



Responsible
Contracting
Project

Supplier Model Contract Clauses

Version 1.0, “SMCs 1.0”

Contents

1	Definitions.....	4
2	Shared Responsibility to Carry Out Human Rights and Environmental Due Diligence.....	5
3	Buyer Obligations.....	6
3.1	Responsible Purchasing Practices.....	6
3.2	Forecasting.....	6
3.3	Production Capacity.....	6
3.4	Samples.....	6
3.5	Deadlines.....	7
3.6	Pricing.....	7
3.7	Commercial Terms (Payment and Delivery).....	7
3.8	Input Costs Increases.....	7
3.9	Order Changes.....	8
3.10	Reasonable Assistance.....	8
3.11	Positive Incentives for Supplier.....	8
3.12	Charges, Penalties, and the Like.....	8
3.13	Recognition.....	9
3.14	Obligation of Good Faith.....	9
4	Supplier Obligations.....	9
4.1	Subcontracting Approvals and Cascading Responsibilities to Subcontractors.....	9
4.2	Supplier's Responsibilities as Buyer.....	10
5	Adverse Impact and Remediation Plan.....	10
5.1	Actual Adverse Impact and Notice of Actual Adverse Impact.....	10
5.2	Remediation Plan.....	11
5.3	Failure to Remediate.....	12
5.4	Disputes.....	12
6.	HREDD-Related Default and Corrective Action Plan.....	13
6.1	HREDD-Related Default and Notice of HREDD-Related Default.....	13
6.2	Corrective Action Plan.....	13
6.3	Failure to Prepare or Implement Corrective Action Plan.....	14
6.4	Dispute.....	14
7	No Benefits from Default or Breach Related to HREDD.....	14
8	Dispute resolution.....	14
9	Responsible Exit.....	15

Disclaimer: The SMCs are the product of the Responsible Contracting Project. Nothing contained herein, including the clauses to be considered for adoption, is intended, nor should it be considered, as the rendering of legal advice for specific cases or particular situations, and readers are responsible for obtaining such advice from their own legal counsel. The SMCs are intended for educational and informational purposes only, and ultimately the contractual parties are to decide whether and which of the contractual clauses they use in their supply relationships. The lawyer who advises on the use of these clauses must take responsibility for the legal advice offered.

1 Definitions

In this Agreement:

“Adverse Impact” means a potential or actual human rights harm, including human rights harms resulting from harms to the environment, which one or both parties have either caused, contributed to, or are directly linked to (through their products, services, and business relationships).

“Aggrieved Party” has the meaning given to such term in Clause [6.1(a)] (HREDD-Related Default and Notice of HREDD-Related Default).

“Benefit” has the meaning given to such term in Clause [7] (No Benefits from Default or Breach Related to HREDD).

“Buyer” means [insert Brand] and/or, where applicable, its representatives, including for example any of its subsidiaries, agents, partners, brokers, distributors or joint venturers acting or contracting on its behalf.

“Charges” has the meaning given to such term in Clause [3.12] (Charges, Penalties, and the Like).

“Connected Party” has the meaning given to such term in Clause [5.1(a)] (Actual Adverse Impact and Notice of Actual Adverse Impact).

“Corrective Action Plan” has the meaning given to such term in Clause [6.1(b)] (HREDD-Related Default and Notice of HREDD-Related Default).

“Corrective Steps” has the meaning given to such term in Clause [6.2(a)] (Corrective Action Plan).

“Defaulting Party” has the meaning given to such term in Clause [6.1(a)] (HREDD-Related Default and Notice of HREDD-Related Default).

“Dispute Resolution Procedure” means the dispute resolution procedure set out in Clause [8] (Dispute Resolution).

“Human Rights and Environmental Due Diligence” or “HREDD” has the meaning given to such term in Clause [1] (Shared Responsibility to Carry Out Human Rights and Environmental Due Diligence).

“HREDD-Related Default” means a failure of a party to satisfy a HREDD-related obligation under this Agreement, which include, but are not limited to, obligations pursuant to Clauses [1] (Shared Responsibility to Carry Out Human Rights and Environmental Due Diligence), [3.2] (Forecasting), [3.3] (Production Capacity), [3.4] (Samples), [3.5] (Deadlines), [3.6] (Pricing), [3.7] (Commercial Terms (Payment and Delivery)), [3.8] (Input Costs Increases), [3.9] (Order Changes), [3.10] (Reasonable Assistance), [3.11] (Positive Incentives for Supplier), [3.13] (Recognition), [4.1] (Subcontracting Approvals and Cascading Responsibilities to Subcontractors), and [4.2] (Supplier’s Responsibilities as Buyer).

“Living Wage” means 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.

“Non-Connected Party” has the meaning given to such term in Clause [5.1(a)] (Actual Adverse Impact and Notice of Actual Adverse Impact).

“Remediation Plan” has the meaning given to such term in Clause [5.1(b)] (Actual Adverse Impact and Notice of Actual Adverse Impact).

“Remediation Steps” has the meaning given to such term in Clause [5.2(a)] (Remediation Plan).

“Responsible Exit Procedure” means the responsible exit procedure as set out in Clause [9] (Responsible Exit).

“Responsible Purchasing Code of Conduct” means [insert name of Brand or Supplier]’s buyer code of conduct as set out at [insert location of buyer code of conduct, for example, in Schedule ___].

“Supplier Code of Conduct” means [insert name of Brand]’s supplier code of conduct as set out at [insert location of supplier code of conduct, for example, in Schedule ___].

2 Shared Responsibility to Carry Out Human Rights and Environmental Due Diligence

[Buyer and Supplier each covenants to establish, maintain, and cooperate in a human rights and environmental due diligence (“HREDD”) process appropriate to its size and circumstances to identify, prevent, mitigate, and account for how Buyer and Supplier addresses the direct and indirect Adverse Impacts of its activities on the human rights of individuals affected by their supply chains.] / [Buyer covenants to establish and maintain a human rights and environmental due diligence (“HREDD”) process appropriate to its size and circumstances to identify, prevent, mitigate and account for how Buyer addresses the direct and indirect Adverse Impacts of its activities on the human rights of individuals affected by its supply chains. Supplier covenants to participate and cooperate in Buyer’s HREDD process as requested and instructed in detail by Buyer. Buyer further covenants to support Supplier in carrying out such HREDD processes as necessary.] Such HREDD shall be consistent with the 2011 United Nations Guiding Principles on Business and Human Rights (UNGPs) and the Organisation for Economic Co-operation and Development (OECD) Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector (2018). Failure by either party to comply with this Clause [2] shall be a HREDD-Related Default.

3 Buyer Obligations

3.1 Responsible Purchasing Practices.

As part of its undertaking to cooperate in carrying out due diligence and to prevent, mitigate, and thus avoid contributing to Adverse Impacts, Buyer shall support Supplier's adherence to the Supplier Code of Conduct by engaging in responsible purchasing practices [in accordance with the Responsible Purchasing Code of Conduct]. In the event of a conflict or inconsistency between this Agreement and [either of] the Supplier Code of Conduct [or the Responsible Purchasing Code of Conduct], this Agreement shall prevail.

3.2 Forecasting.

From the outset of the commercial relationship, Buyer shall establish a transparent forecasting methodology that results in projections of order quantities and deadlines that take into account Supplier's production capacity and end market demand. To support a high level of accuracy, such methodology shall be based on a sufficient investment in data analysis and demand planning, taking into account relevant geographies, categories, and product designs. Buyer shall share initial and updated forecasts in a timely manner to allow Supplier a sufficient time to meet Buyer's ongoing requirements. Nevertheless, neither forecasts nor projections are binding on Buyer or Supplier unless otherwise agreed. Failure to comply with this Clause [3.2] shall be a HREDD-Related Default.

3.3 Production Capacity.

From the outset of the commercial relationship, Buyer and Supplier shall cooperate to establish the production capacity of Supplier to meet the requirements of the Buyer. Such cooperation shall include dialogue between Buyer and Supplier and may also include inspections of records and facilities. The result of this process shall be documented. To the extent that Buyer reserves capacity, Buyer shall pay for it in accordance with [this Agreement] / [the contract or, where there is no contract, in accordance with the Supplier's usual rates]. Failure to comply with this Clause [3.3] shall be a HREDD-Related Default.

3.4 Samples.

Samples, whether produced as part of the style development process or after the style has been adopted, as well as the processes related to samples, shall be managed by both parties to minimise the financial burdens on Buyer and Supplier. Digital samples shall be used where appropriate. Buyer shall not request more than [___] samples (style or otherwise), and any samples shall be requested to be provided within a reasonable timeframe. If the parties agree to samples beyond such number, Supplier shall have the right to request that Buyer pay for them. Buyer shall provide prompt feedback on all samples, and the parties shall agree expeditiously on design and related matters to enable Supplier to begin manufacture. The parties shall manage samples and the processes related to

them to maximise the conversion of samples into goods that will be furnished and accepted as part of the order, and Buyer shall set out clear criteria to determine how samples will be selected by Buyer for conversion into goods. Failure to comply with this Clause [3.4] shall be a HREDD-Related Default.

3.5 Deadlines.

Buyer and Supplier agree to collaborate to set reasonable deadlines that take Supplier's production capacity into account, and the parties shall agree upon deadlines [___] months in advance of production. Such deadlines and other aspects of the timeline shall be renegotiated between the parties as necessary to avoid Adverse Impacts that may result from delays, deadlines, or other timing requirements. If Buyer requires that Supplier work with another company, including but not limited to, for supply of materials or services, Buyer shall be responsible for any delay caused thereby. Failure to comply with this Clause [3.5] shall be a HREDD-Related Default.

3.6 Pricing.

Buyer and Supplier shall collaborate to agree on a price, taking into account the scope and size of the contract, that accommodates the costs associated with upholding responsible business conduct, including the payment of a Living Wage to workers. If the payment of a Living Wage is not required by law and is not immediately feasible, then Buyer and Supplier shall commit to developing a pricing schedule to pay such wages within a reasonable time. Supplier shall ensure that the funds corresponding to the payment of the Living Wage are used solely for that purpose. Supplier shall document that the funds are being used as agreed, and in the absence of satisfactory documentation, such funds shall be returned to Buyer. If necessary, Buyer may set off any unreturned funds against any amount that Buyer owes Supplier. [Where possible and to the extent permissible under competition laws, Buyer and Supplier shall cooperate to utilise open costing approaches to determining price.] Failure to comply with this Clause [3.6] shall be a HREDD-Related Default.

3.7 Commercial Terms (Payment and Delivery).

Buyer shall collaborate with Supplier to agree on commercial terms, including payment and delivery terms, that will support Buyer's and Supplier's performance of their respective obligations under this Agreement and prevent and mitigate Adverse Impacts. Delivery and payment terms will clearly indicate the time and place for (a) the transfer of risk of loss; (b) Buyer's obligation to accept the goods; and (c) Buyer's obligation to pay. Failure to comply with this Clause [3.7] shall be a HREDD-Related Default.

3.8 Input Costs Increases.

If there is a material increase in input costs that increases the risks of any Adverse Impacts, Buyer and Supplier shall collaborate to agree on alternative terms to

mitigate or avoid 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. Failure to comply with this Clause [3.8] shall be a HREDD-Related Default.

3.9 Order Changes.

For any change to an agreed order (including, but not limited to, cancellations, change orders, quantity increases or decreases, or changes to design specifications) requested by Buyer or Supplier, Buyer and Supplier shall consider the Adverse Impacts of such change and take action to avoid or mitigate Adverse Impacts, such as by increasing the price to accommodate overtime wages, extending the deadline, or by allowing responsible subcontracting. [No changes shall be made to an agreed order after production has begun]. Failure to comply with this Clause [3.9] shall be a HREDD-Related Default.

3.10 Reasonable Assistance.

If, through the HREDD process carried out in accordance with this Agreement, either party determines that Supplier requires reasonable assistance to comply with the Supplier Code of Conduct, Buyer shall provide such assistance. Reasonable assistance may include Supplier training, upgrading facilities, cost-sharing, and strengthening management systems. Failure by Buyer to provide the necessary reasonable assistance, or failure by Supplier to comply with the Supplier Code of Conduct after receiving such assistance, shall constitute a HREDD-Related Default.

3.11 Positive Incentives for Supplier.

Buyer and Supplier shall collaborate to establish benchmarks to assess human rights performance and [may] / [shall] establish rewards or incentives for meeting or exceeding such benchmarks, including, 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 potential expansion or continuation of the commercial relationship between Buyer and Supplier shall give weight to human rights performance [equal] / [as well as] to criteria such as quality, price, timely delivery, and the like. Failure to comply with this Clause [3.11] shall be a HREDD-Related Default.

3.12 Charges, Penalties, and the Like.

The parties shall specify at the outset any charges, price reductions, chargebacks, penalties or the like (the "Charges") that will be levied by Buyer in

the event of delays, non-conformity of the goods, or any other default (including a HREDD-Related Default) or breach of this Agreement. No additional Charges may be levied unless such Charges have been agreed in writing between Supplier and Buyer. Any Charges shall be reasonable, shall not exceed the direct and actual damage caused to Buyer, and shall not exceed the original price under [this Agreement] / [the contract]. All Charges shall be linked to demonstrated defaults, and evidence thereof shall be made available to Supplier. [No Charges shall be levied once the goods have passed a pre-shipment inspection by Buyer or an agent or contractor acting for Buyer.]

3.13 Recognition.

Where Buyer seeks to employ due diligence measures such as, but not limited to, questionnaires, audits, and scorecards in its HREDD processes, Supplier may provide Buyer with a recent equivalent document (e.g., questionnaires completed for another buyer or audit reports prepared by a reputable third-party) provided that the respective document does not contain competitively-sensitive information regarding supply relationships with other customers (including, among other things, the identity of other buyers should not be disclosed), 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. At the request of Supplier, Buyer shall, to the extent permissible under competition laws, coordinate with Supplier and other buyers publicly known to source from the respective Supplier to minimise inconsistencies between various due diligence measures employed. Failure to comply with this Clause [3.13] shall be a HREDD-Related Default.

3.14 Obligation of Good Faith.

This Agreement imposes on both parties an obligation of good faith. Good faith includes honesty in fact, the observance of reasonable commercial standards of fair dealing and of responsible business conduct, including prompt and faithful performance of contractual obligations.

4 Supplier Obligations

4.1 Subcontracting Approvals and Cascading Responsibilities to Subcontractors.

Any subcontracting by Supplier (including hiring of subsuppliers or the like) is permitted only after Supplier has conducted HREDD on such subcontractor, and such subcontractor has agreed to the HREDD responsibilities stated herein. [All subcontracting [where the total contract price for such subcontract or in aggregate with related subcontracts is greater than \$[___]] 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 \$[___]]. Failure to comply with this Clause [4.1] shall be a HREDD-Related Default.

4.2 Supplier's Responsibilities as Buyer.

When Supplier acts as a buyer or in a similar capacity in its contracts with subsuppliers or subcontractors, Supplier shall ensure that it complies with all of the buyer responsibilities stated in this Agreement. Such responsibilities include, without limitation, sharing responsibility for HREDD, responsible purchasing practices, responsible pricing, providing reasonable assistance, establishing clear and reasonable deadlines, fair labour practices, and responsible exit. Failure to comply with this Clause [4.2] shall be a HREDD-Related Default.

5 Adverse Impact and Remediation Plan

5.1 Actual Adverse Impact and Notice of Actual Adverse Impact

- (a) This Clause [5] applies if an actual Adverse Impact occurs and if either or both parties caused or contributed to such Adverse Impact. For purposes of this Agreement, a party can be deemed to have contributed to an actual Adverse Impact if it failed to satisfy a HREDD-related obligation under this Agreement and triggered a HREDD-Related Default that was a significant contributing factor to the actual Adverse Impact in question. If a party causes or contributes to an Actual Adverse Impact, it shall be deemed to be a connected party ("Connected Party") and the other party shall be deemed to be a non-connected party ("Non-Connected Party").
- (b) If this Clause [5] applies, the Non-Connected Party shall notify the Connected Party of the following matters:
 - (i) that, in the Non-Connected party's reasonable assessment, 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 [5].
- (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 [5.1(b)], 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 [5].

(d) For the avoidance of doubt, to the extent the actual Adverse Impact resulted from a HREDD-Related Default, both this Clause [5] and Clause [6] below shall apply.

5.2 Remediation Plan

- (a) Upon receiving notice in accordance with Clause [5.1(b)], 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 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 [(a)](i) and [(a)](ii) above; and
 - (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;
 - (vi) and include a timeline to prepare and publish one or more written [public] reports on the Remediation Plan implementation.
- (b) 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.

- (c) 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.
- (d) 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 [5]. Where applicable, such evidence shall include verification that the Remediation Plan has been implemented in a manner that is reasonably satisfactory to the affected stakeholders.
- (e) Any engagement with stakeholders and/or their representatives [and/or a third party acting on behalf of such stakeholders] pursuant to this Clause [5] shall only be carried out to the extent it does not cause, contribute to, or exacerbate any Adverse Impacts. The Connected Party shall ensure that any such engagement is free of manipulation, interference, coercion, and/or intimidation, and is conducted in a culturally appropriate format. Where such engagement 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.
- (f) 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.

5.3 Failure to Remediate

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 the Responsible Exit Procedure.

5.4 Disputes

In the event that any dispute arises between the parties in connection with this Clause [5], the parties shall resolve such dispute in accordance with the Dispute Resolution Procedure.

6. HREDD-Related Default and Corrective Action Plan

6.1 HREDD-Related Default and Notice of HREDD-Related Default

- (a) This Clause [6] applies if a HREDD-Related Default occurs and such default is attributable to one or both parties. Each party to which such HREDD-Related Default is attributed shall be deemed to be a defaulting party (“Defaulting Party”) and the other party shall be deemed to be an aggrieved party (“Aggrieved Party”).
- (b) Upon becoming aware of a HREDD-Related Default, the Aggrieved Party shall promptly notify the other Defaulting Party of the following matters:
 - (i) that, in the reasonable assessment of the Aggrieved Party, a HREDD-Related Default has occurred;
 - (ii) reasonable details of the HREDD-Related Default; and
 - (iii) that the Defaulting Party must prepare and implement a corrective action plan (the “Corrective Action Plan”) in accordance with this Clause [6].
- (c) Both parties may be in the position of an Aggrieved Party and a Defaulting Party if both parties caused or contributed to the HREDD-Related Default, in which case each party has the rights and duties of both an Aggrieved Party and a Defaulting Party under this Clause [6].

6.2 Corrective Action Plan

- (a) Upon receiving notice in accordance with Clause [6.1(b)], the Defaulting Party shall prepare, and submit to the Aggrieved 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 HREDD-Related Default;
 - (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 HREDD-Related Default; and quantitative and/or qualitative indicators for determining when the Corrective Steps are completed.
- (b) 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.
- (c) 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 HREDD-Related Default is also attributable to the Aggrieved Party, that party shall provide such assistance in amounts that are at least proportionate to the extent of its attribution.

- (d) In the event of a HREDD-Related Default that is attributable to a factory or company designated by Buyer, Buyer shall be responsible for ensuring that the designee cures the HREDD-Related Default. If cure is not reasonably possible within an appropriate timeframe, Supplier shall have the right to require that such designee be terminated.

6.3 Failure to Prepare or Implement Corrective Action Plan

- (a) 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, including termination. If the Aggrieved Party elects to terminate this Agreement, it shall do so in accordance with the Responsible Exit Procedure.
- (b) The Aggrieved Party is entitled to direct damages from the Defaulting Party to compensate for losses arising from any HREDD-Related Default (including any failure to adequately implement a Corrective Action Plan and/or a Remediation Plan). Damages are limited to direct damages and do not include indirect, special, consequential damages or the like, except to the extent that such losses are attributable to the fraud, gross negligence or wilful misconduct.

6.4 Dispute.

In the event that any dispute arises between the parties in connection with this Clause [6], the parties shall resolve such dispute in accordance with the Dispute Resolution Procedure.

7 No Benefits from Default or Breach Related to HREDD

Neither Buyer nor Supplier shall Benefit from a HREDD-Related Default or breach related to an Adverse Impact (including failure to adequately implement a Remediation Plan or Corrective Action Plan). In this Clause [7], “Benefit” shall mean being put in a better position than if this Agreement had been performed without such a HREDD-Related Default or breach. If funds are insufficient to pay all damages to an Aggrieved Party, funding a Corrective Action Plan or Remediation Plan shall take priority.

8 Dispute resolution

Any dispute shall be resolved by the managers in charge of the issue for Buyer and for Supplier. If they cannot resolve the dispute, they shall refer the dispute to their superiors in their respective companies, and if necessary, to the head of the company or the division. The matter will be brought to [arbitration] / [litigation] only if they cannot resolve the dispute by company personnel after good faith dialogue [within [___] days of such dispute arising]. Such good faith dialogue shall

be a condition precedent to the [filing of a claim or demand for arbitration] / [bringing of suit].

9 Responsible Exit

In any termination of this Agreement by either party, whether due to a failure by the other 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 (a) consider the Adverse Impacts; (b) collaborate with the other party to address such Adverse Impacts and employ reasonable efforts to avoid or mitigate them; and (c) provide reasonable notice to the other party of its intent to terminate this Agreement [which notice shall be shared promptly with affected stakeholders]. Termination of this Agreement shall be without prejudice to any rights or obligations under this Agreement arising prior to termination, including, without limitation, payment that is due for invoices submitted by Supplier pursuant to Buyer's purchase orders prior to termination, including for partially or completely manufactured conforming goods.