



MMD Mineral Sizing (Europe) Ltd

A Member of the MMD Group of Companies

Cotes Park Lane, Cotes Park Industrial Estate, Somercotes, Derbyshire, DE55 4NJ

T: +44 (0) 1773 835533

E: sales@mmdsizers.com

F: +44 (0) 1773 835593

W: www.mmdsizers.com

The Buyer's attention is in particular drawn to the provisions of Condition 11.4.

1. Interpretation

1.1 The definitions and rules of interpretation in this condition apply in these conditions (hereinafter the 'Conditions').

Buyer: the person, firm or company who accepts the Company's quotation or who otherwise enters into a Contract with the Company or who purchases the Goods and/or Services from the Company.

Company: MMD Mineral Sizing (Europe) Ltd, Cotes park lane, Cotes park industrial estate, Somercotes, Derbyshire, DE55 4NJ

Contract: any contract between the Company and the Buyer for the sale and purchase of Goods and/or the provision of Services, incorporating these Conditions.

Delivery Point: the place where delivery of the Goods is to take place under Condition 4.

Goods or the Goods: any goods agreed in the Contract to be supplied to the Buyer by the Company (including any part or parts of them).

Services or

the Services: any services agreed in the Contract to be provided to the Buyer by the Company (including any part thereof).

1.2 A reference to a law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.

1.3 Words in the singular include the plural and in the plural include the singular.

1.4 A reference to one gender includes a reference to the other gender.

1.5 Condition headings do not affect the interpretation of these Conditions.

2. Application of Terms

2.1 Subject to any variation under Condition 2.3 the Contract shall be on these Conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Buyer purports to apply under any purchase order, confirmation of order, acceptance of a quotation or specification, other document or course of dealing).

MMD Mineral Sizing (Europe) Ltd

Standard Terms and Conditions for the supply of Goods and Services

MMD Mineral Sizing (Europe) Ltd, Terms & Conditions (revision 6, 10 Dec 2014)



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2.2 No terms or conditions endorsed on, delivered with or contained in the Buyer's purchase order, confirmation of order, acceptance of a quotation or specification or other document shall form part of the Contract simply as a result of such document being referred to in the Contract.

2.3 These Conditions apply to all the Company's sales and any variation to these Conditions, including any special conditions or terms agreed between the parties, and any representations about the Goods and/or Services shall have no effect unless expressly agreed in writing and signed on behalf of the Company. The Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Company which is not set out in the Contract. Nothing in this Condition shall exclude or limit the Company's liability for fraudulent misrepresentation.

2.4 Each order or acceptance of a quotation for Goods and/or Services by the Buyer from the Company shall be deemed to be an offer by the Buyer to buy Goods and/or Services subject to these Conditions.

2.5 No order placed by the Buyer shall be deemed to be accepted by the Company until a written acknowledgment of order is issued by the Company or (if earlier) the Company delivers the Goods or starts to provide the Services to the Buyer when a contract for the sale or supply of the Goods and / or Services on these Conditions will be established.

2.6 Acceptance of delivery of the Goods or provision of the Services shall be deemed to be conclusive evidence of the Buyer's acceptance of these Conditions.

2.7 The Buyer shall ensure that the terms of its order and any applicable specification are complete and accurate.

2.8 Any quotation is given on the basis that no Contract shall come into existence until the Company despatches an acknowledgment of order to the Buyer. Any quotation is valid for a period of 30 days only from its date, provided that the Company has not previously withdrawn it.

3. Description

3.1 The quantity and description of the Goods and/or Services shall be set out in the Company's quotation or acknowledgment of order.

3.2 All samples, drawings, descriptive matter, specifications and advertising issued by the Company and any descriptions or illustrations contained in the Company's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods and/or Services described in them. They shall not form part of the Contract.

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4. Delivery

4.1 Unless otherwise agreed in writing by the Company, delivery of the Goods and/or provision of the Services shall take place at the Company's place of business.

4.2 The Buyer shall take delivery of the Goods;

(a) within 15 days of the Company giving it notice that the Goods are ready for delivery or;

(b) the period (if any) stated in the quotation or Contract as long as the Buyer has provided appropriate instructions, documents, licences or authorisations to enable the Company to complete delivery.

4.3 Any time or dates specified by the Company for delivery of the Goods and/or provision of the Services are intended to be an estimate and time for delivery shall not be made of the essence by notice. If no dates are so specified, delivery shall be within a reasonable time.

4.4 Subject to the other provisions of these Conditions the Company shall not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods and/or provision of the Services (even if caused by the Company's negligence).

4.5 If for any reason the Buyer fails to accept delivery of any of the Goods when they are ready for delivery, or provision of any of the Services when the Company is ready to provide the Services, or the Company is unable to deliver the Goods and/or provide the Services on time because the Buyer has not provided appropriate instructions, documents, import or other licences or authorisations:-

(a) risk in the Goods shall pass to the Buyer (including for loss or damage caused by the Company's negligence);

(b) for the purposes of payment the Goods and/or Services shall be deemed to have been delivered or provided;

(c) the Company may, if its storage facilities permit, store the Goods until delivery, whereupon the Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance) and;

(d) payment shall become due immediately.

4.6 Unless otherwise agreed in writing the Buyer shall provide at the Delivery Point and at its expense adequate and appropriate equipment and manual labour for loading the Goods.

4.7 The Company may deliver the Goods and/or provide the Services by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of the Contract.

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4.8 Each instalment shall be a separate Contract and no cancellation or termination of any one Contract relating to an instalment shall entitle the Buyer to repudiate or cancel any other Contract or instalment.

5. Non-Delivery / Discrepancies / Damage in Transit

5.1 The quantity of any consignment of Goods as recorded by the Company on despatch from the Company's place of business shall be conclusive evidence of the quantity received by the Buyer on delivery unless the Buyer can provide conclusive evidence proving the contrary.

5.2 The Company shall not be liable for any non-delivery of Goods, discrepancies in the Goods or damage in transit to the Goods (even if caused by the Company's negligence) unless the Buyer gives written notice to the Company of the non-delivery or discrepancies or damage in transit within 10 working days of the date when the Goods would in the ordinary course of events have been received and in the case of damage in transit the Buyer shall additionally give written notice to the carrier within 5 working days.

5.3 Any liability of the Company for non-delivery of the Goods, discrepancies in the Goods or damage in transit to the Goods shall be limited to replacing the Goods within a reasonable time or using a credit note at the pro rata Contract rate against any invoice raised for such Goods.

6 Delivery of Services

6.1 Whilst providing the Services to the Buyer the Company shall maintain appropriate accounts and records of the services provided (to include duration and/or quantity together with a breakdown of any expenses and materials) and shall remit the same to the Buyer as soon as practicable after the end of each calendar month and/or upon completion of the provision of the Services. The Buyer shall sign approval of the accounts and records which shall thereafter constitute evidence that the Company's obligations for the provision of the Services has been completed in full accordance with the provisions of the Contract.

6.2 If within 5 working days of delivery to the Buyer of accounts and records in accordance with clause 6.1 the Buyer fails or declines to sign such accounts and records without providing reasonable and substantiated reasons therefore, then the accounts and record shall be deemed to be correct and agreed by both parties.

6.3 Any liability of the Company for non-provision, incomplete provision or inadequate provision of the Services according to the terms of the Contract shall be limited to completing the relevant part of the Services or alternatively issuing a credit note at the pro rata Contract rate against any invoice raised for such Services always subject to clause 11.3 and clause 11.4.

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7 Risk / Title

7.1 The Goods are at the risk of the Buyer from the time of the delivery.

7.2 Ownership of the Goods shall not pass to the Buyer until the Company has received in full (in cash or cleared funds) all sums due to it in respect of;

(a) the Goods and/or Services; and

(b) all other sums which are or which become due to the Company from the Buyer on any account.

7.3 Until ownership of the Goods has passed to the Buyer, the Buyer shall:

(a) hold the Goods on a fiduciary basis as the Company's bailee;

(b) store the Goods (at no cost to the Company) separately from all other goods of the Buyer or any third party in such a way that they remain readily identifiable as the Company's property;

(c) not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and

(d) maintain the Goods in satisfactory condition and keep them insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company. On request the Buyer shall produce the policy of insurance to the Company.

7.4 The Buyer may resell the Goods before ownership has passed to it solely on the following conditions:

(a) any sale shall be effected in the ordinary course of the Buyer's business at full market value;

(b) any such sale shall be a sale of the Company's property on the Buyer's own behalf and the Buyer shall deal as principal when making such a sale; and

(c) if the Goods are resold before the Company has received all sums due to it under clause 7.2 the proceeds of sale up to the balance outstanding to the Company shall be placed in a separate designated bank account as being due to the Company.

7.5 The Buyer's right to possession of the Goods shall terminate immediately if;

(a) the Buyer has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purposes only of reconstruction or amalgamation or has a receiver and / or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Buyer or notice of intention to appoint an administrator is given by the Buyer or its directors or by a qualifying

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floating charge holder, or a resolution is passed or a petition presented to any court for the winding-up of the Buyer or for the granting of an administration order in respect of the Buyer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Buyer; or

(b) the Buyer suffers or allows any execution, whether legal or equitable, to be levied on his / its property or obtained against him / it, or fails to observe or perform any of his / its obligations under the Contract or any other contract between the Company and the Buyer or is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 of the United Kingdom, or any equivalent legislation, or the Buyer ceases to trade; or

(c) the Buyer encumbers or in any way charges any of the Goods.

7.6 The Company shall be entitled to recover payment for the Goods and/or Services notwithstanding that ownership of any of the Goods has not passed from the Company.

7.7 The Buyer grants the Company, its agents and employees, an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Buyer's right to possession has terminated, to recover them.

7.8 Where the Company is unable to determine whether any Goods are the goods in respect of which the Buyer's right to possession has terminated, the Company shall be deemed to have sold all goods of the kind sold by the Company to the Buyer in the order in which they were invoiced to the Buyer.

7.9 On termination of the Contract, howsoever caused, the Company's (but not the Buyer's) right contained in this Condition 7 shall remain in effect.

8. Price

8.1 Unless otherwise agreed by the Company in writing, all quoted prices for Goods;

(a) are ex works and;

(b) do not include site work or Services.

8.2 The price for the Goods and/or provision of the Services shall be exclusive of any value added tax and all costs or charges in relation to packaging, loading, unloading, carriage and insurance, all of which amounts the Buyer shall pay in addition when it is due to pay for the Goods and/or Services.

9. Payment

9.1 Subject to Condition 9.4, payment of the price for the Goods and/or Services is due within 30 days of the date of the Company's invoice.

9.2 Time for payment shall be of the essence.

9.3 No payment shall be deemed to have been received until the Company has received cleared funds.

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9.4 All payments payable to the Company under the Contract shall become due immediately on its termination despite any other provision.

9.5 The Buyer shall make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Buyer has a valid court order requiring an amount equal to such deduction to be paid by the Company to the Buyer.

9.6 If the Buyer fails to pay the Company any sum due pursuant to the Contract, the Buyer shall be liable to pay interest to the Company on such sum from the due date for payment at the annual rate of 4% above the UK base lending rate from time to time of HSBC Plc accruing on a daily basis until payment is made, whether before or after any judgment. The Company reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998 of the United Kingdom.

10. Quality

10.1 The warranties in this clause shall exclude and shall not apply to;

- (a) any wear parts or consumables and;
- (b) all goods or parts thereof which are of proprietary or third party manufacture.

Where the Company is not the manufacturer of the Goods, the Company shall endeavour to transfer to the Buyer the benefit of any warranty or guarantee given to the Company.

10.2 The Company warrants that (subject to the other provisions of these Conditions) on delivery and for a period of 18 months from the date of delivery or 12 months from the completion of commissioning, whichever is the earlier, the Goods shall;

- (a) be of satisfactory quality;
- (b) be reasonably fit for their ordinary purpose and;
- (c) be reasonably fit for any particular purpose for which the Goods are being bought if the Buyer had made known that purpose to the Company in writing and the Company has confirmed in writing that it is reasonable for the Buyer to rely on the skill and judgment of the Company.

10.3 The Company shall not be liable for a breach of any of the warranties in Condition 10.2 unless;

- (a) the Buyer gives written notice of the defect to the Company, and, if the defect is as a result of damage in transit to the carrier, within 5 working days of the time when the Buyer discovers or ought to have discovered the defect, and;
- (b) the Company is given a reasonable opportunity after receiving the notice of examining such Goods and the Buyer (if asked to do so by the Company) returns such Goods to the Company's place of business at the Company's cost for the examination to take place there.

10.4.1 The Company shall not be liable for a breach of any of the warranties in Condition 10.2, if;

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- (a) the Buyer makes any further use of such Goods after giving such notice; or
- (b) the defect arises because the Buyer failed to follow the Company's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice; or
- (c) the Buyer alters or repairs such Goods without the written consent of the Company;
- (d) the Buyer installs or uses in the Goods components or parts not supplied by or not authorised in writing by the Company;
- (e) the defect arises from any drawing, design, information, pattern, process, specification, know-how or intellectual property provided or specified by the Buyer to the Company upon which the Company has relied in manufacturing the Goods.

10.4.2 In the event that a defect arises in the circumstances set out in clause 10.4.1(e) the Buyer shall indemnify and hold harmless the Company from and against all claims and losses arising from loss, damage, liability, injury to the Company, its employees and third parties. "Claims" shall mean all demands, claims, proceedings, penalties, fines and liabilities (whether criminal or civil) in contract, tort or otherwise, and "losses" shall mean all losses including without limitation financial losses, damages, legal costs and other expenses of any nature whatsoever.

10.4.3 In the event of any of the matters of this clause 10.4 applying the Company shall be entitled to the cost of any arrangement to examine such Goods that it has made and, if at its sole option, the Company agrees to repair or replace such Goods (or the defective part) this shall be at the Buyer's cost.

10.4.4 For the avoidance of doubt, if this clause 10.4 applies, all repairs or replacement Goods or parts shall be charged at the Company's current prices, together with any delivery or transport costs, duties and taxes applicable.

10.5 Subject to Condition 10.3 and Condition 10.4 if any of the goods do not conform with any of the warranties in Condition 10.2 the Company shall at its option repair or replace such goods (or the defective part) or refund the price of such Goods at pro rata contract rate provided that, if the Company so requests, the Buyer shall, at the Company's expense, return the Goods or the part of such Goods which is defective to the Company.

10.6 If the Company complies with Condition 10.5 it shall have no further liability for a breach of any of the warranties in Condition 10.2 in respect of such Goods.

10.7 Any Goods replaced shall belong to the Company and any repaired or replacement Goods shall be guaranteed on these terms for the unexpired portion of the 12 or 18 month period, as applicable.



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11. Limitation of Liability

11.1 Subject to Condition 4, Condition 5, Condition 6 and Condition 10, the following provisions set out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Buyer in respect of:

(a) any breach of these Conditions;

(b) any use made or resale by the Buyer of any of the Goods, or of any product incorporating any of the Goods; and

(c) any use made by the Buyer of the Services or any part of them;

(d) any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.

11.2 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by Section 12 of the Sale of Goods Act 1979 of the United Kingdom) are, to the fullest extent permitted by law, excluded from the Contract.

11.3 Nothing in these Conditions excludes or limits the liability of the Company;

(a) for death or personal injury caused by the Company's negligence; or

(b) for any matter which it would be illegal for the Company to exclude or attempt to exclude its liability; or

(c) for fraud or fraudulent misrepresentation.

11.4 Subject to Condition 11.2 and Condition 11.3;

(a) the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the Contract price;

(b) the Company or its representatives shall not be liable to the Buyer or any third parties for loss of profit, loss of business, or depletion of goodwill in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract;

(c) the Buyer shall take all necessary measures to ensure that all of its personnel comply with the requirements of any health and safety statutes or other legislation, orders, regulations and codes of practice which may apply to the Goods and / or the provision of the Services and may not derogate from the same. (For the avoidance of doubt, the Buyer is solely responsible for the health and safety of all personnel, activities and equipment at any of the sites where the Goods and / or the Services are provided and that any advice, instructions or communications, training or site services provided by the Company to the Buyer shall not

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imply any assumption of responsibility on the part of the Company in respect of such personnel, activities or equipment under any circumstances whatsoever).

12. Assignment

12.1 The Company may assign or sub-contract the Contract or any part of it to any person, firm or company.

12.2 The Buyer shall not be entitled to assign or sub-contract the Contract or any part of it without the prior written consent of the Company.

13. Force Majeure

The Company reserves the right to defer the date of delivery or to cancel the Contract (without liability to the Buyer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Company including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, provided that, if the event in question continues for a continuous period in excess of 180 days, the Buyer shall be entitled to give notice in writing to the Company to terminate the Contract.

14. Intellectual Property

14.1 Any specifications, designs or information provided by the Company to the Buyer whether related to the Goods and / or Services or not (including the copyright, patent, registered design rights, design right or other Intellectual Property in them) shall be the property of the Company.

14.2 Where any designs, specifications or information have been supplied by the Buyer for manufacture by the Company or to the order of the Buyer then the Buyer warrants that the use of those designs, specifications or information for the manufacture, processing, assembly or supply of the Goods and/or Services shall not infringe the rights of any third party.

14.3 The Buyer shall indemnify the Company against all claims, damages, penalties, costs and expenses, which arise out of or in connection with the Buyer's infringement of any copyright, patent, registered design rights, design right or other Intellectual Property of the Company or any third party.

14.4 This Condition 14 shall survive the termination of this agreement, however arising.



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15. Confidentiality

15.1 The Buyer shall keep in strict confidence all technical, or commercial know-how, specifications, inventions, processes or initiatives, documents, drawings, illustrations, maps, plans, diagrams, designs, pictures or other images, tape, disc or other devices, or record embodying information in any form which are of a confidential nature and have been disclosed to the Buyer by the Company, its employees, agents or sub-contractors and any other confidential information concerning the Company's business or its products which the Buyer may obtain.

15.2 The Buyer shall restrict disclosure of such confidential material to such of its employees or agents or sub-contractors as need to know the same for the purpose of discharging the Buyer's obligations to the Company and shall ensure that all such employees, agents, or sub-contractors are subject to obligations of confidentiality corresponding to those which bind the Buyer.

15.3 All materials, equipment and tools, drawings, specifications and data supplied by the Company to the Buyer shall, at all times, be and remain as between the Company and the Buyer the exclusive property of the Company but shall be held by the Buyer in safe custody at its own risk and maintained and kept in good condition by the Buyer until returned to the Company and shall not be disposed of or used other than in accordance with the Company's written instructions or authorisation.

15.4 This Condition 15 shall survive the termination of this agreement, however arising.

16. General

16.1 Each right or remedy of the Company under these Conditions is without prejudice to any other right or remedy of the Company whether under these Conditions or not.

16.2 If any provision of these Conditions 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 of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of these Conditions and the remainder of such provision shall continue in full force and effect.

16.3 Failure or delay by the Company in enforcing or partially enforcing any provision of these Conditions shall not be construed as a waiver of any rights under these Conditions.

16.4 Any waiver by the Company of any breach of, or any default under, any provision of these Conditions by the Buyer shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of these Conditions.

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16.5 The Buyer and the Company do not intend that any term of these Conditions shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 of the United Kingdom by any person that is not a party to it.

16.6 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.

17. Arbitration

17.1. Any dispute or difference arising out of or in connection with these Conditions shall be determined by the appointment of a single arbitrator to be agreed between the parties, or failing agreement within fourteen days, after either party has given to the other a written request to concur in the appointment of an arbitrator, by an arbitrator to be appointed by the President or a Vice President of the Chartered Institute of Arbitrators, United Kingdom.

17.2. The arbitration award shall be final and binding on all parties

17.3. The arbitration fee shall be borne by the losing party except as otherwise awarded by the Arbitrator.

17.4. In the course of arbitration, the performance of the Contract shall continue except the parts which are under arbitration.

18. Communications

18.1 All communications between the parties about the Contract shall be in writing and delivered by hand or sent by fax or email;

(a) (in the case of communications to the Company) to its registered office or such changed address as shall be notified to the Buyer by the Company; or

(b) (in the case of the communications to the Buyer) to the registered office of the addressee (if it is a company) or (in any other case) to any address of the Buyer set out in any document which forms part of the Contract or such other address as shall be notified to the Company by the Buyer.

18.2 Communications shall be deemed to have been received;

(a) if delivered by hand or personally, on the day of delivery; or

(b) if sent by fax or email on a working day prior to 4.00pm local time, at the time of transmission.

To prove service it is sufficient to prove that the notice was transmitted by fax to the fax number of the party (with answerback), or by e-mail to the e-mail address of the party (with non-automated confirmation response by the receiving party).



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