/or pay for goods that conform to this Agreement, Supplier may store them or resell them and will be made whole by Buyer through damages. Supplier will not resell goods made in material violation of the human rights or environmental standards stated in this Agreement; such goods shall be donated to charity.

5.5 Indemnification; comparative fault calculation

A party shall, in case of a breach of this Agreement, indemnify, defend and hold harmless the other party and its officers, directors, employees, agents, affiliates, successors and assigns (collectively, "Indemnified Party") against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, penalties, fines, costs or expenses of whatever kind, including, without limitation, the cost of storage, return, export or destruction of Goods, reasonable attorneys' fees, audit fees that would not have been incurred but for the breach, the costs of enforcing any right under this Agreement or applicable law, in each case, that arise out of the breach, and if applicable the difference in cost between Buyer's purchase of Supplier's Goods and replacement Goods. This Section shall apply, without limitation, regardless of whether claimants are contractual counterparties, investors, or any other person, entity, or governmental unit whatsoever.

Article 6 Extent of Buyers Duties

6.1 Negation of Buyer's Contractual Duties Except as Stated

Notwithstanding any other provision of this Agreement:

(a) Buyer does not assume a further reaching duty under this Agreement to monitor Supplier or its Representatives, including, without limitation, for compliance with laws or standards regarding working conditions, pay, hours, or the like, then required by Buyer's obligations under Articles 1 and 2, unless such further reaching duty is required under applicable law and to the extent it is required by applicable law.

(b) Buyer does not assume a further reaching duty under this Agreement to monitor or inspect the safety of any workplace of Supplier or its Representatives nor to monitor any labor practices of Supplier or its Representatives, then required by Buyer's obligations under Articles 1 and 2, unless such further reaching duty is required under applicable law and to the extent it is required by applicable law.

(c) Buyer does not have a further reaching authority and disclaims any further reaching obligation to control (i) the manner and method of work done by Supplier or its Representatives, (ii) implementation of safety measures by Supplier or its Representatives, or (iii) employment or engagement of employees and contractors or subcontractors by Supplier or its Representatives then required by Buyer's obligations under Articles 1 and 2 or if such further reaching obligation is required under applicable law and to the extent it is required by applicable law. The efforts contemplated by this Agreement do not constitute any authority or obligation of control, unless such obligation is required under Articles 1 and 2 or applicable law and to the extent it is required by applicable law. They are efforts at cooperation that leave Buyer and Supplier each responsible for its own policies, decisions, and operations. Buyer and Supplier and Representatives remain independent and are independent contractors. Nor are they joint employers, and they should not be considered as such.

(d) If Buyer makes use of audits to verify compliance with this Agreement by Supplier and such audits are commensurate with Section 1.3(i), Buyer shall bear the cost of such audits if Supplier is an SME. If Supplier is not an SME and an audit is commensurate with Section 1.3(i) the cost of this audit is borne by [Buyer][Supplier].

Article 7 Dispute Resolution

7.1 Dispute Resolution Procedures

The parties agree that, except for emergency measures, the procedures set forth in this Article shall be the sole and exclusive remedy in connection with any dispute arising in whole or in part from or relating to Articles 1 through 6 [or Schedule Q], whether such dispute involves Buyer, Supplier, or a Representative (a "Dispute"). Buyer and Supplier irrevocably waive any right to commence any action in or before any court or governmental authority, except as expressly provided in this Article 7. Notwithstanding anything contained herein to the contrary, however, at any point in the proceedings under this Article 7, the parties may agree to engage the services of a neutral facilitator to assist in resolving any Dispute.

7.2 [Confidentiality]

All documents and information concerning the Dispute, including all submissions of the parties, all evidence submitted in connection with any proceedings, all transcripts or other recordings of hearings, all orders, decisions and awards of the arbitral tribunal and any documents produced as a result of any informal resolution of a dispute, shall be confidential, except with the consent of both parties or where, and to the extent, disclosure is required of a party (a) by legal duty, (b) to protect or pursue a legal right, or (c) in relation to legal proceedings before a court or other competent authority.]

7.3 Joinder of Multiple Parties

If one or more other disputes arise between or among parties to other contracts that are sufficiently related to the same or similar actual or threatened human rights violations, the parties shall use their best efforts to consolidate any such related disputes for resolution under this Article 7.

7.4 Informal Good Faith Negotiations Up the Line

The parties shall try to settle their Dispute amicably between themselves by good faith negotiations, initially in the normal course of business at the operational level. If a Dispute is not resolved at the operational level, the parties shall attempt in good faith to resolve the Dispute by negotiation between executives who hold, at a minimum, the office(s) of [TITLE(S)]. Either party may initiate the executive negotiation process at any time and from time to time by providing notice (the "Dispute Notice"). Within no more than five (5) days after the Dispute Notice has been given, the receiving party shall submit to the other a written response (the "Response"). The Dispute Notice and the Response shall include (a) a statement of the Dispute, together with a recital of the alleged underlying facts, and of the respective parties' positions and (b) the name and title of the executive who will represent that party and of any other person who will accompany the executive. The parties agree that such executives shall have full and complete authority to resolve the Dispute. All reasonable requests for information made by one party to the other will be honored. If such executives do not resolve such dispute within [twenty (20)] days of receipt of the Dispute Notice for any reason, the parties shall have an additional [ten (10)] days thereafter to reach agreement as to whether to seek to resolve the Dispute through mediation under Section 7.6.

7.5 Expert Determination and Assessment

Parties may agree to engage experts for expert determination or assessment of fact. If Parties have agreed to engage (an) expert(s) they will negotiate in good faith regarding the appointment of one or more experts. Parties will share the cost of the determinations and/or assessments by such experts and will, upon request by the expert(s), provide information to the expert(s) which the expert(s) reasonably need to undertake the determination and/or assessment Parties have agreed upon. Expert(s) shall enable Parties to review and comment on their draft findings and will respond to the comments of the Parties regarding the draft findings.

7.6 Mediation

If the parties do not resolve any Dispute within the periods specified in Section 7.4, either party may, by notice given in accordance with Section 2.3(b) or 5.1(b)(the “Mediation Notice”), invite the other to resolve the Dispute under the [insert name of rules] as in effect on the date of this Agreement (the “Mediation Rules”). The language to be used in the mediation shall be [language]. If such invitation is accepted, a single mediator shall be chosen by the Parties. If, within [_____] days following the delivery of the Mediation Notice, the invitation to mediate is not accepted, the parties shall resolve the Dispute through [arbitration][litigation] under Section 7.7] [If the parties are unable to agree upon the appointment of a mediator, then one shall be appointed by the [insert title of official at the named institution]].

7.7 [In this clause, companies choose between arbitration (Alternative A) and litigation (Alternative B):] [Arbitration] [Litigation]

If and only if the parties (a) have chosen not to make use of Mediation under Section 7.5 to resolve the Dispute, or (b) have not, within [_____] days following the delivery of the Dispute Notice, resolved the Dispute using such Mediation, then the Dispute shall be settled

[Alternative A for arbitration:] [by arbitration in accordance with the [name of rules of the arbitration institution] (the “Arbitration Rules”) in effect on the date of this Agreement. The number of arbitrators shall be [one] [three]. The seat of arbitration shall be [seat] and the place shall be [place]. The language of the proceedings shall be [language]. [The provisions for expedited procedures contained in [section or article] of the Arbitration Rules shall apply irrespective of the amount in dispute. The parties further agree that following the commencement of arbitration, they will continue to attempt in good faith to reach a negotiated resolution of the Dispute.]

[Alternative B for litigation:] [by the District Court of ____ [here refer to the choice of forum, preferably in an EU member state] which has exclusive jurisdiction, for any dispute, in connection with this agreement, with the exclusion of any other place of jurisdiction].

7.8 [Only for use with Alternative A for arbitration:] [Emergency Measures

Notwithstanding any provision of this Agreement or any applicable institutional rules, any party may obtain emergency measures at any time to address a Zero Tolerance Activity or any other imminent threat to health, safety, or physical liberty. In addition, a party may make an application for emergency relief to the [name of institution] (the “Arbitration Institution”) for emergency measures under the arbitration rules of the Arbitration Institution as in effect on the date of this Agreement.]

7.9 [Only for use with Alternative A for arbitration:] [Arbitration Award

The arbitrator(s) may grant any remedy or relief set forth in Article 5 or elsewhere in this Agreement and that a court of competent jurisdiction could grant, except that the arbitrators may not grant any relief or remedy greater than that sought by the parties, nor any punitive damages. The award shall include compliance with a Remediation Plan as contemplated by Article 2.3 above. [The arbitration tribunal shall send a copy of each final order, decision and award to [title of official and name of institution] so that the public may have access to such documents, provided that, prior to sending any such document to such repository, such arbitration tribunal, in consultation with each of the parties, shall redact any information from such document that would (a) would reveal the identity of any party that wishes to remain anonymous; or (b) disclose any other information (including without limitation the amount of any award, any proprietary information or any trade secrets) that a party wishes to remain confidential.]]

7.10 Applicable Law

This Agreement shall be governed (including its validity, interpretation and effects) exclusively by the Laws of [*recommended: the law of an EU Member State*], without regard to the conflict of Laws provisions thereof.