

# OMYA NEW ZEALAND LIMITED

## TERMS AND CONDITIONS FOR THE SALE OF GOODS

VERSION 2019

### 1. General Conditions

1.1 Orders are accepted on these terms and conditions unless otherwise specified in a written acceptance and no contract will be concluded between the Seller and the Buyer until accepted by the Seller either by written notice or delivery of the goods ordered.

1.2 These terms and conditions of sale apply to all contracts with the Seller, unless expressly varied in writing and signed on behalf of the Seller.

1.3 These terms and conditions shall prevail over any terms and conditions contained in any order or offer made by the Buyer or any document used by the Buyer and purporting to have contractual effect, and the Buyer's acceptance of the goods constitutes acceptance of these terms and conditions.

1.4 These conditions of sale do not and shall not be taken as applying to exclude, restrict or modify in any manner whatsoever; the rights conferred upon customers and others by those laws, and in particular by the Consumer Guarantees Act 1993, that cannot be lawfully excluded, restricted or modified;

1.4.1 the remedies conferred on a consumer by any such law;

1.4.2 the exercise of any such rights or remedies by a consumer; or

1.4.3 any mandatory condition or warranty implied by any such law in favour of a consumer which cannot be excluded by a contract between the parties to a sale of goods.

Wherever any part of these terms and conditions will otherwise be inconsistent with the mandatory requirements of any such law these conditions of sale shall as far as possible be construed so as to be consistent with such law and to that purpose to the extent necessary shall be of no force or effect (but without prejudice to and reserving the full force and effect of the remaining provisions hereof).

1.5. Under the terms of the Privacy Act 1993 you authorise any person or company to provide us with such information as we may require in response to our credit inquiries. You authorise us to furnish to any third party, details of this application and any subsequent dealings that you may have with us as a result of this application being acted on by us.

### 2. Definitions

In these conditions:

2.1 "Buyer" means the party placing the order with the Seller for the purchase of the goods

2.2 "Seller" means Omya New Zealand Limited

2.3 "Consumer Guarantees Act" means Consumer Guarantees Act 1993

2.4 "A consumer" means a consumer as defined in Section 2 of the Consumer Guarantees Act but does not include a Buyer, who by clause 12 of these terms and conditions has contracted out of that Act.

### 3. Price

3.1 The Seller's prices are based on current material, labour and transport costs and any offer for supply or price lists are subject to variation without notice. Deliveries of goods will be made at prices current at the time of delivery. All prices are exclusive of Goods and Services Tax unless otherwise stated and the amount of such tax shall be added to the price and payable by the Buyer.

### 4. Terms of Payment

4.1 Unless otherwise agreed in writing all goods shall be paid for by the 20th day of the month following the date of invoice.

4.2 If payment is not made by such date without prejudice to its other remedies the Seller may charge the Buyer interest on the outstanding amount at a rate of two (2) per cent per month or part thereof compounding from the date such account becomes overdue, and the Seller shall be entitled to suspend or cancel deliveries due pursuant to any unfulfilled order.

4.3 If the Buyer

(a) fails to pay the purchase price within the period specified in clause 4.1; or

(b) fails to carry out the terms of the contract; or

(c) repudiates the contract with the Seller; or

(d) dies; or

(e) stops payment; or

(f) calls a meeting of its creditors; or

(g) becomes insolvent; or

(h) being a company calls a meeting of creditors or members for the purpose of going into, or goes into, liquidation; or

(i) has a statutory demand served on it; or

(j) has a receiver appointed,

then notwithstanding the provisions of clause 4.1 hereof all accounts payable to the Seller shall become immediately due and owing, and the Seller may at its option notwithstanding its previous waiver of such default or failure and without prejudice to its other rights under the contract suspend or cancel the contract or require payment in cash on delivery or tender of goods notwithstanding the terms of the payment previously specified. The Seller may exercise any such right as to the whole or part of such goods. The Seller may for the purposes of recovery of its goods enter upon the Buyer's premises where they are stored or where they are reasonably thought to be stored and may repossess the same.

4.4 The Buyer shall pay all costs incurred by the Seller, including costs on a solicitor-Buyer basis and debt collector's costs incurred in the recovery or attempted recovery of outstanding moneys and the enforcement of these Terms and Conditions.

### 5. Delivery

5.1 Subject to the provisions of clause 1.4 hereof the Seller shall not be responsible or liable in any way to the Buyer for any default or delays in the delivery of the order or any part of it nor for any direct or consequential loss or damage arising from such delays or default and no such delay shall relieve the Buyer from any obligation, to pay for any goods already delivered or, to accept delivery of any goods ordered. No order may be withdrawn or altered without the written consent of the Seller.

5.2 Where in the Seller's opinion any dispute arises between the Seller and the Buyer as to the performance by either the Seller or Buyer of any term, warranty or condition

of any contract the Seller shall have the right to suspend supply until in the opinion of the Seller the dispute shall have been settled.

5.3 The Buyer shall ensure safe and adequate access to any site for delivery of the goods, and the Seller may refuse to deliver to any site if it is of the opinion that delivery would be unsuitable or unsafe. The Buyer shall indemnify the Seller for all costs, liabilities or damages which may arise out of delivery to any site to which adequate access cannot be obtained.

### 6. Risk

6.1 The risk in the goods purchased shall pass to the Buyer upon delivery to the Buyer or his agent or to any carrier with instructions to deliver the same to the Buyer or as directed by the Buyer.

### 7. Personal Property Securities Act 1999

7.1 For the purposes of the Personal Property and Securities Act 1999 (PPSA), the Buyer agrees these conditions constitute and create a security agreement. The Buyer grants a security interest in favour of Omya New Zealand Limited in all the Buyer's present and after-acquired inventory of all goods supplied to the Buyer by Omya New Zealand Limited, and all proceeds and accounts receivable in relation to that inventory (which present and after-acquired inventory is hereafter in this clause referred to as "Goods") to secure the payment by the Buyer to Omya New Zealand Limited of all amounts the Buyer may owe Omya New Zealand Limited from time to time and at any time in respect of such Goods.

7.2 Omya New Zealand Limited may at its discretion and in such manner as Omya New Zealand Limited determines allocate payments made by the Buyer for all and any Goods.

7.3 Until payment is made to Omya New Zealand Limited, the Buyer agrees to store the Goods in a manner which permits them to be identified, and cross-referenced to particular invoices for the Goods.

7.4 To the extent permitted by law, if the Buyer defaults under these conditions or under any other payment obligation to Omya New Zealand Limited:

7.4.1 Each security interest created in favour of Omya New Zealand Limited will become immediately enforceable;

7.4.2 Omya New Zealand Limited may, at any time, by notice to the Buyer declare all or any part of the moneys owing to Omya New Zealand Limited to be due and payable immediately, upon demand or at a later date as Omya New Zealand Limited may specify;

7.4.3 Omya New Zealand Limited may:

7.4.3.1 Take possession of and either sell or retain the Goods;

7.4.3.2 Pay any expenses incurred in the exercise of any such powers out of the revenue from, or proceeds of realisation of the Goods;

7.4.3.3 Under Sections 133 and 134 of the PPSA, reinstate the security agreement; and

7.5 The Buyer shall give written notice to Omya New Zealand Limited immediately upon any change of name of the Buyer.

7.6. On being requested by Omya New Zealand Limited, the Buyer shall promptly do all things (including signing any document) and provide all information necessary to enable Omya New Zealand Limited to perfect and maintain the perfection of any and each security interest granted to Omya New Zealand Limited by the Buyer (including by registration of a Financing Statement).

### 8. Warranties

8.1 Other than expressly provided herein and subject always to clause 1.4 of these conditions of sale:

8.1.1 the Seller makes no representation and gives no guarantee whatsoever in respect of any goods manufactured, sold or supplied by it; and

8.1.2 all conditions and warranties whatsoever whether statutory or otherwise are hereby excluded in so far as the same may be lawfully excluded by agreement between the parties to the contract; and

8.1.3 the seller shall not be liable in respect of any claim of any nature or any injury, loss or damage to any person or property caused by or arising out of the use of any goods manufactured, sold or supplied by it.

### 9. Remedies

9.1 The Seller's liability in any case of defect or fault, shall be limited to the purchase price of the goods in respect of which such liability arises and the Seller shall have no further liability or responsibility for any direct, indirect or consequential injury, loss or damage whatsoever and howsoever arising PROVIDED THAT the provisions of this clause shall not prevent a Buyer who is a consumer from exercising any remedies that Buyer may have under the Consumer Guarantees Act.

9.2 This clause 9 shall apply where the Buyer is a Consumer.

9.3 Subject to the rights and remedies contained in the Consumer Guarantees Act if, as a result of some fault on the Seller's part, the goods supplied are defective in that:

9.3.1 They are not of acceptable quality; or

9.3.2 They are not reasonably fit for any particular communicated purpose where the Consumer has reasonable relied on the Seller's skill or judgement; or

9.3.3 They do not comply with the description given to the Consumer before purchase; or

9.3.4 They do not comply with the sample or demonstration model shown to the Consumer before purchase then the Consumer must notify the Seller within seven days of the date on which such defect was discovered or ought to have been discovered and, where possible, return the goods to the Seller.

9.4 Where appropriate, the Seller will remedy the defect by way of repair, replacement or refund.

9.5 Where the defect cannot be remedied or is of a substantial character, the Seller will refund the consumer's money or replace the goods, or compensate the consumer for the amount of any reduction in value of the goods below the price paid or payable.

9.6 With the exception of the relevant statutory warranties contained in the Consumer Guarantees Act no warranty or condition shall be implied against the Seller by any other statute, at common law or otherwise and no representation, express condition,

warranty or variation of the Terms and Conditions shall be binding on the Seller unless it is in writing and signed for or on behalf of the Seller.

9.7 Where the goods or any of them are subject to any express warranty given by the Seller to remedy any defect by repairing or replacing the goods with goods of identical type, then the consumer shall not be able to exercise its remedies set out in the Consumer Guarantees Act without first giving the Seller a reasonable opportunity to remedy the defect by repair or replacement in accordance with its express warranty. Goods returned under express warranty for the purposes of remedying any defect must, where practical, be returned to the Seller's place of business, all transportation charges, insurances, taxes, duties and charges being borne by the consumer.

#### **10. Returns**

10.1 Goods cannot be returned to the Seller unless agreed in writing by the Seller. The Buyer shall pay all costs of the Seller associated for such return.

10.2 The Seller accepts no responsibility for claims arising from under or over estimation of quantities of goods required. Estimates are provided by the Seller for guidance only.

#### **11. Claims**

11.1 The type and quantity of goods delivered are detailed on the delivery docket and must be checked by the Buyer at the time of delivery for compliance with the Buyer's order. If delivery is to an unattended site the Seller will not be liable for any loss or damage to the goods and the Buyer shall be deemed to have accepted the goods as per the delivery docket. Variations between actual quantities delivered and those shown on the delivery docket must be noted on all copies of the delivery docket or Carrier's run sheet signed by the Buyer at time of delivery. Invoice charges will be based upon quantities of goods shown to be supplied as per the delivery docket.

11.2 Any claim in respect of the goods must be made in writing within seven (7) days of delivery otherwise it will not be considered by the Seller and in the absence of any such claim being accepted by the Seller, the Buyer shall be liable to pay for the full quantity of goods stated in the Seller's delivery docket.

#### **12. Supply for Business Purposes**

12.1 Where this agreement would otherwise be subject to the provisions of the Consumer Guarantees Act 1993 and where such supply is a supply for business purposes, the Buyer agrees that the goods are supplied to the Buyer for business purposes in terms of sections 2 and 43 of the Consumer Guarantees Act 1993 and that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply to the Buyer.

#### **13. Resupply to a third party**

13.1 The Buyer who re-supplies to a third party any goods purchased under these Terms and Conditions of Sale shall ensure that such third party enjoys no better rights against the Seller in respect of such goods than would be enjoyed by a purchaser from the Seller subject to these conditions of sale (including exclusion from the terms of the Consumer Guarantees Act of persons who are consumers under the Consumer Guarantees Act but are acquiring goods for business purposes). The Buyer agrees to keep the Seller indemnified accordingly.

#### **14. Advice**

14.1 The Buyer shall ensure that the goods are not used for any purpose for which they are not suitable and shall be responsible for using all necessary care and skill in handling and using or installing the goods. Subject to the provisions of clause 1.4 the Buyer expressly acknowledges and agrees that any advice furnished by the Seller with respect of the use of the goods is given in good faith but on the basis that the Seller assumes no obligation or liability for advice given or results obtained all such advice being given by the Seller and accepted by the Buyer at the Buyer's risk.

#### **15. Severability**

15.1 If any of these terms and conditions is held by a Court to be ineffective by virtue of non-registration, illegality or otherwise, then such condition, or part of it, shall be severed from all other conditions without affecting the validity or enforceability of all other conditions or part of them.

#### **16. Waiver**

16.1 Failure by the Seller to insist on strict performance or any term of condition herein should not be deemed to be a waiver thereof or of any rights the Seller may have and shall not be deemed a waiver of any subsequent breach of any term or condition.