

Omya Minerals Philippines Inc.
Standard Terms and Conditions for the Sale of Products

Version 2019

1. Scope of Application

All offers made by Omya Minerals Philippines Inc. (hereinafter referred to as “**Seller**”) and all orders for products placed by Seller’s customers (hereinafter individually referred to as “**Buyer**”) with Seller shall be subject to these Standard Terms and Conditions for the Sale of Products (hereinafter referred to as “**Terms**”). Seller’s acknowledgement of Buyer’s order, stating the specific designation and quantity of the product/s along with the price therefor, taken together with these Terms constitute the entire agreement (hereinafter collectively referred to as “**Agreement**”) between 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 14.2 below.

Seller and Buyer shall herein individually and collectively also referred to as “**Party**” or “**Parties**”, respectively.

2. Purchase Price and Payment Terms

The purchase price payable for the products shall be the price offered by Seller (“**Price Offer**”) and accepted by Buyer (“**Purchase Price**”). Unless otherwise agreed to in writing, the Purchase Price shall be exclusive of all sales, duties, excise and value added taxes.

Without the acceptance of the Buyer, the Price Offer does not constitute an offer for the purpose of entering into this Agreement. It may be withdrawn by the Seller through written notice at any time prior to the Buyer’s acceptance, without liability to the Buyer, and at which time such Price Offer shall cease to be valid.

The Seller reserves the right, by giving prior written 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 in accordance with the ICC-Incoterms 2000, unless otherwise agreed between the Parties in writing.

The Payment Terms (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.

All orders and Price Offers are placed subject to the availability of the products. The Seller retains the right to decline or stay any order on the ground of unavailability or any other lawful and reasonable grounds, including but not limited to any indication, whether following a credit check or otherwise, that the Purchaser may not be able to pay for the products.

3. Benefits and Risks

Subject to Clause 5 below, the benefits and risks shall pass to the 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.

4. Retention of Title

To the extent permitted under Philippine law, the Seller shall retain title to the products until the Seller has received from the Buyer the purchase price in full. The Buyer undertakes to assist Seller in connection with all measures for purposes of securing credit for the products and, in particular, to enter

into corresponding supplemental agreements, if necessary. The Buyer authorizes the Seller to have the entry or priority note regarding the retention of title registered in public registries and the like. The Buyer further agrees to keep the products in good repair and to insure them against loss or damage until the purchase price has been paid in full.

5. Delivery

Upon delivery, the Buyer must sign a delivery note from the Seller or the Seller's carrier. The said delivery note shall be conclusive of the fact of delivery and the quantity of the products received by the Buyer.

Where the products 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 its own loss or damage resulting from any failure to do so. The quantity of products 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 products is reduced following dispatch to the Buyer.

6. Default Interest

Unless otherwise agreed upon in writing between the Buyer and Seller, the full purchase price shall be paid based on the Payment Terms agreed between the Buyer and Seller. This sales invoice is payable on demand and/or in accordance with the Payment Terms. In case of non-payment at date of maturity, Buyer agrees to pay interest of 3% per month, with the products to remain as the property of the Seller until fully paid for. All interest due if not paid at the end of the month shall be added to the principal, the total amount to bear the same rate of interest until fully paid. Buyers agree to submit to the jurisdiction of the courts of Makati City on any legal action arising out of this transaction and to reimburse the seller for all costs of collection.

7. Warranties

7.1. *Warranties of the Buyer*

The Buyer warrants that it shall take all reasonable precautions to ensure the health and safety of the Seller and the Seller's employees, agents, or sub-contractors while they are at the Buyer's premises or any other location designated and agreed upon for purposes of delivery.

The Buyer further warrants that it will inform the Supplier of all health and safety rules and regulations and any other reasonable security requirements that apply at such location.

7.2. *Warranties of the Seller*

Seller warrants that the products delivered by Seller to Buyer (i) conform to the specifications prevailing on the date that the Agreement was entered into; (ii) are manufactured, packaged and labeled in compliance with the applicable laws in Buyer's territory, as provided in writing to the Seller by Buyer; (iii) are new; (iv) are free from and clear of any encumbrances; and (v) are free from hidden defects in material and workmanship at delivery of the products to Buyer.

Subject to the corresponding timely complaint in accordance with Clause 8 below, defective products shall be replaced by Seller at Seller's cost (including cost of new product, transportation, customs, and other import duties).

SELLER MAKES NEITHER WARRANTY OF THE PERFORMANCE OF THE DELIVERED PRODUCTS NOR OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. THE EXPRESS WARRANTIES SELLER MAKES TO BUYER IN THIS CLAUSE 7 ARE THE ONLY WARRANTIES SELLER WILL MAKE.

8. Complaints for Defective Products or Shortage in Quantity

No claim for defective quality or shortage in quantity of any individual delivery of products shall be valid, unless made to the Seller 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 in their delivered state and quality shall be deemed to have been accepted by the Buyer. Products of defective quality or insufficient quantity cannot be returned to the Seller, unless pursuant to such written claim as above. All costs and expenses in connection with such return shall be exclusively borne by the Buyer.

Any claim by the Buyer under this Clause 8 shall not entitle the Buyer to withhold or delay payment for any other orders or products in respect of which no such claim has been made, whether or not those products form part of the same consignment.

9. Indemnity to Seller

Notwithstanding Clause 2 above, in the event that the Buyer wishes to cancel an order, it may only do so through written notice to the Seller and upon express acceptance by the Seller of such notice of cancellation. The Buyer shall indemnify the Seller for all losses (including loss of profit), costs (including the cost of all labor and materials used), damages, charges, and expenses incurred by the Seller as a result of the Buyer's cancellation.

Further, in case the Buyer dies, becomes insolvent, appoints a receiver, is served with judicial demand, or in any manner fails or becomes unable to pay the Purchase Price in accordance with the Payment Terms, all its pending accounts shall become immediately due and demandable. After such escalation, the Seller has the option to either (a) waive in writing such default or failure to pay; (b) terminate this Agreement; or (c) require payment in cash in [Philippine Pesos] upon delivery or tender of the products, notwithstanding the Payment Terms previously specified.

10. Limitation of Liability

Unless Seller causes a damage by gross negligence or intentional conduct, Seller shall not, whether as a result of breach of contract, breach of representations and warranties, tort, or otherwise, 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.

Notwithstanding the foregoing, no limitation shall be imposed on the Seller's liability for personal injury or death caused by the Seller's negligence.

11. 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.) and other intellectual property as provided by the Seller are to be removed from the product immediately upon the Buyer's receipt thereof. Any further use by the Buyer of such signs of the Seller shall be permissible only with the prior written consent of the Seller.

12. Confidentiality

During the term of the Agreement and for a subsequent period of 5 (five) years, 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. The Buyer likewise undertakes to procure the necessary steps, including the execution of non-disclosure agreements, to bind its employees, consultants, agents, and other personnel to confidentiality in accordance with this Clause.

13. Force Majeure

Non-performance of the 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 the non-performance of the Seller (such as, but not limited to: war and war-like activities, revolution, terrorist

acts or other similar acts, rebellion, invasion, lawless violence, environmental catastrophe, strikes, martial law, civil disturbances, 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) within forty-eight hours (48) of knowledge of said force majeure, gives notice thereof to the Buyer, which may be either written or oral in form, depending on the gravity of the event; 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, provided, however, that in the event that the Parties fail to negotiate their affected obligation/s, the Seller shall be excused from performance of its obligations.

14. Miscellaneous

14.1. Assignment

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.

14.2. Modifications and Amendments

Any modifications, amendments, or supplements of the Agreement, including of this Clause 14.2, shall be valid only if made in writing and signed by both Parties.

14.3. 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.

14.4. Non-Waiver

The waiver by the Seller of any term, condition or provision stipulated herein shall not be construed to be a waiver of any other term, condition or provision hereof. Neither shall the Seller's failure to insist on strict performance by the Buyer or the Seller's waiver of any default on the part of the Buyer be construed as a waiver of any subsequent breach of this Agreement.

15. Applicable Law and Jurisdiction

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

The Parties shall each use their reasonable endeavors to resolve any dispute arising out of or in connection with or in respect of this Agreement through prompt discussions in good faith at a level appropriate to the dispute in question. This procedure shall commence when either Party gives written notice to the other Party, setting out the issues in the dispute.

Unless the Parties otherwise agree in writing, such dispute resolution 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 not resolved in accordance with the foregoing procedure, or any controversy or claim between the Parties arising out of or in connection with or in respect of this Agreement, including breach,

termination, validity, construction, enforcement, or performance, shall be initiated exclusively before the courts of Makati City, to the exclusion of all other venues.