

1. Scope

All offers and order confirmations made by Omya Malaysia Sdn Bhd (Company No. 212604-D) (hereinafter referred to as “**Seller**”) and all purchase orders relating to the products placed by Seller’s customers (hereinafter individually referred to as “**Buyer**”) shall be subject to these Standard Terms and Conditions for the Sale of Products (hereinafter referred to as “**Terms**”). Seller’s confirmation of Buyer’s purchase order together with these Terms constitute the entire agreement (hereinafter collectively referred to as “**Agreement**”) between Seller and Buyer. Any additional, different or conflicting provision contained in any document of Buyer relating to the products, including, but not limited to, any purchase order of Buyer, Buyer expressly agrees that (i) these Terms shall apply and (ii) Buyer’s additional, different and/or conflicting provisions shall not become a part of these Terms or Seller’s offer to sell the product(s) to Buyer. Neither the sale of any products, performance of any work or services nor any statements, claims or representations made by or on behalf of Seller shall alter these Terms or the rights and duties of Seller and Buyer. No representations, warranties or guarantees, other than those contained herein, and no variation of these Terms shall be binding on Seller and Buyer, subject to Clause 16 below. Seller and Buyer are herein individually and collectively also referred to as “**Party**” or “**Parties**”, respectively. For avoidance of doubt, these Terms shall apply to all contracts with the Seller, unless expressly varied in writing and signed on behalf of the Seller.

2. Basis of Agreement

Any Price Offer submitted to the Buyer will not constitute an offer for the purposes of contract formation and shall remain valid for the period stated therein. Notwithstanding this and any validity period set out in a Price Offer, a Price Offer shall no longer be valid where a sub-contractor or supplier to the Seller has changed its charges, or where the Seller notifies the Buyer that it has withdrawn the Price Offer. For the avoidance of doubt, the Seller may withdraw a Price Offer at any time without liability to the Buyer.

In the event that the Buyer wishes to cancel an order, it may only do so with the written consent of the Seller and on the terms that the Buyer shall indemnify the Seller in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Seller as a result of cancellation.

All orders and Price Offers are placed subject to the availability of the Goods and the Seller retains the right to decline or rearrange any order on these grounds or any other grounds, including but not limited to any indication, whether following a credit check or otherwise, that the Buyer may not be able to pay for the Goods.

3. Subcontractors

It is hereby understood that Seller is entitled to sell and/or distribute the products at its discretion entirely or partly through its Affiliates, which shall act in their own name as subcontractors for Seller, and/or through sub-contractors. Seller is responsible to Buyer that the Agreement is complied with also by Seller’s Affiliates and/or Seller’s subcontractors. The Term “**Affiliates**” as used herein shall mean any corporation, association, or other entity that directly owns, is owned by, or is under common control with a Party, either currently or during the term of this Agreement. As used in this definition, the term “control” (including, its correlative meanings “controlled by” and “under common control with”) means the possession, directly, or indirectly, of the power to direct or cause the direction of management policies, whether through the ownership of voting securities, by contract or otherwise.

4. Purchase Price and Payment Terms

The purchase price payable for the products shall be the price offered by Seller. Unless otherwise agreed between the Parties in writing, the purchase price shall be exclusive of all sales, duties, excise, value added taxes, federal, state or local taxes on the sale, use or severance of the product(s), which shall be borne by Buyer.

Seller reserves the right, by giving prior notice at any time before execution of the order, to increase the price of the products to reflect any increase in price based on factors beyond the Seller’s control, such as foreign exchange fluctuations, currency regulations, increases in duties, a significant increase in the costs of labour, materials or other costs of manufacture, as well as based on changes in the order of the Buyer with respect to delivery dates, quantities or specifications requested by the Buyer.

The prices are Ex Works [Location], in accordance with the ICC-Incoterms 2010, unless otherwise agreed between the Parties in writing.

The terms of payment (including currency) result from the corresponding offer, the order confirmation and the invoice. No amounts due and payable may be withheld or set off against any type of counterclaims.

In the event that the Buyer fails to pay the purchase price within the period agreed and specified, the Buyer fails to carry any of the terms of the Agreement, the Buyer repudiates the Agreement with the Seller, the BUYER dies (if applicable), the Buyer stops payment, calls a meeting of its creditors, the Buyer becomes insolvent, the Buyer has any statutory demand served on them or the Buyer has a receiver appointed, all amounts or accounts due or payable to the Seller shall become immediately due and payable and the Seller may at its own option notwithstanding its previous waiver of such default or failure and without prejudice to its other rights under the Agreement suspend or cancel the Agreement or require payment in cash on delivery or tender of goods notwithstanding the terms of the payment previously specified.

5. Delivery

Upon delivery the Buyer will be required to sign the Seller’s, or the Seller’s carrier’s, delivery note as conclusive evidence that delivery was made and of the quantity of Goods received by the Buyer.

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.

6. Buyer's Obligations

Where applicable, the Buyer shall take all reasonable precautions to ensure the health and safety of the Seller, its employees, agents, or sub-contractors whilst at the Buyer's premises and any other location for delivery stated in the Contract Details and will inform the Seller of all health and safety rules and regulations and any other reasonable security requirements that apply at such location.

7. Benefits and Risks

Subject to Clause 8 below, the benefits and risks shall pass to Buyer upon the earliest of a) Seller's notification that the product(s) are ready for dispatch or b) the delivery of the products in accordance with the agreed delivery terms or c) the delivery of the products to the consignment stock at Buyer's plant, if applicable.

8. Retention of Title

To the extent permitted under the law of the territory to which the product(s) are delivered, Seller shall retain title to the product(s) until Buyer has paid the purchase price in full. If such law does not permit retention of title but permits Seller to retain other rights to the product(s), Seller shall be entitled to exercise all rights of this kind.

Buyer undertakes to assist Seller in connection with all measures for purposes of securing credit for the product(s) and, in particular, to enter into corresponding supplemental agreements, if necessary. Buyer further agrees to keep the product(s) in good repair and to insure them against loss or damage until the purchase price has been paid in full.

9. Default Interest

Late payments shall entitle Seller to charge interest on arrears. The interest on arrears shall be ten (10) percent per year on the corresponding outstanding amount. In case of delay, Seller shall, in addition to such default interest, also have a right of retention with respect to deliveries of the product(s) from all open purchase orders of Buyer that have not yet been carried out.

10. Warranties

Seller warrants that, at the time of delivery, the products sold by Seller to Buyer (i) conform to the then current specifications, (ii) are manufactured, packaged and labeled in compliance with the applicable laws in Buyer's territory as notified to Seller by Buyer in writing, and (iii) are free from and clear of any encumbrances.

Subject to the corresponding timely complaint in accordance with Clause 11 below, Seller at Seller's option, shall either replace the nonconforming products with products that conform to the current specifications or refund or reduce the purchase price of the nonconforming products. It is understood that this shall be Buyer's sole remedy in case of nonconforming products.

SELLER MAKES NEITHER WARRANTY OF THE PERFORMANCE OF THE DELIVERED PRODUCTS NOR OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. 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 WARRANTIES SELLER MAKES TO BUYER IN THIS CLAUSE 10 ARE THE ONLY WARRANTIES THE SELLER MAKES. THE BUYER IS RESPONSIBLE FOR CARRYING OUT APPROPRIATE TESTING REGARDING THE SUITABILITY OF THE PRODUCTS FOR BUYER'S PARTICULAR PURPOSES AND PROCESSING CONDITIONS.

The Seller shall have no liability under the warranties stated in this Clause 10 or otherwise if the Goods have not been paid for by the Due Date.

Any claim by the Buyer under the Warranties in this Clause 10 in respect of any Goods shall not entitle the Buyer to withhold or delay payment in respect of any other Goods in respect of which no such claim has been made whether or not those Goods form part of the same consignment.

11. Buyer's Claims

Claims shall be valid only if made in writing within three (3) working days for dry products and twelve (12) working hours for wet products, respectively, each from the time of delivery. In default of such timely notice, the corresponding deliveries shall be deemed to have been accepted by Buyer. No Claim for non-compliance with the current specifications or shortage in quantity of any individual delivery of Products shall be valid after the delivered Products have been mixed with other products or used in the production process of Buyer or Buyer's customers. For the purposes of the Agreement, "**Claims**" means claims, demands, causes of action, judgments, proceedings, awards, damages, losses, costs, expenses, fines, penalties and liabilities, including litigation costs and reasonable attorney's fees.

12. Limitation of Liability

In no event shall Seller, its Affiliates, auxiliary persons, their employees, directors and subcontractors be liable to Buyer for any direct, indirect, incidental or consequential damages (including, but not limited to, loss of profits, opportunities or revenues) or claims of Buyer's customer's for such damages, whether as a result of breach of contract, breach of representations and

warranties, tort or otherwise.

13. Trademarks

In connection with further processing of the products delivered by Seller to Buyer (transferring into another container, mixing, etc.), the trademarks (including, in particular, brand names, logos, etc.) as provided by Seller are to be removed from the products. Any further use of such signs of Seller shall be permissible only with the prior written consent of Seller.

14. Confidentiality

During the term of the Agreement and for a subsequent 5 (five) year period, Buyer agrees to keep any information supplied to it by the Seller under the Agreement (including, in particular, information regarding pricing, financial information, market information, customer data, data of employees, manufacturing and technical information and know-how) confidential.

15. Force Majeure

Non-performance of Seller shall be excused to the extent that performance is rendered impossible or prevented or hindered or is delayed by an extraordinary and severe event of force majeure, governmental act or change of circumstances beyond the control and not caused by non-performing Seller (e.g. war and war like activities, revolution, terrorist act, environmental catastrophe, geological implications, implementation of new and substantial economic restrictions, severe economic collapse of currency, late deliveries of Seller's own suppliers, etc.), provided, however, that Seller (i) immediately informs Buyer accordingly, and (ii) resumes performance of its obligations under the Agreement without delay when such causes are removed.

In case the 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.

16. Miscellaneous

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.

Modifications and Amendments. Any modifications and/or amendments of the Agreement, including of this Clause 16, shall be valid only if made in writing and signed by both Parties.

Severability. Should any part of the Agreement be held unenforceable or in conflict with the applicable laws or regulations of any jurisdiction, the invalid or unenforceable part or provision shall be replaced with a provision which accomplishes, to the extent possible, the original business purpose of such part or provision in a valid and enforceable manner, and the remainder of the Agreement shall remain binding upon the Parties hereto. This provision shall apply by way of analogy if the Agreement is incomplete.

Trade Control. Buyer undertakes that in connection with the use of the products (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 relating to the export or import of goods including economic sanctions imposed by the United Nations and similar bodies and including country specific embargoes.

No Waiver. Knowledge or acquiescence by the Seller of the breach of any term or conditions by the Buyer shall not operate as or be deemed a waiver of such Terms or any other Terms and notwithstanding such knowledge and acquiescence, the Seller shall be entitled to exercise his rights under this Agreement and to require strict performance by the Buyer of the the Terms of this Agreement.

17. Applicable Law and Jurisdiction

This Terms and the entire business relationship between Seller and Buyer shall be subject to laws of Malaysia, giving no effect to the conflict of law provisions and the UN Convention on Contracts for the International Sale of Goods (CISG).

The competent court at the domicile of the Seller shall have exclusive jurisdiction, except that the Seller has the right to initiate legal proceedings concerning outstanding payments for delivered products before the competent court at the domicile of the Buyer.

18. Disputes

The parties shall each use their reasonable endeavours to resolve any Dispute by prompt discussions in good faith at a level appropriate to the Dispute in question. This procedure commences when either party gives notice to the other in writing setting out the issues in the Dispute and referring to this Condition. Unless the parties otherwise agree in writing this procedure shall be treated as having been exhausted if the Dispute has not been settled within a reasonable period of time to be determined by both parties acting reasonably at all times. However, for the avoidance of doubt, the parties shall attempt to resolve such disputes or differences in good faith and without recourse to legal proceedings.

Any dispute, controversy or claim arising out of or relating to this Agreement, or the breach, termination or invalidity thereof, shall be decided by arbitration in accordance with the Rules for Arbitration of the Kuala Lumpur Regional Centre for Arbitration subject to the exception that the Seller shall have the option to pursue court proceedings to recover unpaid invoice amounts due from the Buyer. The language to be used in arbitration proceedings shall be in English.

19. Notices

Unless explicitly provided otherwise hereunder, any notice, request, demand, consent, approval or other communication to any Party hereto shall be effective when received and shall be given in writing, and delivered in person against receipt thereof, or sent by certified mail, postage prepaid, facsimile or international courier service at its address as it shall hereafter furnish in writing to the other. All such notices and other communications shall be deemed given on the date received by the addressee.