

TERMS AND CONDITIONS (US and Canada)

The following terms and conditions ("Terms and Conditions") apply to all sales of Product(s) to you, the buyer ("Buyer"), by any of Omya Inc., Omya Canada Inc., Omya Specialty Materials Inc., Omya Industries Inc. and their respective affiliates (collectively, "Seller"), unless superseded by the terms of a separate written agreement signed by authorized representatives of both Seller and Buyer. These Terms and Conditions are available on Omya's website at www.omya.com.

- 1. Applicability; Governing Law and Conflicting Terms.** All transactions with respect to the current or future sale of any and all materials, products, supplies or other goods and all services relating thereto (the "Product(s)") by Seller to Buyer shall be made in accordance with these Terms and Conditions and shall be governed by and construed in accordance with the laws of the State of Ohio, notwithstanding any choice of laws doctrines of such jurisdiction or any other jurisdiction which would cause the substantive law of another jurisdiction to apply, and expressly excluding the United Nations Convention on Contracts for the International Sale of Goods. These Terms and Conditions (a) constitute an offer by Seller to Buyer to sell the Products for the Purchase Price (as defined in Section 2 hereof) and pursuant to the terms set forth herein, and (b) are not an acceptance of the terms or conditions of any offer of Buyer. Acceptance of this offer is expressly conditioned upon and limited to the provisions of these Terms and Conditions. In the event of any additional, different or conflicting provision contained in any document of Buyer, including, but not limited to, any purchase order of Buyer. Buyer expressly agrees that (i) these Terms and Conditions shall govern and supersede Buyer's terms and conditions, and Buyer's additional, different and/or conflicting provisions shall not become a part of these Terms and Conditions or Seller's offer to sell the Product(s) to Buyer. Neither the sale of any goods, performance of any work or services nor any statements, claims or representations made by or on behalf of Seller shall alter these terms and conditions or the rights and duties of Seller and Buyer. Buyer shall ensure that these Terms and Conditions are delivered to and enforceable against any subsequent purchaser or user of the Products.
- 2. Purchase Price; Price Adjustments and Payment Terms.** The purchase price (the "Purchase Price") for the Product(s) shall be the total, gross amount that is set forth on Seller's sales invoice that relates to the Product(s) (the "Invoice") plus any surcharge and Price Adjustments (as described in this Section 2). Buyer hereby grants to Seller a security interest in all Products as security for the prompt and full payment of the Purchase Price. **IF THERE IS A CHANGE IN THE PRICE OF RAW MATERIALS, ENERGY OR PROCESS MATERIALS USED TO PRODUCE THE PRODUCTS, LABOR, OVERHEAD, TAXES, EXCHANGE RATES, DUTIES OR OTHER COSTS RELATING TO THE PRODUCT(S) OR ANY COMPONENT THEREOF (COLLECTIVELY, "PRICE CHANGES"), OR IF SELLER INCURS ADDITIONAL COSTS OR EXPENSES AS A RESULT OF DELAYS OR CANCELLATIONS FROM SUPPLIERS, MANUFACTURERS OR OTHER THIRD PARTIES (COLLECTIVELY, "ADDITIONAL COSTS"), THEN BUYER EXPRESSLY AGREES THAT THE PURCHASE PRICE SHALL BE INCREASED FOR ANY AND ALL SUCH PRICE CHANGES AND ALL OF ADDITIONAL COSTS (COLLECTIVELY, "PRICE ADJUSTMENTS").** Accordingly, Buyer agrees and acknowledges that any and all price quotes and sales offers, whether written or verbal, may be changed for any such Price Adjustments. Furthermore, Buyer acknowledges and agrees that (a) any sales offers or price quotes from Seller must be accepted by the product manufacturer/supplier prior to Seller's fulfilling any order for Buyer and (b) Seller will not be legally bound by any such offer or quote to Buyer that is not accepted by Seller's manufacturer/supplier. If Buyer places an order for Product(s) that is less than an aggregate amount of Five Hundred Dollars (\$500.00), then the Purchase Price shall include a Twenty-Five Dollar (\$25.00) surcharge. Payment of the Purchase Price is due from Buyer within thirty (30) days following tender of delivery of the Product(s) by Seller. Buyer has no right of set-off for any amount due to Seller. If at any time the financial responsibility or condition of Buyer becomes impaired or unsatisfactory to Seller or, in Seller's good faith and reasonable opinion inadequate to meet the obligations hereunder, the terms of credit may, at Seller's option, be changed or withdrawn. If the terms of credit are withdrawn, Seller at its option may require cash or satisfactory security before making shipments or deliveries. The exercise of Seller of its rights under this paragraph shall not be deemed a default or material default of any agreement on the part of Seller. The parties agree that all payments still owing after the due date can bear interest at a monthly rate of one and one-half (1.5%) percent or the maximum rate allowed by law, whichever is lesser.
- 3. Indemnification.** Buyer agrees to indemnify, defend and hold harmless Seller, its owners, officers, directors, employees, representatives and any affiliate of Seller and the owners, officers, directors, employees and representatives thereof, from and against any and all damages, claims, expenses (including reasonable attorneys' fees), losses or liabilities of any nature whatsoever, and whether involving injury or damage to person or property, and any and all suits, causes of action and proceedings thereon arising or allegedly arising out of, related to, based upon or attributable to the Product(s) sold hereunder or from the use thereof.
- 4. Disclaimer of Warranties.** SELLER EXTENDS NO WARRANTIES, EITHER EXPRESS OR IMPLIED, CONCERNING THE PRODUCT(S), INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE, OR REGARDING PRODUCT SHELF LIFE. IN NO EVENT SHALL SELLER BE LIABLE TO BUYER, ANY USER OF THE PRODUCT(S), OR ANY THIRD PARTY FOR INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE, OR OTHER DAMAGES WHATSOEVER ARISING FROM THE USE OR PERFORMANCE OF THE PRODUCT(S), OR FROM THE NON-DELIVERY, DELAYED DELIVERY, DAMAGE OF PRODUCT(S) OR OTHERWISE. BUYER EXPRESSLY ASSUMES ALL RESPONSIBILITY FOR DETERMINING THE FITNESS OF SUCH PRODUCT(S) FOR BUYER'S INTENDED USE. ANY TECHNICAL INFORMATION, PRODUCT LITERATURE, SELLER TECHNICAL ASSISTANCE OR OTHER INFORMATION IS GIVEN TO AND ACCEPTED BY BUYER AT ITS OWN RISK AND IS NOT A WARRANTY BY SELLER TO BUYER.
- 5. Inspection; Rejection of Nonconforming Product(s).** Buyer must promptly inspect the Product(s) upon delivery, and must promptly notify Seller of any claimed defect, nonconformity, or shortage of the Product(s), pursuant to the specific notice requirements set forth below. No claim for defect, non-conformity or shortage in quantity of any individual delivery of Product(s) shall be valid, unless made in writing within three (3) working days for dry Products and twelve (12) working hours for wet Product(s), respectively, each from the time of delivery. Buyer's failure to provide such notice of any defect, non-conformity or shortage shall operate as a complete, unconditional acceptance of the Products as-is and as a waiver of any claims for defect, non-conformity or shortage. Any claim must state the basis of the alleged nonconformity of the Product(s) and describe the portion of the Product(s) being rejected. Buyer shall have no right to reject Product(s) if Buyer mixes, blends or otherwise incorporates the Product(s) with any other substance.
- 6. Exclusive Remedies of Buyer.** The sole and exclusive remedies of Buyer, any user of the Product(s) or any third party are: (a) in the case of any breach by Seller other than Seller's delivery of nonconforming Product(s), to receive repayment of the amount paid by Buyer to Seller, provided that such amount is not in excess of the Purchase Price; and (b) in the case of Seller's delivery of nonconforming Product(s), to return the Product(s) and at Seller's sole option, to (i) receive repaired or replaced Product(s) or (ii) receive repayment of the amount paid by Buyer to Seller, provided that such amount is not in excess of the Purchase Price. **IN NO EVENT SHALL SELLER'S AGGREGATE LIABILITY FOR ALL DAMAGES FROM ANY CLAIM, IN WHATEVER FORM, EXCEED THE TOTAL PRICE PAID BY BUYER TO SELLER FOR THE PRODUCTS AT ISSUE. NO CLAIM SHALL BE ALLOWED FOR PRODUCT THAT HAS BEEN PROCESSED OR COMMINGLED IN ANY MANNER.**
- 7. Freight & Delivery.** Unless otherwise set forth in an applicable order confirmation, all Product(s) are shipped EXW (INCOTERMS® 2010) Seller's facilities. The calculation of the price of the Products is based upon the weight determined at the point of departure from the factory. Delivery dates are target dates and may be modified on the event of a *force majeure*. Seller shall have no liability for any damages or costs to Buyer related to a modified delivery date.
- 8. Title and Risk of Loss.** Title to the Products shall remain with Seller until receipt by Seller of payment in full of the purchase price for such Products. Risk of loss for the Products shall pass to Buyer upon Seller making the Products available to the carrier for delivery to Buyer, irrespective of whether Buyer or Seller selects the carrier(s) used to ship the Product(s).
- 9. Modification and Rescission.** These Terms and Conditions can be modified or rescinded at any time by the Seller.
- 10. Venue.** Buyer agrees that any and all disputes between Buyer and Seller shall be resolved by, and Buyer consents to, the exclusive jurisdiction and venue of the Circuit Court of Hamilton County, Ohio and the United States District Court for the Southern District of Ohio. Buyer hereby waives all objections to venue in such Courts.
- 11. Waiver of Jury Trial.** Buyer and Seller acknowledge that the right to trial by jury is a constitutional one, but that it may be waived. Each of Buyer and Seller, after consulting (or having the opportunity to consult) with counsel of its choice, knowingly voluntarily and intentionally waives any right to trial by jury in any action or other legal proceeding arising out of or relating to these terms and conditions, any purchase order or any other document pertaining to any transaction involving Buyer and Seller.
- 12. Severance Clause.** It one or more of the provisions contained in these Terms and Conditions shall for any reason be found to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any Other provision and those Terms and Conditions shall be construed as if the invalid, illegal, or unenforceable provision had never been contained in it.
- 13. Force Majeure; Excuse of Performance.** (a) Seller shall not be held responsible for failure or delay in delivering the Product(s), if such failure delay is caused by war, fire, sabotage, unavoidable accident, strike, labor trouble or shortages, equipment breakdown, geological conditions, governmental laws, regulations, orders or decrees (including those relating to environmental matters), unavailability of materials, containers or transportation, or acts of God or other causes beyond Seller's control; (b) if Seller determines that Seller's ability to deliver the Product(s) or any component thereof is hindered, limited or made impracticable, Seller may, in its sole discretion (i) suspend; delay or cancel delivery of or any portion of the Product(s) or any component thereof and/or (ii) allocate its available supply of the Product(s) or any component thereof among itself and its purchasers on such basis as Seller determines in its sole discretion, all without any liability to Buyer any resulting suspension, delay, cancellation, allocation, or failure of performance which may result therefrom; and (c) if Seller fails by the reason of force majeure event to perform for a period in excess of three (3) months, Buyer may cancel the order affected by the force majeure event.
- 14. No Waiver.** Except as otherwise set forth herein, no failure to exercise any right of either party hereunder shall constitute a waiver of said right, nor shall any waiver of any right hereunder constitute a waiver any other right, nor shall any waiver constitute a continuing waiver- Except as otherwise set forth herein, no waiver shall be binding unless executed in writing by the party making the waiver.
- 15. Integration, Amendment, Assignment.** These Terms and Conditions, the Invoice and the Price Adjustments represent the entire agreement between the parties with respect to the matters set forth therein, superseding all prior and contemporaneous agreements and understandings; whether written or oral. In no event shall these Terms and Conditions, the Invoice, the Price Adjustments or any provision thereof be deemed to be amended, modified or changed in any manner whatsoever (including by reason of trade usage or course of dealing) except and unless such amendment, modification, or change is signed by authorized representatives of both Seller and Buyer, specifically references these Terms and Conditions, and clearly states that it is intended to be an amendment, modification, or change to these Terms and Conditions. Seller may assign any portion or all of these Terms and Conditions, the Invoice and the Price Adjustments to any of its affiliates, successors or assigns. The provisions of this Agreement will survive for so long as may be necessary to have their intended effect.
- 16. Collection Costs.** If Seller retains the services of counsel in connection with enforcing Buyer's obligations hereunder, Buyer shall pay all costs, including attorneys' fees, incurred by Seller in connection with such collection.
- 17. Taxes.** Buyer shall bear any federal, provincial, state, or VAT, HST, GST, sales, use, or other taxes due on the sale, use or severance of the Product(s).