

General Terms and Conditions of Sale

Valid from: 1st of September 2022

Omya UK Ltd



1. Scope and Definitions

- a) These General Terms and Conditions of Sale (hereinafter referred to as “**Terms**”) apply to all quotes, price lists, offers, order confirmations, delivery of any tangible and intangible goods, and any performance (of any works, services or other) made by Omya UK Limited or any of its Affiliates (hereafter individually referred to as “**Seller**”) and all request for quotes and purchase orders placed by Seller’s customers (hereinafter individually referred to as “**Buyer**”). In case Seller communicates other terms in writing, the latter prevail. Any general terms and conditions and/or any other additional, different or conflicting provision stipulated by Buyer, are expressly not accepted by Seller, and shall not apply. Neither delivery nor performance nor any representations nor other statements or information provided by or on behalf of Seller shall alter these Terms or the rights and duties of Seller and Buyer defined herein.
- b) “**Affiliate/s**” shall include any corporation, association, or other entity that directly or indirectly controls, is controlled by, or is under common control with a Party, either currently or during the term of the Agreement. The term “**control**” (including, its correlative meanings “controlled by” and “under common control with”) means the power to exercise a decisive influence over the activities and/or the management, whether through the ownership of voting securities, by contract or otherwise.
- c) “**Claims**” means any claims, demands, causes of action, legal actions, proceedings, judgments, awards, damages, losses, costs, expenses, fines, penalties, litigation costs, reasonable attorney’s fees, regress claims and any other liability.
- d) Seller and Buyer are herein individually and collectively also referred to as “**Party**” or “**Parties**”, respectively.
- e) “**Goods**” shall, for the purpose of these Terms, include any tangible and intangible goods and any performance (of any works, services or other), which are delivered by Seller, its Affiliates or subcontractors.
- f) “**Intellectual Property Rights**” means all patents, industrial designs, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world and “**Intellectual Property Right**” means any one of the Intellectual Property Rights;

2. Conclusion and Content of Agreement

- a) Seller’s quotes, proposals, price lists and offers (“**Price Offer**”) are non-binding and will not constitute an offer for the purposes of contract formation. A Price Offer shall only remain valid for the period stated therein and in any event, Seller shall be entitled to withdraw a Price Offer at any time without liability to the Buyer.
- b) Each order or acceptance of a Price Offer by the Buyer shall be deemed to be an offer by the Buyer to purchase the Goods subject to these Terms.
- c) A binding agreement is established by and with the content of Seller’s written or electronic order confirmation (“**Order Confirmation**”) or by Seller commencing processing of the Buyer’s order and/or delivery of the Goods, whichever is earlier and at which point, these Terms shall become binding on the Parties. These Terms together with Seller’s Order Confirmation constitute the entire agreement (collectively referred to as “**Agreement**”) between the Parties. Buyer shall review the Order Confirmation and respond in writing in case of any incorrectness immediately upon receipt.
- d) The Seller may cancel an order prior to delivery by written notice to the Buyer, in which case the Seller shall have no liability to the Buyer under any circumstances other than for any payment or part payment made for the Goods by the Buyer prior to delivery.
- e) The images or descriptions of the Goods on the Seller’s website or portal or contained in any Price Offer, sales literature or other documents provided by the Seller are for illustrative purposes only and the Seller cannot guarantee that the Goods will confirm exactly to such images or descriptions.

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3. Affiliates and Subcontractors

Seller is entitled, at its discretion, to deliver or perform any of its obligations under the Agreement entirely or partly:

- a) through any of its Affiliates, who shall act in their own name and shall be solely liable to the Buyer for execution of the relevant obligations in accordance with the Agreement; and/or
- b) through third-party subcontractors.

4. Price and Payment

- a) The price payable by Buyer shall be the price set forth in the Order Confirmation ("**Price**"). Unless otherwise defined therein or agreed between the Parties in writing, the Price is payable in the currency of the country in which Seller is domiciled, and shall be exclusive of any taxes, duties or other levies, which shall be borne by Buyer.
- b) Seller reserves the right, at any time before delivery of the Goods, to increase the Price based on any factors beyond the Seller's control (including, without limitation, foreign exchange fluctuations, currency regulations, increases in freight costs or duties, increase in the costs of labour, materials, energy or other costs of manufacture, or changes to delivery dates, quantities or specifications requested by Buyer and accepted by Seller).
- c) The Prices are FCA at the domicile of Seller, in accordance with the ICC-Incoterms 2020, unless otherwise defined in the Seller's Order Confirmation or agreed between the Parties in writing.
- d) The Seller shall invoice the Buyer for the Goods on dispatch of the Goods unless otherwise agreed between the Parties in writing. The Seller reserves the right at any time to request full or partial payment in advance of delivery of the Goods.
- e) The Buyer shall pay each invoice within 30 days of the invoice date, unless otherwise set out in the corresponding Order Confirmation.
- f) The Buyer shall not be entitled to withhold or set off any payment it owes to the Seller against any type of counterclaims it may have against the Seller.
- g) If the Buyer fails to pay in full any invoice from the Seller by its relevant due date then, without prejudice to any other right or remedy the Seller may have:
 - (i) the Buyer shall be required to pay interest on the outstanding sums from the due date for payment until payment of the outstanding amount is received by the Seller. Such interest shall accrue at a rate of ten (10) percent; and
 - (ii) the Seller and any of its Affiliates shall be entitled to suspend and/or request prepayment for any pending deliveries of Goods to Buyer and any of its Affiliates.

This clause shall apply automatically without requiring the Seller to give notice the the Buyer.

5. Title and Risk

- a) Risk of damage to or loss of the Goods shall pass to the Buyer upon the earliest of:
 - (i) the Seller's notification that the Goods are ready for dispatch;
 - (ii) the delivery of the Goods to the Buyer in accordance with the agreed delivery terms; or
 - (iii) the delivery of the Goods to the consignment stock at Buyer's plant, if applicable.
- b) Title to the Goods shall not pass until the Seller has received full payment of the Price in cash or cleared funds.
- c) The Buyer undertakes to assist Seller in connection with all measures for purposes of securing credit for the Goods and, in particular, to enter into corresponding supplemental agreements, if necessary.
- d) Until such time as title to the Goods passes to the Buyer:

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- (i) the Buyer shall hold the Goods as the Seller's fiduciary agent and bailee and shall keep the Goods separate from those of the Buyer and third parties and identified as the Seller's property;
- (ii) the Buyer agrees to keep the Goods in good storage and repair and to insure them against loss or damage;
- (iii) if Goods are damaged or destroyed by an insured risk the Buyer shall receive the proceeds of any such insurance as trustee for the Seller; and
- (iv) the Seller shall be entitled at any time to require the Buyer to deliver up the Goods to the Seller and if the Buyer fails to do so, the Seller shall be entitled to enter any premises of the Buyer or third party where the Goods are stored and repossess the Goods.

6. Deliveries

- a) The Seller shall use reasonable endeavours to deliver the Goods in accordance with any agreed delivery dates but does not accept any binding obligation in regard to the same and time shall not be of the essence for delivery. The Seller shall, at its option, be entitled to postpone delivery, to make partial delivery or to withdraw from the Agreement, in whole or in part without liability to the Buyer.
- b) The Seller reserves the right to deliver plus/minus 5% of the quantity of Goods defined in the Order Confirmation. The weight determined in connection with loading shall be determinative for the calculation.
- c) If the Buyer fails to take delivery of the Goods or fails to give the Seller adequate instructions for delivery within 14 days of being notified by the Seller that the Goods are ready for delivery then, without prejudice to any other right or remedy available to the Seller, the Seller may:
 - (i) store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage from the date on which the Buyer was notified that the Goods were ready for delivery and, where relevant, redelivery, as an additional charge; or
 - (ii) sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) charge the Buyer for any shortfall below the Price under the Agreement.
- d) The Buyer shall accept delivery of the Goods in accordance with the Order Confirmation or as otherwise agreed in writing by the Parties and shall, where applicable, promptly load or unload the Goods. For the avoidance of doubt, where the Seller is responsible for delivery to the Buyer, the Seller or the Seller's carrier shall not be responsible for unloading the Goods and the Buyer shall be charged for wasted time at the Seller's standard rate and any other expenses incurred by the Seller:
 - (i) for any delay in unloading the Goods; and/or
 - (ii) for each repeat delivery where the Seller or the Seller's carrier leaves the deliver location and subsequently returns to the delivery location with the Goods and/or;
 - (iii) as a result of the Buyer's inability or unwillingness to accept delivery of, or to collect, the Goods.
- e) Where the Goods are delivered by bulk pressure tanker or similar means, the Buyer shall be responsible for the correct connection of such tanker to the receiving hopper or other such equivalent device and shall be liable for any loss or damage resulting from any failure to do so. The quantity of Goods delivered to the Buyer shall be that recorded by the Seller on dispatch to the Buyer and the Seller shall not be liable for any shortfall where the quantity of Goods is reduced following dispatch to the Buyer.

7. Warranties

- a) Seller warrants that, at the time of delivery, the Goods (i) will conform to the then current specifications, (ii) are manufactured, packaged and labeled in compliance with the applicable laws at the place of manufacture, and (iii) are free from any legal encumbrances.
- b) SAVE TO THE MINIMUM EXTENT REQUIRED BY LAW, ANY WARRANTY AND REPRESENTATION OF ANY PERFORMANCE OF THE GOODS AND OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE IS EXCLUDED. ALL INFORMATION THAT HAS BEEN OR MAY BE GIVEN TO BUYER (E.G. IN PRODUCT INFORMATION, SAFETY DATA SHEETS, OTHER ACCOMPANYING PRODUCT DOCUMENTATIONS, COMMUNICATIONS AND RECOMMENDATIONS) SHALL NOT BE CONSIDERED AS WARRANTY OR REPRESENTATION OF SELLER. THE EXPRESS REPRESENTATIONS SELLER MAKES TO BUYER IN CLAUSE 7 a) ARE THE ONLY REPRESENTATIONS SELLER MAKES. ANY OTHER WARRANTIES AND REPRESENTATIONS, BE IT BY LAW, EXPLICIT OR IMPLICIT, ARE TO THE EXTENT POSSI-

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BLE UNDER APPLICABLE LAW EXCLUDED. BUYER IS RESPONSIBLE FOR CARRYING OUT APPROPRIATE TESTING REGARDING THE SUITABILITY OF THE GOODS OR WORKS OR SERVICES FOR BUYER'S PARTICULAR PURPOSES AND PROCESSING CONDITIONS.

8. Buyer's Claims

- a) Claims relating to Seller's default relating to the Goods or their delivery or performance shall be valid only if made in writing (with an explanation as to why the Goods are rejected) within three (3) working days for dry Goods, twelve (12) working hours for wet Goods, and three (3) working days for works, services or any other 'Goods' (as defined above), respectively, each from the time of delivery. In default of such timely notice, the corresponding Goods and/or their deliveries and/or performances shall be deemed to have been accepted by Buyer.
- b) Seller shall be entitled, at its discretion, to inspect or have inspected the rejected Goods at Buyer's premises, and/or to require Buyer to send a sample of the objected goods to Seller withing reasonable time.
- c) Buyer shall keep the rejected Goods separate from other goods in their original condition and not use them.
- d) No Claim for non-compliance with the represented specifications or shortage in quantity of any individual delivery of Goods or for any other reason shall be valid after the delivered Goods have been mixed with other goods or used in the production process of Buyer or Buyer's customers.
- e) Subject to compliance with the above provisions by Buyer, Seller, at its option, shall either replace the nonconforming Goods with Goods that conform to the current specifications, or improve the Goods, or reduce or refund the Price. Buyer shall, upon Seller's instruction, return the nonconforming Goods to Seller in their original condition or dispose them. It is understood that this shall be Buyer's sole Claim in respect of the rejected Goods.

9. Limitation of Liability

- a) NOTHING IN THIS CLAUSE 10 SHALL ATTEMPT TO LIMIT OR EXCLUDE THE SELLER'S LIABILITY FOR (I) DEATH OR PERSONAL INJURY; (II) FRAUD OR FRAUDULENT MISREPRESENTATION; OR (III) ANY OTHER LIABILITY WHICH CANNOT LEGALLY BE EXCLUDED OR LIMITED.
- b) SUBJECT TO CLAUSE 10(A), IN NO EVENT SHALL SELLER, ITS AFFILIATES, AUXILIARY PERSONS, SUBCONTRACTORS, AND THEIR EMPLOYEES AND DIRECTORS BE LIABLE FOR ANY INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, ANY LOSS OF PROFITS, OPPORTUNITIES, REVENUES, AND ANY REPUTATIONAL DAMAGE, WHETHER AS A RESULT OF BREACH OF CONTRACT, BREACH OF REPRESENTATIONS AND WARRANTIES, TORT OR OTHERWISE.
- c) SUBJECT TO CLAUSE 10(A) AND 10(B), THE SELLER'S TOTAL AGGREGATE LIABILITY UNDER THE AGREEMENT SHALL NOT EXCEED THE TOTAL PRICE OF THE GOODS IN THE RELEVANT AGREEMENT, SAVE WHERE SUCH LIABILITY IS COVERED BY ANY INSURANCE POLICY HELD BY THE SELLER IN WHICH CASE THE SELLER'S LIABILITY SHALL BE LIMITED TO THE AMOUNT SUCCESSFULLY RECOVERED BY THE SELLER UNDER THAT POLICY IN RESPECT OF SUCH LIABILITY.

10. Intellectual Property Rights

- a) The Buyer acknowledges that the Seller is the owner of or licensee of all Intellectual Property Rights in the Goods, including any specifications, sales literature, catalogue or webpage. Under no circumstances shall any of the Intellectual Property Rights transfer to the Buyer other than as expressly stated within these terms and/or the Agreement.
- b) The Seller grants to the Buyer a non-exclusive, non-transferrable licence (without the right to sub-licence) to use any Intellectual Property Rights in the Goods for the purpose of making reasonable use of the Goods only.

11. Obligation to keep Records and to cooperate

- a) Buyer shall maintain complete and accurate records of all quantities of product purchased and their use.
- b) If any governmental or other competent authority or Seller issues a product withdrawal or recall or wants to communicate an information to the market, Buyer shall fully cooperate with Seller, in particular, upon and in accordance with Seller's instruction, in:

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- (i) promptly contacting any third party users which Seller desires to be contacted, which have received the Goods or processed products containing the Goods (hereafter the “Users”) from Buyer,
- (ii) promptly communicating to such Users any information or instructions which Seller wishes to transmit,
- (iii) obtaining the removal of all Goods or processed products containing the Goods from Buyer’s inventory and the inventory of Users, and/or to organize a recall, and
- (iv) disposing of removed Goods.

c) Seller agrees to reimburse Buyer for all reasonable direct out-of-pocket costs and expenses actually incurred as a result of removing of and disposing of Goods produced by Seller as requested by Seller. Seller disclaims any liability for Goods produced by third party producers, Buyer’s or third parties’ finished products or work in process.

12. Confidentiality

a) Until the end of the term of the Agreement and for a subsequent period of 5 (five) years, Buyer agrees to keep the existence of the Agreement and any information marked as confidential, or any such other information as would otherwise reasonably be considered to be confidential, supplied to it by Seller under the Agreement and/or before the Agreement is made (including, in particular, information regarding offers, pricing, financial information, market information, customer data, data of employees, manufacturing and technical information and know-how) confidential.

b) Information shall not be considered to be confidential if:

- (i) it was known or in the possession of the Buyer before it was provided by the Seller;
- (ii) it is, or becomes, publicly available through no fault of the Buyer;
- (iii) it is provided to the Buyer without restriction or disclosure by a third party, who did not breach any confidentiality obligations;
- (iv) it was developed by the Buyer (or on its behalf) without direct access to, or use or knowledge of the confidential information supplied by the Seller; or
- (v) it is required to be disclosed by order of a court of competent jurisdiction.

13. Force Majeure

a) Non-, bad-, or late-performance of Seller shall be excused to the extent that performance is rendered impossible or prevented or hindered or is delayed by an event of force majeure, governmental act, or change of circumstances beyond the control of Seller (e.g. war and war like activities, revolution, terrorist act, strike, environmental catastrophe, geological implications, epidemics, pandemics, implementation of new economic restrictions/sanctions, economic collapse, collapse of currency, non-, bad-, or late-performance of Seller’s own suppliers, service providers and (sub-)contractors, explosions, fire, collapse of infrastructure, cyber incidents or attacks, IT systems failure, shortfalls/shortages of any kind, etc.). Seller shall (i) inform Buyer accordingly, and (ii) resume performance of its obligations under the Agreement within reasonable time after such causes are removed.

b) In case performance by Seller of any of its obligations under the Agreement is rendered impossible by any of the above events, the Parties agree to negotiate in good faith their respective affected obligations.

14. Termination and Consequences

a) Without prejudice to any other remedies or rights it may have, the Seller may terminate the Agreement at any time by written notice to the Buyer and the notice taking effect as specified in the notice if:

- (i) the Buyer commits a material or persistent breach of the Agreement which shall include a failure to pay the Price or any other sums due under the Agreement by the relevant due date and (if such a breach is remediable), fails to remedy that breach (which, in relation to late payment, shall include payment of any interest) within 14 days of being notified in writing;
- (ii) the Buyer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the

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step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;

- (iii) the Buyer suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business;
- (iv) there is a chance in control of the Buyer;
- (v) the Seller reasonably apprehends that any of the events mentioned above is about to occur; or
- (vi) the Seller is unable to obtain any licence or consent necessary to comply with any relevant legislation.

b) Upon termination of the Agreement for any reason:

- (i) the Buyer shall immediately pay to the Seller all outstanding invoices and in respect of any part of the Price or other sums payable by the Buyer but for which no invoice has been submitted, the Seller may submit an invoice which shall be payable immediately on receipt;
- (ii) the Buyer shall, upon the Seller's request, pay any part of the Price for any Goods which are in the process of being manufactured but have not yet been completed, and in such case the Seller shall then deliver those Goods to the Buyer;
- (iii) each Party shall return, delete or destroy all Confidential Information and all other information which has been provided to it by the other Party in accordance with the instructions of that other Party;
- (iv) any licence granted by these Terms shall terminate; and
- (v) the accrued rights and remedies of the Parties as at termination and the continuation of any provision expressly stated to survive or implicitly surviving termination shall not be affected.

15. Miscellaneous

a) Assignment. Except as per Clause 3 above, neither Party shall have the right, without the prior written consent of the other Party, to assign, transfer or dispose of, in whole or in part, its respective rights, claims and obligations under the Agreement.

b) Modifications and Amendments. Any modifications and/or amendments of the Agreement, including of this Clause, shall be valid only if made in writing and signed by both Parties, whereas the signed documents can be exchanged physically or electronically.

c) Severability. If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract. If any provision of the Contract is deemed deleted under this clause the Parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision

d) Compliance with laws and Trade Control. Buyer undertakes that in connection with the use of the Goods (including end use thereof) and the performance of the Agreement, Buyer and those under its control shall comply at all times with all applicable laws, rules and regulations of all relevant jurisdictions, including those relating to product safety laws and to the export or import of goods including economic sanctions or embargos imposed by the United Nations and other international and national bodies (hereafter collectively the "Regulations"). Seller is relieved from its supply/performance obligations in case these would constitute an infringement of such Regulations.

e) Third Party Rights. Unless it expressly states otherwise, the Agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Agreement.

16. Applicable Law and Jurisdiction

a) The Agreement, any dispute or claim arising out of or in connection with it or its subject matter or formation and the entire business relationship between Seller and Buyer shall be governed by, and construed in accordance with, the laws of England and Wales.

b) The courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation, except that Seller has the right to initiate legal proceedings concerning outstanding payments before the competent court at the domicile of Buyer where applicable.

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