



# **Newable Business Loans Limited trading as Newable Commerce**

## **Export Finance Terms and Conditions**

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**For use with Single Invoice Finance for  
Exporters Facility Advances**

## 1. Ownership of Receivable

1.1. By signing and delivering the Single Invoice Finance for Exporters Facility Cover Letter to Newable, the Company assigns to Newable the ownership of the Receivable. In the event that the Receivable fails to be transferred effectively to Newable for any reason, the Company shall hold the Receivable on trust for Newable.

1.2. The Company will use all money advanced to it pursuant to the Advance for the Purpose. Newable is not obliged to monitor or verify how any amount advanced under this agreement is used.

## 2. Conditions precedent

2.1. Newable will not advance the Advance until it has received all the documents and evidence specified in Schedule 1 - Conditions Precedent in form and substance satisfactory to Newable, together with any additional conditions, documents and evidence as set out in the Single Invoice Finance for Exporters Facility Cover Letter.

2.2. Newable's obligation to make the Advance is subject to the further conditions precedent that, on the date any Advance Schedule is submitted and approved by Newable and the date the Advance is made available to the Company:

(a) the representations and warranties are true and correct in all material respects and will be true and correct in all material respects immediately after Newable has made the proposed Advance;

(b) all payments owing or due from the Company to Newable have been paid on time;

(c) the Advance shall not exceed the Principal; and

(d) no Event of Default or Potential Event of Default is continuing or would result from the proposed Advance.

2.3. The conditions specified in this clause 2 are inserted solely for Newable's benefit. Newable may waive them, in whole or in part and with or without conditions, without prejudicing Newable's right to require subsequent fulfilment of such conditions.

## 3. Drawdown

3.1. The Advance may be advanced in one Advance, of an amount not less than £26,000 subject to clause 2.

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## 4. Total Rate - Discount Charge and Factoring Fee

4.1. The Total Rate, comprising the Discount Charge and Factoring Fee due and payable on the Advance, is detailed in the Single Invoice Finance for Exporters Facility Cover Letter.

4.2. Any Discount Charge or Factoring Fee on the Advance or part thereof unpaid at the end of the Term shall be payable at the rate of 4% per month from the end of the Term and will continue to be payable before and after any judgement or decree, or the administration or liquidation of the Company.

## 5. Repayment and Prepayment

5.1 The Debtor shall be directed to pay the Invoice direct to Newable to the account details as provided by Newable to the Company from time to time.

5.2 Upon receipt by Newable of the remittance from the Debtor in respect of the Invoice, Newable shall calculate and retain (a) any sums owing pursuant to the Total Rate (b) the amount of the Advance and (c) any other fees or expenses charged or incurred by Newable. Any surplus balance shall be paid to the Company within three Business Days. In the event that the balance is a negative amount, the Company shall make a payment to Newable within three Business Days for the amount of such balance.

5.3 At the expiry of the Term, if the Advance has not been repaid, the Company will pay an amount equal to the amount outstanding under the Advance, sufficient to repay the Advance, and the Total Rate in full.

5.4 Any payments received directly by the Company from the Debtor (or on behalf of the Debtor) or from any credit insurance provider in respect of the Receivable shall be held on trust for Newable and shall be transferred to the account notified by Newable to the Company for such purpose within one Business Day of receipt.

5.5. The Company may prepay all or any of the Advance before the end of the Term.

5.6. Newable may require the Company to prepay the Advance in full, if:

5.6.1. any law or regulation is introduced or changed, or there is any change in the way any court or regulatory authority interprets or applies any law or regulation which; or

5.6.2. complying with any direction, request or requirement (whether or not having the force of law) of any monetary agency, central bank, or governmental or regulatory authority; or

5.6.3. any judgment, order or direction of any court, tribunal or authority binding on Newable, makes it unlawful for Newable to make any Advance, or allow any Advance to remain outstanding.

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To require prepayment under clause 5.3, Newable will give notice to the Company demanding prepayment and giving the date for that prepayment. The date for prepayment will be no earlier than the 5th Business Days after the date of the notice.

The Company will prepay the Advance as set out in the notice, together with accrued interest on the Advance and all other sums payable under the Finance Documents.

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5.7. Any prepayment under this agreement will be made together with all interest due on the amount prepaid, and subject to any amounts payable under clauses 7 and 8, without premium or penalty.

## 6. Payments

6.1. Subject to satisfaction of the conditions precedent in clause 2, Newable shall pay the Advance (less any deduction of the Arrangement Fee under clause 7.1) to the Company within two (2) Business Days of its confirmation of the Company's request in the Advance Schedule, unless otherwise agreed between the parties.

6.2. All payments that the Company makes under this agreement will be made in immediately available cleared funds on the due date to an account which Newable may specify to the Company for the purpose.

6.3. All payments made by the Company under this agreement will be made in full, without set-off, counterclaim or condition, and free and clear of, and without any deduction or withholding, provided that, if the Company is required by law or regulation to make such deduction or withholding, it will:

(a) ensure that the deduction or withholding does not exceed the minimum amount legally required;

(b) pay to the relevant taxation or other authorities, as appropriate, the full amount of the deduction or withholding;

(c) provide Newable if requested, within the period for payment permitted by the relevant law, either:

(i) an official receipt of the relevant taxation authorities concerned on payment to them of amounts so deducted or withheld; or

(ii) if such receipts are not issued by the taxation authorities concerned on payment to them of amounts so deducted or withheld, a certificate of deduction or equivalent evidence of the relevant deduction or withholding; and

(iii) pay to Newable such additional amount as is necessary to ensure that the net full amount received by Newable after the required deduction or withholding is equal to the amount that Newable would have received had no such deduction or withholding been made.

6.4. Any payment under any Finance Document which is due to be made on a day which is not a Business Day will be made on the next Business Day). Any interest or other amount accruing on a daily basis will be calculated accordingly.

6.5. If Newable receives a payment that is insufficient to discharge all the amounts then due and payable by the Company under the Finance Documents, Newable will apply that

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payment in settlement of the obligations of the Company in the order determined by Newable in its absolute discretion. The provisions of this clause 6.5 will override any appropriation made by the Company.

## 7. Fees, charges and expenses

7.1. The Company will pay the Arrangement Fee to Newable on the date of the Single Invoice Finance for Exporters Facility Cover Letter as specified in the Single Invoice Finance for Exporters Facility Cover Letter. The Arrangement Fee will be deducted from the amount paid to the Company under clause 6.1, unless otherwise stated in the Single Invoice Finance for Exporters Facility Cover Letter. For the avoidance of doubt, in the event that the Arrangement Fee is deducted from the amount paid to the Borrower under clause 6.1, the Arrangement Fee will form part of the Advance and shall therefore attract the Total Rate in accordance with clause 4 and the other terms of this agreement.

7.2. The Company will, promptly on demand, pay to Newable the amount of all costs and expenses reasonably incurred by Newable in connection with:

(a) the negotiation, preparation, execution and perfection of the Finance Documents and the other documents referred to in them, and the negotiation, preparation, execution and perfection of the Security; and

(b) any amendment, extension, assignment, novation, waiver, consent or suspension of rights (or any proposal for any of these) relating to a Finance Document or a document referred to in any of them.

7.3. The Company will, on demand, pay to Newable the amount of all costs and expenses incurred by Newable in connection with enforcing, preserving any rights under, or monitoring the provisions of, any Finance Document.

7.4. Any amounts of costs and expenses incurred by Newable in connection with enforcing, preserving any rights under, or monitoring the provisions of, any Finance Document, that are not paid on demand, will accrue interest at a rate of 4% per month.

## 8. Indemnities

8.1. The Company will indemnify Newable within three (3) Business Days of demand against any cost, loss or liability incurred by Newable as a result of the occurrence of any Event of Default.

8.2. The indemnity under clause 8.1 will include any interest that Newable would have received (as determined by Newable) if the due payment had been received on the relevant Repayment Date less the amount the Company has actually paid in respect of interest up to the date of actual payment.

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8.3. Each indemnity in this agreement:

- (a) is a separate and independent obligation from the other obligations in this agreement;
- (b) gives rise to a separate and independent cause of action;
- (c) applies whether or not any indulgence is granted by Newable; and
- (d) will continue in full force and effect despite any judgment, order, claim or proof for a liquidated amount in respect of any sum due under this agreement, or any other judgment or order.

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## 9. Representations and warranties

The Company makes the representations and warranties in this clause 9 to Newable on the date of the Single Invoice Finance for Exporters Facility Cover Letter and on each date that any amount is outstanding or owing to Newable.

### 9.1.

(a) the Company:

(i) is a duly incorporated limited liability company validly existing under the law and jurisdiction of England and Wales;

(ii) has the power to own its assets and carry on its business as it is being conducted;

(iii) has the power to enter into, deliver and perform, and has taken all necessary action to authorise its entry into, delivery and performance of, the Finance Documents and the transactions contemplated by them; and

(iv) will not exceed any limit on its powers as a result of the borrowing or grant of security contemplated by the Finance Documents.

(b) The entry into and performance by the Company of, and the transactions contemplated by, the Finance Documents do not and will not contravene or conflict with:

(i) the Company's constitutional documents; or

(ii) any agreement or instrument binding on it or its assets or constitute a default or termination event (however described) under any such agreement or instrument.

9.2. The entry into and performance by the Company of, and the transactions contemplated by, the Finance Documents do not and will not contravene or conflict with any law or regulation or judicial or official order, applicable to it.

9.3. The Company's obligations under the Finance Documents are legal, valid, binding and enforceable.

9.4. The Security creates (or, once entered into, will create):

(a) valid, legally binding and enforceable Security for the obligations expressed to be secured by it; and

(b) subject to registration under the Companies Act 2006 (where applicable) and, in the case of real property, registration at the Land Registry, perfected Security over the assets expressed to be subject to security in it, in favour of Newable, having the priority and ranking expressed to be created by the Security.

9.5. No deduction for, or on account of, Tax is required from any payment that the Company may make under any Finance Document.

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9.6. No Event of Default or Potential Event of Default is continuing or might reasonably be expected to result from the making of an Advance.

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9.7. No other event or circumstance is outstanding which constitutes (or, with the expiry of a grace period, the giving of notice, the making of any determination or any combination thereof, would constitute) a default or termination event (howsoever described) under any other agreement or instrument which is binding on it or to which any of its assets is subject which has or is likely to have a Material Adverse Effect.

9.8. The information, in written or electronic format, supplied by or on behalf of the Company to Newable in connection with the Advance and the Finance Documents was, at the time it was supplied or at the date it was stated to be given (as the case may be):

- (a) if it was factual information, complete, true and accurate in all material respects;
- (b) if it was a financial projection or forecast, prepared on the basis of recent historical information and on the basis of reasonable assumptions and was arrived at after careful consideration;
- (c) if it was an opinion or intention, made after careful consideration and was fair and made on reasonable grounds; and
- (d) not misleading in any material respect, nor rendered misleading by a failure to disclose other information, except to the extent that it was amended, superseded or updated by more recent information supplied by, or on behalf of, the Company to Newable.

9.9. There has been no material adverse change in the business, assets, financial condition, trading position or prospects of the Company since the date of this agreement.

9.10 No litigation, arbitration or administrative proceedings are taking place, pending, or have been threatened against the Company, any Group Company, any of the Company's directors or any of the Company's assets.

9.11 The Company has not breached any law or regulation which breach has or is reasonably likely to have a Material Adverse Effect.

9.12 In respect of the Receivable, the Company will be deemed to have given the following warranties to Newable both on the date of the Single Invoice Finance for Exporters Facility Cover Letter and each date that any amount is outstanding or owing to Newable or the Receivable is outstanding:

9.12.1 the Receivable relates to an actual and bona fide sale and Delivery of Goods to the Debtor or services completely performed for the Debtor and is evidenced by an invoice and is undisputed and enforceable payment obligations of the Debtor;

9.12.2 payment of the Receivable in full will be legally enforceable against the Debtor to whom the Invoice is addressed in a Permitted Country;

9.12.3 that the Debtor is not Insolvent;

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- 9.12.4 the Company has an absolute right to transfer the Receivable to Newable free from any Security, trust or tracing or other third party rights adversely affecting the Receivable or the Goods;
- 9.12.5 the Debtor has an established place of business in a Permitted Country;
- 9.12.6 that any Goods required to be delivered pursuant to such Receivable have been delivered and services required to be performed pursuant to the Receivable have been fully performed;
- 9.12.7 Newable's ownership of the Receivable or the transfer to Newable of information about the Debtor will not violate any applicable laws or agreement;
- 9.12.8 the value of the Receivable is the amount due in respect of the Receivable under the Contract of Sale and there is no prompt payment discount;
- 9.12.9 all sums due or obligations owed by the Company or any other person to the Debtor have been paid or performed and neither the Company nor any other person has any other obligations towards the Debtor which, in either case, could reduce the amount payable to Newable for the Receivable;
- 9.12.10 no right or claim (whether valid or alleged) exists which will reduce or extinguish the Receivable or affect Newable's ability to recover or collect the Receivable in full;
- 9.12.11 the correct name and address and any other details of the Debtor and any required purchase order number appear on the Invoice and on any documents evidencing the Receivable;
- 9.12.12 the Debtor has all the consents and certificates necessary in order to pay the Receivable to Newable;
- 9.12.13 the Invoice identifies the currency for payment as a Permitted Currency;
- 9.12.14 in respect of any Export Debt, the Debtor has all authorities, licences and permits necessary for the lawful purchase, import and payment for the Goods in each Permitted Country by their due date for payment either to the Company or, following a notice of assignment, to Newable;
- 9.12.15 the export of Goods and the payment by the Debtor for such Goods is not unlawful under any applicable laws;
- 9.12.16 the Receivable is not due from an Associate of the Company or any of its directors or from a private individual;

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- 9.12.17 the Receivable is not due from a Debtor to whom the Company is or may be indebted;
- 9.12.18 the Receivable does not arise from Goods supplied by the Company on approval, trial, evaluation, consignment, sale or return or similar terms;
- 9.12.19 the Receivable is not to be discharged in whole or in part by a letter of credit or payment against documents;
- 9.12.20 the Receivable is due by a Debtor which has purchased Goods for its business;
- 9.12.21 the Receivable is not regulated by the Consumer Credit Act 1974 or other local consumer protection legislation;
- 9.12.22 the Receivable does not arise from the sale of the Company's capital or fixed assets;
- 9.12.23 the Receivable is due in respect of the Company's trade, occupation or profession and where the Company has an established place of business;
- 9.12.24 the Receivable does not arise under a conditional sale or hire purchase or leasing agreement;
- 9.12.25 the Receivable does not arise from cash sales, inter company sales or pro-forma invoices;
- 9.12.26 the Receivable does not arise from a Debtor with any Contra Account.

## 10. General covenants

The Company covenants with Newable as set out in this clause 10 and undertakes to comply with these covenants. The covenants given by the Company in this clause 10 will remain in force from the date of this agreement for so long as any amount remains outstanding under the Finance Documents.

- 10.1. The Company will promptly obtain all consents and authorisations under any law or regulation (and do all that is needed to maintain them in full force and effect) to enable it to perform its obligations under the Finance Documents and to ensure the legality, validity, enforceability and admissibility in evidence of the Finance Documents in its jurisdiction of incorporation.

10.2. The Company will comply in all respects with all relevant laws to which it may be subject, if failure to do so would materially impair its ability to perform its obligations under the Finance Documents.

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10.3. It will not enter into any amalgamation, demerger, merger, corporate reconstruction or change in ownership.

10.4. The Company will not make any substantial change to the general nature or scope of its business as carried on at the date of this agreement.

10.5. If Newable is obliged for any reason to comply with "know your customer" or similar identification procedures in circumstances where the necessary information is not already available to it, the Company will, promptly on the request of Newable, supply (or procure the supply of) such documentation and other evidence as is reasonably requested in order for Newable to carry out, and be satisfied that it has complied with, all necessary "know your customer" or other similar checks under all applicable laws and regulations pursuant to the transactions contemplated in the Finance Documents.

10.6. If required by Newable, the Company agrees to enter into a business mentor-mentee agreement.

10.7. If required by Newable, the Company agrees to use the services of a recovery manager nominated by Newable. The Company agrees to co-operate with the recovery manager and authorises them to provide all relevant information to Newable or its authorised representative.

10.8. If required, the Company consents to Newable discussing the Advance and its progress with any Indemnifier, Responsible Finance, British Business Bank and Department for Business, Energy and Industrial Strategy and Department for Business and Trade (or any replacement governmental department).

10.9. The Company will ensure the bank account from which any payments are to be made to Newable has the capability of making payments using a direct debit mandate.

10.10. In respect of the Receivable, the Company undertakes:

- 10.10.1. to ensure that the payment and settlement discount terms for the Receivable do not differ from those appearing in this agreement (including, without limitation, any Maximum Terms of Payment) and that these terms appear on the Invoice and all copies;
- 10.10.2. not to cancel or vary any Contract of Sale or payment terms or settlement discounts without the written consent of Newable;
- 10.10.3. to ensure that the Contract of Sale shall:
- only be made in the ordinary course of trading activities as disclosed to Newable;
  - be subject to English law;
  - provide for the payment by the Debtor to be in a Permitted Currency;
  - not include any prohibition against the assignment of the Receivable;

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- 10.10.4. not to enter into any agreement for the factoring, charging, declaring in trust or discounting of the Receivable with any other party or any arrangement prejudicial to Newable's outright unencumbered ownership of the Receivable;
- 10.10.5. to tell Newable immediately it becomes aware of:
- details of dispute with the Debtor or any adverse credit or other information about the Debtor;
  - any change in the management or ownership of the Debtor;
  - any holder of rights of ownership over Goods making any claim;
  - the Debtor becoming Insolvent;
  - all retrospective or quantity discount structures agreed with the Debtor and all discounts to which the Debtor is entitled have not been taken;
- 10.10.6. promptly when asked:
- to give Newable such information about the Debtor as Newable may specify;
  - to give Newable evidence (including proof of Delivery) satisfactory to Newable of any order and the completion of the Contract of Sale;
  - to exercise all rights of an unpaid seller of Goods including any reservation of title;
- 10.10.7. to perform all its obligations to the Debtor and, if Newable asks, to give evidence of such performance;
- 10.10.8. to maintain full accounting records and provide them to Newable on request;
- 10.10.9. promptly to inform Newable of it becomes aware of any breach of its warranties relating to the Receivable;
- 10.10.10. to obtain a signed proof of Delivery or collection (or, in the case of manpower service, signed timesheets) for the Receivable, to be held to the order of Newable;
- 10.10.11. to ensure that any debt collection or credit management agency used by it will acknowledge, in a form acceptable to Newable, Newable's ownership of the Receivable;
- 10.10.12. to ensure that its company registration number, VAT registration number and its credit terms appear on the Invoice;
- 10.10.13. to ensure that the terms of the Contract of Sale with the Debtor is not amended or varied in any way without Newable's prior written consent;
- 10.10.14. Newable may require the Company at any time to deliver to Newable and not the Debtor, the original of the Invoice and any credit note, bill of lading, airway bill, customs form, commercial and consular invoice, certificate of origin, insurance document, bill of exchange, draft or negotiable instrument, and such other documents as it may require for

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the enforcement of its rights. Upon receipt Newable shall forward them, at the Company's expense, to the Debtor or such other persons or organisations as are appropriate;

- 10.10.15. Newable may sell, assign or otherwise transfer the Receivable to any factoring company outside the UK that it may choose for the purpose of collections;
- 10.10.16. to promptly settle any dispute arising in relation to the Receivable;
- 10.10.17. to pre-notify Newable of the Invoice and provide a pro-forma invoice for approval in advance of the proposed date of Advance;
- 10.10.18. to issue the Invoice no later than 7 days after the pre-notification required pursuant to clause 10.10.17.

### 11. Events of Default

Each of the events or circumstances set out in clauses 11.1 to 11.22 is an Event of Default.

11.1. The Company or any Indemnifier:

- (a) fails to pay any sum payable by it under any Finance Document when due, unless its failure to pay is caused solely by an administrative error or technical problem and payment is made within three (3) Business Days of its due date; or
- (b) cancels its direct debit mandate in respect of the Advance.

11.2 In respect of the Company or any Indemnifier:

- (a) there occurs an event of default or termination event (howsoever described) or a breach of any other deed, document, contract or agreement between the Company and/or any Indemnifier and Newable;
- (b) any Financial Indebtedness of the Company or any Indemnifier is not paid when due nor within any applicable grace period or is declared to be or otherwise becomes (or a creditor is entitled to declare as such) due and payable prior to its specified maturity as a result of an event of default (howsoever described).

11.3. The Company or any Indemnifier fails to comply with any provision, condition, covenant or provision of or to perform any of his obligations or liabilities under the Finance Documents and (if Newable considers, acting reasonably, that the default is capable of remedy) such default is not remedied within 14 days of the earlier of:

- (a) Newable notifying the Company of the default and the remedy required; and
- (b) the Company becoming aware of the default.

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- 11.4. Any representation, warranty or statement made by the Company or any Indemnifier to Newable in, or pursuant to, the Finance Documents is (or proves to have been) incomplete, untrue, incorrect or misleading when made, repeated or deemed made.
- 11.5. The Company or any Indemnifier is unable or admits inability to pay its debts as they fall due or suspends or threatens to suspend making payments of any of its debts or by reason of actual or anticipated financial difficulties, commences negotiations with one or more of its creditors with a view to rescheduling any of its indebtedness.
- 11.6. The Company or any Indemnifier ceases or threatens to cease to carry on, or disposes or threatens to dispose of, its business or a material part of its business.
- 11.7. The Company or any Indemnifier makes a proposal for a voluntary arrangement under the Insolvency Act 1986 Part I or enters or seeks to enter into any other form of composition, arrangement, assignment or compromise with its creditors whether in whole or in part.
- 11.8. The Company or any Indemnifier becomes subject to a notice of an intended appointment of an administrator or an application is made to any court or any meeting of directors or members is called with a view to the Company or any surety entering into administration.
- 11.9. An administrative receiver is appointed in respect of the whole or any part of the undertaking of the Company or any Indemnifier.
- 11.10. A petition is presented in any court or a meeting is convened for the purpose of considering a resolution for the winding up of the Company or any Indemnifier (except in the case of a reconstruction or amalgamation that has the previous approval in writing of Newable).
- 11.11. A receiver and/or manager is appointed in respect of the whole or any part of the Security.
- 11.12. The Company or any Indemnifier gives notice to terminate the indemnity, release the Security or otherwise acts or threatens to act in a way that indicates an intention to no longer be bound by the Indemnity.
- 11.13. A moratorium is declared in respect of any indebtedness of the Company or any Indemnifier.
- 11.14. A distress, attachment, execution, expropriation, sequestration or other analogous legal process is levied, enforced or sued out on, or against, the Company's or Indemnifier's assets having an aggregate value of £1,000 (or its equivalent in other currencies) and is not discharged or stayed within 21 days.
- 11.15. The Company or Indemnifier disposes or threatens to dispose of, the Security or a material part of it.
- 11.16. The Company or Indemnifier makes a proposal for a voluntary arrangement under the

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Insolvency Act 1986 or enters, or seeks to enter, into any other form of composition, arrangement, assignment or compromise with its creditors whether in whole or in part.

- 11.17. A petition is presented for the winding up or the bankruptcy of the Company or any Indemnifier.
- 11.18. Any notice is given, or purported to be given, to terminate the indemnity, release the Security or the Company or any Indemnifier otherwise acts or threatens to act in a way that indicates an intention to no longer be bound by the Indemnity or Security.
- 11.19. Any Security on or over the assets of the Company or any Indemnifier becomes enforceable.
- 11.20. All or any part of any Finance Document becomes invalid, unlawful, unenforceable, terminated, disputed or ceases to be effective or to have full force and effect.
- 11.21. The Company or any Indemnifier repudiates or evidences an intention to repudiate the Finance Documents or any of them.
- 11.22. Any event occurs (or circumstances exist) which, in the reasonable opinion of Newable, has or is likely to have a Material Adverse Effect.
- 11.23. At any time after an Event of Default has occurred, Newable may, by notice to the Company:
- (a) declare that any outstanding Advance, accrued interest and all other amounts accrued or outstanding under the Finance Documents be immediately due and payable, whereupon they will become immediately due and payable; and/or
  - (b) declare that any outstanding Advance be payable on demand, whereupon they will immediately become payable on demand by Newable; and/or
  - (c) Withhold its consent to any request for an Advance in any Advance Schedule; and/or
  - (d) declare the Security to be enforceable.

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## 12. Data protection

12.1. For the purposes of this clause, “Data Controller”, “Data Processor” and “Personal Data” shall have the meanings set out in the General Data Protection Regulation (the GDPR).

12.2. The parties acknowledge and agree that (i) for the purposes of the GDPR, Newable shall be the Data Controller of any Personal Data, which includes personal, business and financial information of the Company collected from the Company or provided to Newable by the Company or third parties (such as the Mentor, any organisation that introduced the Company and credit reference or fraud prevention agencies); and (ii) this clause 12 sets out the basis on which the Company’s Personal Data may be processed by Newable.

12.3. Subject to Newable’s obligations under GDPR, Newable may use the Personal Data of the Company for the purposes set out in this clause 12, including to:

(a) provide services and carry out Newable’s obligations under the Finance Documents and other agreements with the Company, including for customer service, market research, insurance, audit and administrative purposes;

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- (b) enforce or apply Finance Documents and other agreements with the Company or to investigate potential breaches;
- (c) protect the rights, property or safety of Newable, its customers or others, which may include the exchange of information with other companies and organisations for the purposes of fraud protection and credit risk reduction;
- (d) provide the Personal Data to any third party provider of debt financing to Newable from time to time in connection with negotiation, preparation and entry into any arrangements in connection thereto; and
- (e) provide the Company with information relating to any promotions, products and/or services (including mortgages) of Newable, its group or selected third parties that may be of interest to the Company, provided that the Company has not notified Newable that it does not wish to receive such information.

12.4. Newable, its authorised representatives and any organisation that introduced the Company may use the Company's name and any other non-commercially sensitive details for promotional purposes, including the promotion of associated sponsors and organisations.

12.5. Newable may disclose Personal Data to:

- (a) any member of Newable's group, which means its subsidiaries, its ultimate holding company and its subsidiaries, as defined in section 1159 of the Companies Act 2006 who shall be entitled to use the Company's Personal Data for the purposes set out in this clause 12;
- (b) to third parties who provide a service to Newable or are acting as Newable's agents (who will treat such information confidentially);
- (c) to third parties for the purpose of assessing the Company's current and future credit worthiness and to third parties who provide debt financing to Newable from time to time (who will treat such information confidentially);
- (d) where Newable is under a duty to disclose or share the Personal Data in order to comply with any legal or regulatory obligation or request;
- (e) in the event that Newable transfers its rights or obligations under any of the Finance Documents to a third party, in which case Newable will disclose the Personal Data to that third party (including by way of security to any third-party provider of debt financing to Newable from time to time).

12.6. Information on applications will be sent to credit reference agencies (CRAs) and will be recorded by them, which may include information on the Company's business and its proprietors. CRAs may create a record of the name and address of the Company's business

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and its proprietors if there is not one already. Newable will give details of the Company's accounts and how they are managed to CRAs if an Advance is made.

12.7. If the Company does not repay in full and on time, CRAs will record the outstanding debt. This information may be supplied to other organisations by CRAs and fraud prevention agencies (FPAs) to perform similar checks and to trace the Company's whereabouts and

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recover any debts owed. Records remain on file for 6 years after they are closed, whether settled or defaulted.

12.8. If the Company provides false or inaccurate information to Newable and fraud is suspected or identified, Newable will record this and may pass the information to CRAs, FPAs, and other organisations involved in crime and fraud prevention.

12.9. If the Company does not make the payments to Newable as agreed in accordance with the Finance Documents, Newable may trace your whereabouts and recover debts.

12.10. Newable and other organisations may access and use from other countries the information recorded by fraud prevention agencies.

12.11. The Company acknowledges and agrees that the Company's Personal Data may from time to time be transferred to, and stored at, a destination outside the European Economic Area (EEA) and that it may also be processed by staff operating outside the EEA who work for Newable, its suppliers or members of its group.

12.12. The Company's data may also be used for other purposes for which the Company give its specific permission or, in very limited circumstances, when required by law or where permitted under the terms of the GDPR.

### 13. Assignment and transfer

13.1. Newable may assign any of its rights under the Finance Documents or transfer all its rights or obligations by novation.

13.2. The Company may not assign any of its rights or transfer any of its rights or obligations under the Finance Documents.

### 14. Set-off

14.1. Newable may at any time set off any liability of the Company to Newable against any liability of Newable to the Company, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under this agreement. If the liabilities to be set off are expressed in different currencies, Newable may convert either liability at a market rate of exchange for the purpose of set-off. Any exercise by Newable of its rights under this clause 14.1 will not limit or affect any other rights or remedies available to it under this agreement or otherwise.

14.2. Newable is not obliged to exercise its rights under clause 14.1, but if the rights are exercised, Newable will promptly notify the Company of the set-off that has been made.

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## 15. Calculations and certificates

15.1. Newable will maintain accounts evidencing the amounts owed to it by the Company, in accordance with its usual practice. Entries in those accounts will be sufficient evidence of the existence and amount of the Company's obligations as recorded in them.

15.2. If Newable issues any certificate, determination or notification of a rate or any amount payable under this agreement, it will be (in the absence of manifest error) conclusive evidence of the matter to which it relates.

15.3. Any interest, commission or fee will accrue on a day-to-day basis, calculated according to the actual number of days elapsed and a year of 365 days.

## 16. Amendments, waivers and consents

16.1. Newable may amend the terms of any Finance Document provided it gives the Company 30 days' notice of such amendment. The Company may not make any amendments to the terms of the Finance Documents unless with the prior written consent of Newable.

16.2. A waiver of any right or remedy under any Finance Document or by law, or any consent given under any Finance Document, is only effective if given in writing by the waiving or consenting party and will not be deemed a waiver of any other breach or default. It only applies in the circumstances for which it is given and will not prevent the party giving it from subsequently relying on the relevant provision.

16.3. Newable reserves the right to amend, vary and alter these Export Finance Terms and Conditions at any time to comply with law or to meet its changing business requirements by posting the updated version to the relevant page on its website. The Company is expected to check the website from time to time to take notice of any changes made, as they are binding on the Company.

16.4. A failure or delay by a party to exercise any right or remedy provided under any Finance Document or by law will not constitute a waiver of that or any other right or remedy, prevent or restrict any further exercise of that or any other right or remedy or constitute an election to affirm any Finance Document. No single or partial exercise of any right or remedy provided under any Finance Document or by law will prevent or restrict the further exercise of that or any other right or remedy. No election to affirm any Finance Document by Newable will be effective unless it is in writing.

16.5. The rights and remedies provided under each Finance Document are cumulative and are in addition to, and not exclusive of, any rights and remedies provided by law.

## 17. Severance

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If any provision (or part of a provision) of any Finance Document is or becomes invalid, illegal or unenforceable, it will be deemed modified to the minimum extent necessary to

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make it valid, legal and enforceable. If such modification is not possible, the relevant provision (or part of a provision) will be deemed deleted. Any modification to or deletion of a provision (or part of a provision) under this clause will not affect the legality, validity and enforceability of the rest of the relevant Finance Document.

### 18. Counterparts

18.1. Each Finance Document may be executed in any number of counterparts, each of which when executed will constitute a duplicate original, but all the counterparts will together constitute one agreement.

18.2. Transmission of an executed counterpart of this agreement by fax or email (in PDF, JPEG or other agreed format) will take effect as delivery of an executed counterpart of this agreement. If either method of delivery is adopted, without prejudice to the validity of the agreement thus made, each party will provide the others with the original of such counterpart as soon as reasonably possible thereafter.

### 19. Third party rights

(a) Except as expressly provided elsewhere in this agreement, a person who is not a party to this agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or enjoy the benefit of any term of this agreement. This does not affect any right or remedy of a third party which exists, or is available, apart from that Act.

(b) The rights of the parties to rescind or agree any amendment or waiver under this agreement are not subject to the consent of any other person.

### 20. Notices

20.1. A notice given to a party under or in connection with this agreement will be in writing and will be delivered by email, by hand or by first class post to the Company's Address as stated in the Single Invoice Finance for Exporters Facility Cover Letter (or to such other address as that party may notify to the other party in accordance with this agreement).

20.2. Delivery of a notice is deemed to have taken place immediately if delivered by email, upon actual receipt by the other party if delivered by hand at the time the notice is left at the address, or if sent by post at noon on the 1st Business Day after posting.

### 21. Governing law and jurisdiction

21.1. This agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation will be governed by

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and construed in accordance with the law of England and Wales.

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21.2. Each party irrevocably agrees that, subject as provided below, the courts of England and Wales will have exclusive jurisdiction over any dispute or claim (including non-contractual disputes or claims) that arises out of or in connection with this agreement or its subject matter or formation. Nothing in this clause will limit the right of Newable to take proceedings against the Company in any other court of competent jurisdiction, nor will the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdictions, whether concurrently or not, to the extent permitted by the law of such other jurisdiction.

## 22. Definitions and interpretation

22.1. Terms defined in the Single Invoice Finance for Exporters Facility Cover Letter will have the same meaning where used in these Export Finance Terms and Conditions.

22.2. In addition, reference in this agreement to the following terms will have the following meaning:

**Advance:** the advance made available by Newable to the Company pursuant to the terms of these Terms and Conditions and the Loan Cover Letter.

**Advance Rate:** shall have the meaning given to such term in the Single Invoice Finance for Exporters Facility Cover Letter.

**Advance Schedule:** the form of request for an Advance by the Company and Lender and, where given, the consent of Newable to the Advance.

**Arrangement Fee:** shall have the meaning given to such term in the Single Invoice Finance for Exporters Facility Cover Letter.

**Associate:** a person which, directly or indirectly, controls or is controlled by or is under common control with the Company, or a person which beneficially owns or holds, directly or indirectly, five per cent or more of any class of voting shares of the Company or any of them, or a person in which five per cent of any class of voting shares is beneficially owned or held directly, by the Company or any of them.

**Associated Rights:** in relation to the Receivable, all rights ancillary to the Receivable, including without limitation:

- (a) the benefit of every Contract of Sale giving rise to the Receivable;
- (b) rights of retention of title, lien, recovery of possession and other remedies given by law to an unpaid vendor of goods;
- (c) the benefit of all guarantees, warranties, indemnities, securities and policies of

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insurance held by or available to the Company in relation to the debts owed to it by the Debtor;

- (d) all ledgers and records (including computerised records) evidencing the amount owed and the relevant Contract of Sale;
- (e) all the Company's rights under contracts of supply between the Company and its suppliers in relation to goods supplied or to be supplied by the Company in fulfilment of its delivery obligations to the Debtor, whether or not such goods have been appropriated by the Company to the Debtor's Contract of Sale, have been delivered to the Debtor or returned or rejected by the Debtor for any reason.

**Base Rate:** the published base rate of the Bank of England from time to time (and, if the base rate of the Bank of England shall be less than zero, then for the purposes of the Single Invoice Finance for Exporters Facility Cover Letter and these Export Finance Terms and Conditions it shall be deemed to be zero.

**Business Day:** a day other than a Saturday, Sunday or a public holiday in England when banks in England & Wales are open for business.

**Company:** the person, persons, company or partnership noted in such capacity in the Single Invoice Finance for Exporters Facility Cover Letter.

**Conditions Precedent:** the conditions precedent as detailed in Schedule 1- Conditions Precedent, Clause 2 and, the Additional Conditions Precedent to Advance.

**Contra Accounts:** the actual and potential amount that a Debtor could set off against the amount owed by that Debtor to the Company by virtue of a reciprocal trading relationship, as reasonably determined from time to time by Newable from the information provided to Newable by the Company.

**Contract of Sale:** any written contract in any form, including (for the avoidance of doubt) but not limited to, a purchase order between the Company and the Debtor for the sale or hire of Goods or the provision of services or work done and materials supplied.

**CRAs:** as defined in clause 12.6.

**Debtor:** shall have the meaning given to such term in the Single Invoice Finance for Exporters Facility Cover Letter.

**Delivered:** means in relation to Goods:

- (a) their removal from the Company's control and from the Company's premises, carriers and their agents; and
- (b) their physical delivery in a Permitted Country to the Debtor; and
- (c) the assumption of risk therein by the Debtor; and
- (d) complete performance of the Contract of Sale,

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and, in relation to services, their complete performance and **Deliver** and **Delivery** shall be construed accordingly.

**Discount Rate:** shall have the meaning given to such term in the Single Invoice Finance for Exporters Facility Cover Letter.

**EEA:** as defined in clause 12.11.

**Event of Default:** any event or circumstance listed in clause 11.1 to clause 11.22.

**Factoring Fee:** shall have the meaning given to such term in the Single Invoice Finance for Exporters Facility Cover Letter.

**Finance Document:** these terms and conditions, the Single Invoice Finance for Exporters Facility Cover Letter, Advance Schedule, the Security, the Exporter Declaration and any other document designated as such by Newable.

**Financial Indebtedness:** (a) any moneys borrowed and debit balances at financial institutions, (b) any acceptance under any credit acceptance or bill discounting facility (or dematerialized equivalent), (c) any note purchase facility or the issue of bonds, notes, debentures, loan stock or similar instrument, (d) the amount of any liability in respect of any finance leases, (e) receivables sold or discounted, (f) any counter-indemnity obligation in respect of a guarantee, bond, standby or documentary letter of credit or other instrument issued by a bank or financial institution, (g) any amount of any liability under an advance or deferred purchase agreement, (h) any amount raised under any other transaction having the commercial effect of a borrowing.

**FPAs:** as defined in clause 12.7.

**GDPR:** all applicable privacy and data protection laws including the General Data Protection Regulation (EU) 2016/679) and any applicable national implementing laws, regulations and secondary legislation in England and Wales relating to the processing of Personal Data, as amended, replaced or updated from time to time, including the Data Protection Act 2018 and any successor legislation.

**Goods:** any merchandise or materials, or where the context admits, any work or services which are the subject of the Contract of Sale.

**Group Company:** the Company, its subsidiaries, its ultimate holding company and its subsidiaries, as defined in section 1159 of the Companies Act 2006.

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**Indemnifier:** any person or company providing an Indemnity or other form of Security.

**Indemnity:** the personal guarantee and indemnity in the form specified by Newable to support the obligations of the Company to Newable.

**Insolvent:** means, in respect of the Company and the Debtor:

- (a) any corporate action, legal proceedings or other procedure or step is taken in relation to:
- a. the suspension of payments, a moratorium of indebtedness, winding up (save in respect of any winding up petition which is frivolous or vexatious and is discharged, stayed or dismissed within 10 Business Days of commencement or, if earlier, the date on which it is advertised), dissolution, administration or re-organisation (by way of voluntary arrangement, scheme of arrangement or otherwise);
  - b. a composition, compromise, assignment or arrangement with any creditor;
  - c. the appointment of a liquidator, receiver, administrative receiver, administrator, compulsory manager or other similar officer in respect of such entity or its assets;
  - d. enforcement of any Security over assets of any entity or such assets being the subject to any injunction, seizure, distress, diligence, sequestration or attachment;
  - e. the passing of a resolution for voluntary winding up by reason of insolvency;
  - f. the making of a winding up order;
  - g. the passing of a resolution by its directors or members to apply for an administration order;
- or an analogous procedure or step is taken in any jurisdiction;
- (b) being unable or admitting inability to pay its debts as they fall due or being deemed or declared to be unable to pay its debts under applicable law, suspending or threatening to suspend making payments on any of its debts or, by reason of actual or anticipated financial difficulties, commencing negotiations with one or more of its creditors with a view to rescheduling any of its indebtedness;
- (c) the value of its assets being less than its liabilities;
- (d) a moratorium being declared in respect of any of its indebtedness;
- (e) in respect of any individual, bankruptcy or sequestration or the granting of a trust deed for the benefit of creditors or any proposal to enter into a voluntary arrangement under the Insolvency Act 1986 (including any moratorium) or any formal or informal arrangement generally for creditors,

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and **Insolvency** shall be construed accordingly

**Interest and Commitment Fee:** shall have the meaning given to such term and be the rate as expressed in, the Single Invoice Finance for Exporters Facility Cover Letter.

**Invoice:** shall have the meaning given to such term in the Single Invoice Finance for Exporters Facility Cover Letter.

**Material Adverse Effect:** any event or circumstance which, in the opinion of Newable:

(a) is likely to materially and adversely affect the Company's or any Indemnifier's ability to perform or otherwise comply with all or any of its obligations under the Finance Documents;

(b) is likely to materially and adversely affect the business, operations, property, condition (financial or otherwise) or prospects of the Company or any Indemnifier; or

(c) is likely to result in any Finance Document not being legal, valid and binding on, and enforceable in accordance with its terms against, the Company or any Indemnifier;

(d) or is likely to result in the Indemnity or the Security not being legal, valid and binding on, and enforceable in accordance with its terms against, the Company or any Indemnifier.

**Maximum Terms of Payment:** means the maximum terms of payment that may be provided to the Debtor by the Company as specified in the Loan Cover Letter.

**Mentor:** means the person so appointed under a business mentor-mentee agreement.

**Permitted Country:** shall have the meaning given to such term in the Single Invoice Finance for Exporters Facility Cover Letter.

**Permitted Currency:** shall have the meaning given to such term in the Single Invoice Finance for Exporters Facility Cover Letter.

**Potential Event of Default:** an Event of Default or any event or circumstance specified in clause 11 which would (with the expiry of a grace period, the giving of notice, the making of any determination under the Finance Documents or any combination of the foregoing) be an Event of Default.

**Receivable:** shall have the meaning given to such term in the Single Invoice Finance for Exporters Facility Cover Letter.

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**Repayment Date:** the Repayment Date(s) as set out in the Advance Schedule.

**Repayments:** as set out in the Single Invoice Finance for Exporters Facility Cover Letter next to such term.

**Security:** any mortgage, charge, pledge, lien or other security interest securing any obligation of the Company or any Indemnifier to Newable or any other arrangement or other agreement having a similar effect and including all arrangements as set out in the Single Invoice Finance for Exporters Facility Cover Letter next to the term "Security Specific for the purposes of the Advance".

**Single Invoice Finance for Exporters Facility Cover Letter:** the Single Invoice Finance for Exporters Facility Cover Letter cover letter from Newable to the Company setting out the commercial terms of the Advance and to which these Export Finance Terms and Conditions are annexed.

**Total Rate:** the aggregate of the Discount Charge and the Factoring Fee, being the amount as set out in the Single Invoice Finance for Exporters Facility Cover Letter, per 30 days for the period of the Advance.

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23. In the event of any conflict between the Single Invoice Finance for Exporters Facility Cover Letter and these Export Finance Terms and Conditions, these Export Finance Terms and Conditions will prevail.

23.1. In this agreement:

(a) clause, Schedule and paragraph headings shall not affect the interpretation of this agreement;

(b) a reference to a person shall include a reference to an individual, firm, company, corporation, partnership, unincorporated body of persons, government, state or agency of a state or any association, trust, joint venture or consortium (whether or not having separate legal personality);

(c) a reference to a holding company or a subsidiary means a holding company or a subsidiary (as the case may be) as defined in section 1159 of the Companies Act 2006.

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- (d) a reference to a holding company or a subsidiary means a holding company or a subsidiary (as the case may be) as defined in section 1159 of the Companies Act 2006.
- (e) unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular;
- (f) unless the context otherwise requires, a reference to one gender shall include a reference to the other genders;
- (g) a reference to a party shall include that party's successors, permitted assigns and permitted transferees and this agreement shall be binding on, and enure to the benefit of, the parties to this agreement and their respective personal representatives, successors, permitted assigns and permitted transferees;
- (h) a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time;
- (i) a reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision;
- (j) a reference to a time of day is to London time;
- (k) a reference to writing or written includes fax and email;
- (l) an obligation on a party not to do something includes an obligation not to allow that thing to be done;
- (m) a reference to this agreement (or any provision of it) or to any other agreement or document referred to in this agreement is a reference to this agreement, that provision or such other agreement or document as amended (in each case, other than in breach of the provisions of this agreement) from time to time;
- (n) unless the context otherwise requires, a reference to a clause or Schedule is to a clause of, or Schedule to, this agreement and a reference to a paragraph is to a paragraph of the relevant Schedule;
- (o) any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms;
- (p) a reference to directly or indirectly means (without limitation) either alone or jointly with any other person, whether on his own account or in partnership with another (or others) as the holder of any interest in or as officer, employee or agent of or consultant to any other person;
- (q) a reference to a document in agreed form is to that document in the form agreed by Newable and the Company and initialled by or on their behalf for identification;

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- (r) a reference to an amendment includes a novation, assignment, re-enactment, supplement or variation (and amended shall be construed accordingly);
- (s) a reference to assets includes present and future properties, undertakings, revenues, rights and benefits of every description;
- (t) a reference to an authorisation includes an approval, authorisation, consent, exemption, filing, licence, notarisation, registration and resolution;
- (u) a reference to a certified copy of a document means a copy certified to be a true, complete and up-to-date copy of the original document, in writing and signed by a director or the secretary of the party delivering the document;
- (v) a reference to continuing in relation to an Event of Default or a Potential Event of Default means an Event of Default or a Potential Event of Default that has not been remedied or waived;
- (w) a reference to determines or determined means, unless the contrary is indicated, a determination made at the discretion of the person making it;
- (x) a reference to a disposal of any asset, undertaking or business includes a sale, lease, licence, transfer, loan or other disposal by a person of that asset, undertaking or business (whether by a voluntary or involuntary single transaction or series of transactions);
- (y) a reference to a regulation includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, inter- governmental or supranational body, agency, department or regulatory, self- regulatory or other authority or organisation; and
- (z) any accounting terms that are not specifically defined in this agreement shall be construed in accordance with UK GAAP

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23.2 The Single Invoice Finance for Exporters Facility Cover Letter and the Schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement. Any reference to this agreement includes the Single Invoice Finance for Exporters Facility Cover Letter and the Schedules.

#### **Schedule 1 - Conditions precedent**

##### **1. Conditions precedent**

1.1. A copy of the resolutions, duly passed by the Company's board of directors and in a form satisfactory to Newable approving the entry into, terms of and transactions contemplated by the Finance Documents and resolving that the Company executes the Finance Documents.

1.2. The Single Invoice Finance for Exporters Facility Cover Letter (with these Export Finance Terms and Conditions appended to it), duly executed by the Company.

1.3. The Security, duly executed.

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1.4. Payment by the Company of all fees and expenses due under Clause 7.1 and 7.2 (a) before the date of the Single Invoice Finance for Exporters Facility Cover Letter.

1.5. A copy of any other Authorisation, document, opinion or assurance which Newable considers necessary or desirable in connection with the entry into, and performance of, the transactions contemplated by the Finance Documents, or for the Finance Documents to be valid and enforceable.

2. The 'Direct Debit Mandate' and the 'Information Declaration' forms provided by Newable, each duly signed, dated and completed to the satisfaction of Newable.

## Schedule 2 – Conditions Subsequent

1. The Borrower shall provide management accounts for the most recent month end or quarter end comprising profit and loss account and balance sheet, within 5 Business Days of request by the Lender from time to time.

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