

Omya Australia Pty limited
(ACN 001 682 533 ABN 97 001 682 533)
registered Office & Correspondence to:
Level 1, 280-286 Pacific Highway, LINDFIELD NSW 2070
PO Box 430 LINDFIELD NSW 2070

Conditions of Sale

version 2019

1. definitions:

In these conditions of sale, unless the context requires another meaning:

“**Omya**” means Omya Australia Pty Limited, ABN 97 001 682 533.

“**Product data sheet**” means any written information prepared by Omya in relation to goods of the type bought by the Purchaser.

“**Purchaser**” means a person who offers to purchase goods from Omya under a Purchase Order.

“**Purchase Order**” means an offer to purchase goods in a form prescribed or accepted by Omya.

“**representatives of Omya**” means its officers, employees, contractors and agents.

2. General:

2.1 Unless varied or modified in writing signed by both parties by persons having authority to sign the same, the following terms and conditions shall form the basis of any contract which may result from a Purchase Order between Omya as vendor and the Purchaser.

2.2 Where the term “goods” is referred to in these conditions, it shall also include a reference to Containers.

3. Orders:

3.1 The Purchaser acknowledges that each Purchase Order incorporates these conditions of sale and is an irrevocable offer, subject to acceptance by Omya.

3.2 A binding contract for the sale of goods is formed when Omya acknowledges in writing or otherwise, acceptance of a Purchase Order (including by delivering the goods to the Purchaser). Omya may decline to accept a Purchase Order in whole or in part in its absolute discretion.

3.3 If there is any inconsistency between these conditions of sale and other terms and conditions of a Purchase Order, then to the extent of the inconsistency, these terms and conditions prevail.

4. Price:

4.1 The price charged for goods (the “**Purchase Price**”) is exclusive of GST and is to be calculated by reference to Omya’s current price list at the date of delivery and such other terms as may be agreed by the Purchaser and Omya from time to time. It is the Purchaser’s obligation to ensure that they are in possession of the current price list for Omya’s goods.

4.2 Unless otherwise agreed expressly in writing the terms of payment shall be net thirty days from date of invoice.

4.3 In addition to paying the Purchase Price (which is exclusive of GST), the Purchaser must:

(a) pay to Omya an amount equal to any GST payable on any supply by Omya under or in connection with this document, without deduction or set-off of any other amount; and

(b) make that payment as and when the Purchase Price or other consideration or part of it must be paid or provided; and

(c) indemnify Omya against, and pay Omya on demand the amount of: (i) all GST on the transactions contemplated by this document; and (ii) any loss, liability or expense directly or indirectly incurred in connection with or arising from or caused by any failure by the Purchaser to pay any amount as and when required by this clause, for example, any additional tax, penalty tax, fine, interest or other charge under a GST Law.

4.4 Omya must issue a tax invoice (or an adjustment note) to the Purchaser for any supply for which Omya may recover GST from the Purchaser under this document, and must include in the tax invoice (or adjustment note) the particulars required by the GST Law for the Purchaser to obtain an input tax credit for that GST.

4.5 In addition to any GST included in the Purchase Price of the goods, the Purchaser must pay to Omya on demand any GST payable in relation to any other Taxable Supply which is subject to these conditions of sale.

4.6 If any part of the Purchase Price is referable to both a Taxable Supply and anything that is not a Taxable Supply, the GST-exclusive portion of the Purchase Price is to be determined by Omya.

4.7 Omya must refund to the Purchaser any overpayment by the Purchaser for GST, but Omya need not refund to the Purchaser any amount for GST paid to the Commissioner of Taxation unless Omya has received a refund or credit of that amount.

4.8 The Purchaser agrees that any claim regarding overpayment must be asserted within one year from the date the goods concerned were invoiced to the Purchaser or the date the services concerned were performed. All claims not asserted within such one year period are irrevocably waived.

4.9 Words defined in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) have the same meaning in this clause 4.

5. delivery:

5.1 All goods will be delivered to the Purchaser by or on behalf of Omya at the place of delivery specified in the Purchase Order and agreed by Omya.

5.2 Unless otherwise agreed or the goods are ex-works, Omya may select the method of delivery and the carrier.

5.3 Omya will make all reasonable efforts to have the goods delivered to the purchaser on the date agreed between the parties as the delivery date but Omya shall accept no liability whatsoever should delivery not be so made.

5.4 Omya has the right to make partial deliveries when Omya reasonably deems appropriate.

6. Property:

6.1 The property and risk shall pass to the Purchaser upon delivery to the Purchaser or his agent or to any carrier for delivery.

6.2 Title does not pass to purchaser until payment is made in full.

7. Force majeure:

7.1 The deliveries may be totally or partially suspended by Omya during any period in which Omya may be prevented or hindered from delivery by Omya’s normal means of supply or delivery by normal route through any circumstances outside its reasonable control, including without limiting the same, to strikes, lockouts, raw material shortages, accidents, breakdowns of plant and equipment or suspensions of supply of any utility. However, during the period of total or partial suspension of delivery the Purchaser may purchase elsewhere, at its own costs and risk, such quantities of alternative goods as may be necessary to cover requirements during such period in substitution for the goods not delivered. Whether or not the Purchaser makes these arrangements Omya shall not be under any liability in respect of such suspension, and in particular Omya shall be under no obligation to deliver at any future date any goods not delivered during the period of suspension.

7.2 If there is a shortage of the goods due to a force majeure event Omya may allocate the goods amongst its buyers (including the Purchaser) in its sole discretion. The Purchaser agrees to excuse Omya from any and all liability resulting from such shortages or such allocation decision.

8. insurance:

8.1 The Purchaser hereby acknowledges and agrees that, notwithstanding any statute, act or regulation to the contrary, insurance of the goods shall be the responsibility of the Purchaser from Omya’s point of delivery onwards.

8.2 Omya will not be responsible for any loss or damage occurring after delivery to the Purchaser or his agent or a carrier as aforesaid and will only arrange insurance upon written instructions from the Purchaser and such insurance shall be at the cost of the Purchaser.

9. Warranties:

9.1 To the extent permitted by law, these conditions of sale expressly exclude all implied warranties, conditions, liabilities or representations in relation to the goods or their quality, state, condition or fitness for any particular purpose or the correctness of the information, advice or other services provided by Omya or its Representatives (including, without limitation, in any Product Data Sheet) concerning the goods, whether statutory or otherwise and whether imposed at law or in equity.

9.2 The Purchaser acknowledges and agrees:

(a) that the Purchaser is satisfied that the goods are suitable for their purpose;

(b) that in all matters relating to the goods the Purchaser has relied and will rely entirely on the Purchaser’s own judgement and has not relied on any information provided to it by Omya;

(c) that the Purchaser does not rely on any written or oral representation of Omya in relation to the fitness of any goods for any purpose;

(d) to the extent permitted by applicable law, that no warranty that the goods are merchantable shall apply;

(e) that acceptance of delivery of the goods shall be conclusive evidence that the goods accord in any respect with the Purchaser’s requirements and are in good condition and complete in all respects;

(f) that the goods are not suitable for use as a therapeutic good (within the meaning of that term in the *Therapeutic Goods Act 1989*);

(g) that Omya and its Representatives shall not be liable for any liability, claim, damage or expense of any kind or nature:

(i) in relation to any delay in providing or failure to provide the same or in relation to any interruption or loss of the use thereof or any loss of business or profits or any damage whatsoever and however caused; or

(ii) any other consequential loss; and

(h) in relation to non food grade products (as identified in any Product Data Sheet), that the goods are not suitable for use as a food, food ingredient or food additive; and

(i) the goods are acquired by the Purchaser and the Purchaser has held itself out to Omya as acquiring the goods for the purpose of resupply or the purpose of using them up or transforming them in trade or commerce in the course of a process or production or manufacture or for repairing or treating other goods or fixtures on land.

9.3 Where legislation implies in these conditions of sale any condition or warranty which cannot be excluded or modified, the condition or warranty is deemed to be included in these conditions of sale. However, to the extent permitted by law, the liability of Omya and its Representatives for a breach of any such condition or warranty is limited, at Omya’s option to:

(a) In the case of goods, any of the following as determined by Omya at its absolute discretion:

(i) a replacement of the goods or the supply of equivalent goods; or

(ii) the repair or restoration of the goods; or

(iii) the payment of the cost of replacing the goods or acquiring equivalent goods.

(b) In the case of services any one of the following as determined by Omya at its absolute discretion:

(i) the supplying of services again; or

(ii) the payment of the costs of having the service supplied again.

9.4 The Purchaser warrants: (a) that the goods are not being purchased for use as a therapeutic good (within the meaning of that term in the *Therapeutic Goods Act 1989*); and (b) in relation to non food grade products (as identified in any product data sheet prepared by Omya in relation to the goods), that the goods are not being purchased for use as a food, food ingredient or food additive.

9.5 To the extent permitted by applicable law, the Purchaser indemnifies Omya and its Representatives against, and must pay on demand to Omya the amount of all losses, liabilities and expenses arising out of or in connection with: (a) the use of the goods as a therapeutic good (within the meaning of that term in the *Therapeutic Goods Act 1989*); and (b) the use of the goods as a food, food ingredient or food additive; by the Purchaser or any third party who receives the goods or another product of which any part of the goods are incorporated as an ingredient as a direct or indirect result of the Purchaser on-supplying those goods.

9.6 (a) If any sale of goods to the Purchaser is a sale by sample, this clause 9.6 will apply.

(b) The bulk of the goods must correspond with the sample in quality but Omya will have no liability to the Purchaser unless more than 5% of the goods do not correspond with the sample.

(c) The Purchaser will be deemed to have had a reasonable opportunity of comparing the bulk of any consignment of goods with the sample after the expiration of two days from delivery.

(d) If the Purchaser is deemed to have had a reasonable opportunity of comparing the bulk of any consignment with the sample, the Purchaser will also be deemed to have notice of any defect rendering the goods not in accordance with the contract and to have accepted all the goods delivered.

10. Containers:

10.1 Omya reserves the right to charge the Purchaser a deposit on returnable containers/pallets/bulker bags (“**Containers**”). The deposit is refundable when returnable Containers are returned in good order and condition.

10.2 Whether or not the said returnable Containers are returned in good order and condition shall be determined by Omya in its absolute discretion. Omya may in certain circumstances dispense with the charging of a deposit but in such case the returnable Containers are the Purchaser’s responsibility whilst in their care and any costs incurred by Omya occasioned by any loss or damage will be to the Purchaser’s account which the Purchaser hereby agrees to pay.

10.3 Title to the Containers does not pass to the Purchaser in any circumstances.

10.4 The Purchaser acknowledges that Omya has no responsibility for the manufacture or condition of the Containers.

10.5 The Purchaser shall release and indemnify Omya, and its Representatives against, and must pay Omya on demand the amount of all losses, liabilities and expenses arising out of or in connection with the possession or use of all Containers by the Purchaser delivered by Omya.

For the purpose of this indemnity, the Purchaser is deemed to be in possession of a Container from the time of delivery by Omya until Omya or the owner of the Container physically resumes possession.

11 return OF Goods:

11.1 Any goods accepted for return for credit shall be subject to:

(a) 15% handling charge; plus

(b) reimbursement of freight charges paid by Omya on delivery and collection. These charges will not apply where the returns are due to Omya making incorrect supply.

11.2 Goods may only be returned for credit within 6 months from the date of delivery and only with the written permission of Omya, which it may or may not give in its sole discretion. Only goods regularly maintained in stock by Omya and in resaleable condition will be considered for return for credit.

12. service:

12.1 Any advice, recommendation, information, assistance or service provided by Omya, or its Representatives in relation to goods or services supplied or manufactured by it, or their use or application, is given in good faith.

12.2 The Purchaser acknowledges that such advice, recommendation, information, assistance or services are provided as an act of good faith and do not indicate any expertise peculiar to Omya and acknowledges that such advice, recommendation, information, assistance or service is not relied on by the Purchaser.

12.3 Omya is not liable to the Purchaser in contract or in tort arising out of or in connection with or relating to any error (whether negligent or in breach) of contract or not) in respect of any such advice, recommendation, information, assistance or service provided by Omya in relation to any goods or services supplied by Omya before or after the date of the Purchaser’s acquisition of the goods.

12.4 The Purchaser shall release and indemnify Omya and its Representatives against, and must pay Omya on demand the amount of all losses, liabilities and expenses arising out of or in connection with the provision of such advices, recommendation information assistance or service.

13. termination

13.1 If the Purchaser makes default or commits any act of bankruptcy or, being an incorporated company, passes a resolution for winding-up (except for the purposes of reconstruction) or a petition is presented for its winding-up, Omya may, without prejudice to any other rights or remedies it may have, either suspend further deliveries, require payment in advance for such deliveries, or terminate any contract forthwith by written notice to the Purchaser.

14. Variation

14.1 No servant or agent of Omya has any authority to vary the terms hereof except in writing signed by a Director of Omya.

15. representatives

15.1 (a) Omya holds upon trust for Omya and its Representatives the benefit of any indemnity or liability limitation in this document expressed to be in favour of Omya’s Representatives,

(b) Omya is not obliged to take any action to enforce this clause 15 on behalf of any Representative of Omya, but must do anything reasonably required to facilitate any proceeding in respect of this clause 15 by any Representative of Omya, if : (i) Omya is indemnified to its satisfaction against any claim, liability, cost or expense relating to the proceedings; and (ii) the person who wishes to take the proceedings undertakes to Omya a satisfaction to reasonably compensate Omya for any time spent and action taken by any other officer, employee or contractor of Omya or any related body corporate of Omya in relation to proceedings.