

1 DEFINITIONS AND INTERPRETATION

1.1 In these Conditions the following words have the following meanings:

“**Additive**” means any chemical substance intended to be introduced into a manufacturing process, and includes powders, granules, masterbatches and compounds.

“**Affiliate**” means, in relation to a party, any entity or person that Controls, is Controlled by, or is under common Control with that party.

“**Buyer**” the person(s), firm or company who orders Goods from Symphony

“**Claim form**” means the current edition of the Symphony’s prescribed form for claims as made available by Symphony on request.

“**Confidential Information**” means:

- (i) any information subsisting in, arising from or otherwise relating to any Additive or articles made using the Additives; and
- (ii) any other information of a technical, business or other nature (including, without limitation, data, formulae, processes, methods, designs, specifications and other trade secrets, know how, information relating to technology, customers, suppliers, marketing or business plans, products, services, promotional and marketing activities, finances and other business affairs) disclosed by or on behalf of Symphony and whether made available in writing, in disk or electronic form or orally.

“**Control**” means direct or indirect beneficial ownership of 50% (or, outside a party’s home territory, such lesser percentage as is the maximum, permitted level of foreign investment) or more of the share capital, stock or other participating interest carrying the right to vote or to distribution of profits of that party, as the case may be.

“**Contract**” any contract between Symphony and the Buyer for the sale and purchase of Goods which includes these Conditions or incorporates them by reference.

“**Delivery**” is the point at which title and risk in the Goods passes in accordance with the relevant INCOTERM



“Finished Products” means items which have been manufactured and are ready for consumer use without further manufacturing processes.

“Goods” means Additive, Finished Products, and any other goods (including any part or parts of them) supplied or to be supplied to the Buyer by Symphony pursuant to the Contract.

“INCOTERM” or “INCOTERMS” means terms specified in Incoterms 2010 (or any amendment or replacement thereof) published by the International Chamber of Commerce. If an INCOTERM is inconsistent with these conditions, then these conditions shall prevail.

“Intellectual Property” means any patent, copyright, design right, trade mark or any other form of intellectual property right (whether registered or unregistered), any application (or the right to apply) for such intellectual property right, and any rights in relation to intellectual property rights and/or in relation to trade names, company names, domain names and any rights in respect of trade secrets and/or confidential information;

“Order” means a written request for the supply of Goods

“Party” Symphony, the Buyer, or an Affiliate

“Price” means the sum quoted by Symphony for the Goods.

“Related Person” means a Party’s Affiliates, directors, employees, advisers, partners, agents, subcontractors, and consultants

“Symphony” means Symphony Environmental Ltd

“Writing” or “Written” includes faxes and e-mails, but not transient messages such as SMS, Skype, text, WhatsApp, or Messenger

2 APPLICATION OF TERMS


2.1 Orders placed by the Buyer shall be deemed to be accepted by Symphony on these terms and Conditions when a written acknowledgement is issued by Symphony stating that the Order is accepted, or Symphony sends the Goods to the Buyer or makes them available for collection by the Buyer.

2.2 Notwithstanding anything contained in these Conditions, it is the Buyer’s responsibility to ensure that the Goods specified in the Order are suitable for the Buyer’s intended purpose and that all laws in the place of delivery, and in the place where the Goods are to be used, sold, or supplied, are complied with.



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3 PURCHASE PRICE & TERMS OF PAYMENT

- 3.1 Symphony reserves the right to increase the agreed price for the goods in the event of an increase in the cost of raw materials, labour, overheads, or other expenses to Symphony, or change in exchange rate or governmental requirements or transport or insurance costs, after acceptance of the Order but prior to the date of dispatch. In such circumstances any increase shall be limited to 10%.
- 3.2 Any value-added tax and other taxes and duties shall be paid by the Buyer unless otherwise agreed, or unless specified in any INCOTERM expressly incorporated in the Contract.
- 3.3 Unless otherwise agreed, the Buyer shall pay the Price by wire-transfer to Symphony's nominated bank account at least five days before dispatch of the Goods is due.
- 3.4 If Symphony agrees to accept payment by Letter of Credit it shall be opened upon and confirmed by a UK bank at least 10 days before shipment or collection of the goods is due and shall be payable at sight of Bill of Lading, or at sight of the equivalent document for road, rail, or air transport.
- 3.5 If the Buyer fails to make full payment on the due date then without prejudice to any other remedies Symphony shall be entitled to charge simple interest on the amount unpaid at the rate of 1 per cent per month until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest), together with a sum equivalent to any bank charges legal costs or other costs charges or expenses incurred by Symphony arising from the late payment of sums due from the Buyer.

4 DELIVERY

- 4.1 Unless otherwise agreed, the Price is quoted on the basis that Goods are sold CIF (in the case of sea transport) or CIP (in the case of road or air transport) (as defined by INCOTERMS).
- 4.2 The Buyer shall pay for transport from the port of arrival to the Buyer's designated warehouse, but Symphony shall insure the goods from despatch from Symphony's warehouse until arrival at the Buyer's designated warehouse.
- 4.3 Symphony shall use reasonable endeavours to despatch the Goods to the Buyer so as to arrive on or before the delivery date (if any), specified in the Buyer's order but any time or date agreed for despatch or delivery shall be an estimate only, and time shall not be of the essence unless otherwise agreed in writing.



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- 4.4 If the Buyer does not receive the Goods within 14 days of the date of the expected delivery of the goods as notified by Symphony, or within 21 days of the date of invoice if no such date has been notified, the Buyer must notify Symphony forthwith in writing. Otherwise, the goods will be deemed to have been received.
- 4.5 If the Buyer fails to collect the Goods or refuses to accept delivery, the Goods shall be at the Buyer's risk and the Buyer shall indemnify Symphony against all costs and expenses occasioned thereby, including insurance, carriage inspection and storage.
- 4.6 Any liability of Symphony for non-delivery of the Goods shall be limited to delivering the undelivered Goods within a reasonable time or, at Symphony's option, issuing a credit note.
- 4.7 In the case of Additives Symphony may:
- 4.7.1 deliver Goods, within a 10% margin by weight or quantity of those specified in the case of consignments of one tonne or more.
- 4.7.2 vary the formulation shape, size, and/or colour of Additives provided that such variation does not make the Additive unfit for the purpose specified in the Order
- 4.8 In the case of Finished Products, Symphony may deliver Goods within the following tolerances, and accordingly may, subject to clause 4.9:
- 4.8.1 vary the average thickness of any virgin material within a 10% margin + or - of the specified thickness.
- 4.8.2 vary the average thickness of second grade or recycled materials within a 20% margin + or - of the specified thickness
- 4.8.3 vary any specification as to size of the Goods (or part thereof) within a 5% margin, whether larger or smaller
- 4.8.4 vary any specification as to the contents of boxes or packs. A 5% difference by quantity is permitted.
- 4.9 The Buyer acknowledges and agrees that any Goods supplied in accordance with para. 4.7 or 4.8 above are supplied in accordance with the Contract. The Buyer shall pay pro rata for any goods under or over-delivered.
- 4.10 Unless specified by the Buyer, the dynamic properties, odour, static, and other non-specified properties shall be in Symphony's reasonable discretion.

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ACCEPTANCE

- 5.1 The Buyer shall check the quantity of boxes or packs containing the Goods against the delivery-note or packing-list as the case may be at the time of delivery and provide written confirmation of receipt to the carrier, with a note recording any visible damage.



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- 5.2 The Buyer shall examine the Goods forthwith after delivery and will notify Symphony in writing within three days of delivery of any shortage's discrepancies apparent defects in or any apparent loss or damage to the Goods together with the reasons therefor if known and shall supply such photographic or other evidence as Symphony may reasonably require.
- 5.3 If the Goods are alleged to be defective the Buyer must retain a minimum of 90% of intact original boxes, sacks, rolls, bales, or bundles for Symphony's examination.
- 5.4 Subject to clause 5.5, unless the Buyer gives notice in writing to Symphony that the Goods are not in accordance with the terms of the Contract within three days of receipt by the Buyer, the Goods shall be deemed to be satisfactory in every respect and the Buyer shall be deemed to have unreservedly accepted the Goods and shall pay for them accordingly.
- 5.5 In the case of Additives, it is a condition precedent to any liability of Symphony that if the Additive is alleged to be defective a claim shall be submitted to Symphony:
- 5.5.1 within 14 days of the date on which the allegedly defective Additive was first used.
- 5.5.2 on the Claim Form; and
- 5.5.3 accompanied by all information and documentation requested by the Claim Form.
- 5.6 The Buyer acknowledges that any failure to comply strictly with clauses 5.1-5.5 may prevent Symphony from making a claim against Symphony's supplier or against insurers.
- 5.7 Symphony accepts no liability for defective Goods where the Goods have been subjected to direct sunlight, or heat exceeding 30 degrees centigrade, or used later than the expiration date of the service-life specified by Symphony, or Additive packaging has been opened or damaged, and not kept in dry conditions, or additionally in the case of Finished Products, where such products have been cut, printed or otherwise fabricated or processed by the Buyer or any third party.

6 TITLE AND RISK

- 6.1 Property in the Goods shall not pass to the Buyer until they have been paid for in full.
- 6.2 Until property in the Goods passes to the Buyer the Buyer shall hold the Goods on a fiduciary basis as bailee for Symphony. The Buyer shall store the Goods (at no cost to Symphony) separately from all other goods in its possession, marked in such a way that they are clearly identified as



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Symphony's property and in a shaded and dry environment so as to prevent any damage or deterioration.

- 6.3 Until such time as property in the Goods passes from Symphony to the Buyer, the Buyer shall upon request deliver up to Symphony such of the Goods as are in the possession and/or control of the Buyer. If the Buyer fails to do so this clause shall be construed as an irrevocable license granted by the Buyer for Symphony or persons authorized by Symphony in writing to enter premises owned and/or controlled by the Buyer or to which the Buyer has lawful access and remove the Goods.
- 6.4 The Buyer shall not pledge or in any way charge by way of security for any indebtedness any Goods which are the property of Symphony. Without prejudice to the other rights of Symphony, if the Buyer does so all sums whatever owing by the Buyer to Symphony shall forthwith become due and payable.
- 6.5 The Buyer shall insure the Goods and keep them insured to the full amount of the Price payable for such Goods to the reasonable satisfaction of Symphony, from the time of physical delivery to the Buyer until the time that property in the Goods passes from Symphony if later, and shall whenever requested by Symphony produce a copy of the policy of insurance and a receipt for the last premium paid. Without prejudice to the other rights of Symphony, if the Buyer fails to do so all sums whatever owing by the Buyer to Symphony shall forthwith become due and payable.
- 6.6 In the event that:
- 6.6.1 the Buyer shall commit any serious or repeated breach of the Contract; or
- 6.6.2 the Buyer shall commit an act of bankruptcy, make any arrangement or composition with the Buyer's creditors; or
- 6.6.3 any petition or receiving order in bankruptcy shall be presented or made against the Buyer; or
- 6.6.4 (where the Buyer is a limited company) any resolution or petition to wind up the company (other than for the purpose of amalgamation or reconstruction while solvent) shall be passed by the Buyer.
- 6.6.5 the Buyer is unable to pay its debts or ceases to trade, or a Receiver of the whole or any part of the Buyer's undertaking shall be appointed; or
- 6.6.6 the Buyer suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it.

Symphony may at its option:

- (i) terminate the Contract and seek damages from the Buyer



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- and/or
- (ii) refuse to make deliveries to the Buyer and/or
 - (iii) stop any Goods in transit to the Buyer and/or
 - (iv) take possession of the Goods with or without notice. This clause shall be construed as an irrevocable license granted by the Buyer for Symphony or persons authorized in writing by Symphony to enter premises owned and/or controlled by the Buyer, or to which they Buyer has lawful access, and remove the Goods.

7 USE OF ADDITIVE

- 7.1 The Buyer acknowledges that Symphony shall not be obliged to supply Additive (whether for trials or otherwise) until Symphony has received a fully completed Technical Enquiry Form (“TEF”). A copy of the current edition of the TEF is available from Symphony on request. If there is any doubt as to the information required in the TEF, the Buyer shall refer to Symphony’s Technical Department. The Buyer shall arrange for documents to be translated if necessary.
- 7.2 On receipt of a properly completed TEF Symphony will propose a particular grade of Additive and supply it in trial quantity subject to these Conditions. Symphony shall include any relevant technical data sheets and manufacturing instructions along with each supply of Additive. The Buyer agrees that it shall not use any Additive until it has received from Symphony notification of the grade of Additive to be used for each application together with technical data sheets and manufacturing instructions.
- 7.3 The Buyer will then carry out a trial before full production, in accordance with Symphony’s manufacturing instructions.
- 7.4 The Buyer agrees that:
- 7.4.1 the Buyer will examine the Additive before incorporation into products and will report to Symphony any apparent defect before use.
 - 7.4.2 the Additive will be used at first for small-scale trial runs only and samples from the trial runs will be submitted forthwith to Symphony for testing, together with control samples made with polymer and other ingredients from the same batch but not containing Additive.
 - 7.4.3 no articles produced during trial runs will be supplied to a third party without Symphony's written consent.
 - 7.4.4 commercial production will not commence until the Buyer receives written confirmation signed by Symphony that testing of the samples provided to Symphony has been satisfactory and that commercial production is appropriate. Thereupon Symphony will



warrant that the Additive will meet the stated objectives as expressly set out in the Technical Data Sheet(s) supplied by the Buyer, provided that such Additives are used in accordance with the relevant manufacturing instructions and technical data sheets and provided that any data supplied on the TEF has not been changed. Any Additives not conforming to this warranty (and which are promptly returned to Symphony at Symphony's expense) shall be replaced by Symphony without charge.

- 7.5 The batch number of the Additive shall be recorded, and samples of products shall be kept, in respect of each test run and production run, and shall be produced to Symphony in the event of any claim. If such data is not produced Symphony shall not be bound to deal with the claim.
- 7.6 The Buyer agrees that any permitted supplies of Additive to its own customers or subcontractors or distributors can be made only if such person has signed a Confidentiality Agreement approved by Symphony.

8 WARRANTIES AND LIABILITIES

- 8.1 Symphony warrants that upon payment for Goods the Buyer shall acquire a clear title thereto free from all encumbrances.
- 8.2 Additive is supplied on condition that neither the Additive nor items made with it will be supplied to the public in the absence of any regulatory approval required for the product concerned in the country or countries concerned.
- 8.3 In the case of Additive supplied for the purpose of trials, such Additive and information relating thereto are provided on an "as is" basis because such supply is experimental. Symphony expressly excludes all warranties, representations, guarantees or assurances of any kind, express or implied, including any warranty that any information is complete and/or accurate or that the Additive, or any articles produced using the Additive and/or information supplied, are commercially viable, safe, of satisfactory quality, fit for purpose or free from infringement of any third party rights.
- 8.4 In the case of Additive supplied for commercial use, THE WARRANTIES CONTAINED IN CLAUSES 7.4.4 AND 8.1 ARE IN SUBSTITUTION FOR ANY OTHER RIGHTS TO WHICH THE BUYER MIGHT OTHERWISE BE ENTITLED AND IN PARTICULAR BUT WITHOUT LIMITATION ANY IMPLIED UNDERTAKINGS, TERMS OR CONDITIONS OR WARRANTIES, WHETHER STATUTORY OR OTHERWISE, AS TO STATE OR CONDITION, QUALITY, MERCHANTABILITY OR FITNESS FOR ANY PURPOSE, ARE EXCLUDED TO THE FULL EXTENT PERMITTED BY LAW.
- 8.5 Without prejudice to the generality of the foregoing:



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- 8.5.1 The cumulative maximum liability of Symphony under or in connection with each Contract, irrespective of the basis of claim, shall be limited to a sum equal to 150% of the Price payable under such Contract.
- 8.5.2 Symphony shall not be liable for any type of special, indirect or consequential loss, for any loss of profit or anticipated saving, lost, incorrect or spoiled data, loss of use, loss of contracts with third parties, loss of business, loss of goodwill or third-party claims even if such loss was reasonably foreseeable and even if Symphony had been advised of the possibility of the Buyer incurring the same.
- 8.5.3 If any articles are manufactured with Additive otherwise than in accordance with data supplied in the Technical Enquiry Form or not in accordance with Manufacturing Instructions or Technical Data Sheets, Symphony shall have no liability.
- 8.5.4 Symphony shall not be liable for any loss which could reasonably have been avoided by due diligence and prompt remedial action on the part of the Buyer or its customer.
- 8.5.5 The Buyer must take such legal advice as it thinks fit from a lawyer practicing in the place where the Goods are to be sold or used, in relation to any applicable regulatory requirements and in relation to any representation or description to be made upon or about a product made with Additive in the country in which such product is likely to be supplied or used (even if such representation or description is copied from Symphony's materials) in order to ensure that it complies with relevant legislation and Codes of Practice. The Buyer acknowledges that Symphony is not a law-firm and that any advice which Symphony may give on such matters is given without legal responsibility.
- 8.5.6 In the case of finished products Symphony accepts no liability for the accuracy or conformity of any artwork name or other mark instructed or requested by the Buyer, and the Buyer shall indemnify Symphony against any and all costs, damages and expenses arising as a result of any claim that any artwork, name, mark or design incorporated into such Goods at the request of the Buyer contravenes any law or infringes the Intellectual Property rights of a third party.
- 8.6 The Buyer acknowledges that in the absence of the foregoing limitations of liability the prices would be significantly higher, or the Goods would not be sold at all



FORCE MAJEURE

If Symphony shall be unable to perform any of its obligations hereunder by reason



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of fire, explosion, war, riot, malicious damage, theft, strike, lock-out or trade dispute (whether or not involving Symphony's or the Buyer's employees), shortage or non-availability of materials or any other act, omission or state of affairs whether or not of a like nature which is beyond Symphony's reasonable control then Symphony shall be relieved of the obligations incurred under this contract to the extent that the fulfillment of such obligations is prevented frustrated impeded or delayed as a consequence of any such event.

10 OBLIGATIONS OF CONFIDENTIALITY

10.1 The Buyer shall:

- 10.1.1 use Confidential Information and Additive supplied by Symphony for the purposes contemplated by the Contract and for no other purpose whatsoever.
- 10.1.2 treat and safeguard all Confidential Information as private and confidential.
- 10.1.3 ensure proper and secure storage of all Confidential Information and Additive.
- 10.1.4 not at any time without the prior written consent of Symphony:
 - 10.1.4.1 disclose or reveal the Confidential Information to any other person or party whatsoever, other than Related Persons of the Buyer on a need to know basis whose duties necessitate the receipt and consideration of the same and who are aware of the obligations of the Buyer under this Agreement and who are bound by obligations of confidentiality and non-use at least as onerous as those as are contained in this Agreement and which apply to the Confidential Information;
 - 10.1.4.2 discuss, correspond, or have any other contact in respect of the Confidential Information with any person who is not Symphony or a Related Person of Symphony.
 - 10.1.4.3 use any information received from Symphony or any Related Person of Symphony for any activity other than as permitted herein and in particular shall not use the Confidential Information or Goods for the purpose of competition with or circumvention of Symphony.
 - 10.1.4.4 analyse or reproduce or develop or simulate the Confidential Information or the Additive.
 - 10.1.4.5 supply additive (as distinct from goods made with the Additive) to any third party on its own behalf or on behalf of others.

- 10.2 The Buyer shall be responsible for compliance by the Buyer's Related Persons of the obligations set out in this Agreement and any breach of such obligations by the Buyer's Related Persons shall be deemed to be a breach by the Buyer of its obligations under this Agreement.



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- 10.3 The provisions of this clause 10 shall continue in force notwithstanding the completion or expiry of the Contract.

11 LICENCE OF INTELLECTUAL PROPERTY

- 11.1 Symphony hereby grants to the Buyer a non-exclusive license to use Symphony's relevant Trade Marks on Goods and on articles manufactured using the Goods, provided that such articles are properly manufactured in accordance with the manufacturing instructions, technical data sheet and information provided on the Technical Enquiry Form.
- 11.2 The Buyer shall procure as far as possible that articles made using any Goods shall bear the Trade Mark corresponding to such Goods. The Buyer shall comply with any style guides issued by Symphony as to the use of its Trade Marks.
- 11.3 The Buyer shall provide Symphony with samples of any articles on which any Symphony Trade Mark appears no less frequently than every 6 months, and prior to the launch of any new or modified article on which any such Trade Mark appears.
- 11.4 The Buyer shall not except as provided herein:
- 11.4.1. use or permit the use of any of the Trade Marks in any way which might prejudice their distinctiveness or validity, or the goodwill connected to the Trade Marks or the Goods.
- 11.4.2. use or apply to register any trademarks or trade names or company names or domain names so resembling any trade mark or trade name or company name or domain name belonging to Symphony (or any of its Affiliates) as to be likely to cause confusion or deception. If nevertheless the Buyer applies for or obtains or has applied for or obtained any such mark or name, it shall hold the same on trust for Symphony and shall on written request by Symphony, execute an assignment thereof without payment in such form as Symphony may specify.
- 11.5 Except as otherwise provided in these Conditions, the Buyer shall have no rights in respect of any trade names, company names, domain names or Trade Marks used by Symphony in relation to the Goods or of the goodwill associated with them, or any other Intellectual Property of Symphony in respect of the Goods, which shall remain vested in Symphony. Any goodwill in such names or marks which the Buyer derives by use thereof, or by being connected with Symphony in the course of trade (whether arising at common law or otherwise), shall accrue to Symphony, and the Buyer shall (on expiry or termination of this Agreement) at Symphony's request assign the same, with all rights of action then accrued, to Symphony without payment.
- 11.6 The Buyer warrants that it shall not, and shall procure that its Related Persons shall not, represent that it has any title to or right of ownership



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in Symphony's trademarks or other Intellectual Property of Symphony, and shall promptly notify Symphony of any actual or threatened infringement of any such Intellectual Property Rights as may come to the attention of the Buyer.

12 ENTIRE AGREEMENT

These conditions of sale shall prevail notwithstanding any apparent variation of these terms and conditions (save in the manner specified in clause 13.1 below) by any proposal, quotation or other representation or statement made or given by Symphony or its employees, agents Distributors or representatives and notwithstanding any conflict between the terms of this agreement and the terms of any order or communication submitted by the Buyer in respect of the Goods.

13 GENERAL

- 13.1 No waiver, cancellation, or alteration of the provisions of the Contract or these terms and conditions shall be valid unless made in writing and signed by a Director of Symphony.
- 13.2 The Contract shall be construed and enforced in accordance with the laws of England. The English courts shall have exclusive jurisdiction, save for the purposes of enforcement of an English judgement in another country.
- 13.3 Each right or remedy of Symphony under the Contract is without prejudice to any other right or remedy of Symphony whether under the Contract or not.
- 13.4 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent only of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.
- 13.5 Failure or delay by Symphony in enforcing or partially enforcing any provision of the Contract will not be construed as a waiver of any of its rights under the Contract.
- 13.6 Any waiver by Symphony of any breach of, or any default under, any provision of the Contract by the Buyer will not be deemed a waiver of any subsequent breach or default and will in no way affect the other terms of the Contract.
- 13.7 Unless otherwise specified by Symphony the currency of the contract shall be United States dollars.
- 13.8 This agreement is not intended to confer any rights on an entity not a party to it.



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14 NOTICES

- 14.1 All communications between the parties about this Contract must be in writing and delivered by hand or sent by pre-paid first class post or sent by facsimile transmission or as a pdf attachment to an email:
- 14.1.1 in case of communications to Symphony - to its registered office or such address as shall be notified to the Buyer by Symphony; or
 - 14.1.2 in the case of communications to the Buyer to the registered office of the Buyer or to any address of the Buyer in the Order or such other address as shall have been notified to Symphony by the Buyer.
- 14.2 Communications shall be deemed to have been received:
- 14.2.1 if sent by pre-paid first class post, 5 days (excluding Saturdays, Sundays and UK bank and public holidays) after posting (exclusive of the day of posting).
 - 14.2.2 if delivered by hand, on the day of delivery.
 - 14.2.3 if sent by facsimile transmission on a working day prior to 16.00, at the time of transmission at the location of the recipient, and otherwise at 09:00 on the next working day.
 - 14.2.4 if sent as a signed pdf attachment to an e-mail, on the day and time on which the e-mail was sent provided that a failure-to-deliver notice was not returned.
- 14.3 Communications addressed to Symphony shall be marked for the attention of the Chief Executive.



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