

## TERMS AND CONDITIONS OF SALE

Indorama Ventures Oxides Australia Pty Limited

ACN 083 984 187 ABN 67 083 984 187

1. These Terms and Conditions of Sale are subject to the consumer protection provisions of the *Competition and Consumer Act 2010* as amended and similar State and Territory laws.
2. **General**
- (a) The Seller agrees to supply the Buyer with goods ordered by the Buyer from time to time in accordance with these Terms and Conditions of Sale, and these Terms and Conditions of Sale are intended to apply to all such orders as an overarching agreement.
- (b) Any order placed by a Buyer is deemed to be an order incorporating these terms and conditions notwithstanding any inconsistencies which may be introduced in the Buyer's order or acceptance unless expressly agreed to by the Seller in writing.
3. **Definitions**
- (a) In these Terms and Conditions of Sale, unless the context otherwise requires:
- (a) "Attaches" has the same meaning as given to that term in the PPSA;
- (b) "Buyer" means and includes the Buyer and any servant, agent, partner, contractor or employee of that person;
- (c) "Collateral" has the same meaning as given to that term in the PPSA;
- (d) "Seller" means Indorama Ventures Oxides Australia Pty Limited and includes all the Seller's employees and agents;
- (e) "Financing Statement" has the same meaning as given to that term in the PPSA;
- (f) "Financing Change Statement" has the same meaning as given to that term in the PPSA;
- (g) "Goods" means any goods supplied by the Seller to the Buyer;
- (h) "Perfected" has the same meaning as given to that term in the PPSA;
- (i) "PPS Law" means:
- (i) the PPSA;
- (ii) any regulation made pursuant to the PPSA; and
- (iii) any amendment from time to time made to any other legislation or regulation as a consequence of a PPS Law referred to in paragraph (i) or (ii) of this definition;
- (j) "PPSA" means the *Personal Property Securities Act 2009 (Cth)*;
- (k) "Purchase Money Security Interest" has the same meaning as given to that term in the PPSA.
- (l) "Registration Commencement Time" has the same meaning as given to that term in the PPSA.
- (m) "Security Interest" means:
- (i) any security for the payment of money or performance of obligations including a mortgage, charge, lien, pledge, trust or power, or title retention arrangement;
- (ii) a security interest as defined in the PPSA; or
- (iii) any document that grants or creates anything referred to in either paragraphs (i) or (ii) of this definition and any other thing which gives a creditor priority over any other creditor with respect to any asset or an interest in any asset.
- (n) "Verification Statement" has the same meaning as given to that term in the PPSA;
- (o) a reference to "including" means "including without limitation";
- (p) any agreement, warranty, representation or obligation which binds or benefits 2 or more persons, binds or benefits those persons jointly and severally; and
- (q) "\$" or "dollars" is a reference to the lawful currency of Australia.
4. **Acceptance**
- 4.1 Acceptance by the Buyer of these Terms and Conditions of Sale, as amended by the Seller from time to time, may be by any one of the following ways:
- (a) by signing and returning a copy of these Terms and Conditions of Sale as indicated below;
- (b) by performing an act that is done with the intention of adopting or accepting these Terms and Conditions of Sale, including but not limited to continuing to purchase Goods; or
- (c) by oral acceptance.
- I/We acknowledge and agree to these Terms and Conditions of Sale as amended by the Seller from time to time. I/We are duly authorized to agree to these Terms and Conditions on behalf of the Buyer.

Signed: \_\_\_\_\_  
Name: \_\_\_\_\_  
Date: \_\_\_\_\_
5. **Description**
- The description herein before given of the Goods has been given by way of identification only and the use of such description does not constitute this sale by description.
6. **Payment Terms**
- 6.1 Payment for the Goods must be made in full (without any set off) and received by Seller within thirty (30) days from invoice date unless otherwise identified by Seller on any statement of account or invoice. Payment is only received by Seller when it receives cash or when the proceeds of other methods of payment are credited to Seller's bank account. If the Buyer makes any default in any payment or is unable or states that it is unable to pay any amount due to the Seller as and when such amounts fall due, all amounts by the Buyer to the Seller shall become immediately payable.
- 6.2 All payments are to be made on or before the due date as a condition precedent to future deliveries or supplies under this or any other contract.
- 6.3 In the event of default by the Buyer in relation to Clause 6.1 all debt recovery costs, including legal costs on a solicitor/own client basis and disbursements, and any mercantile agent costs charged to the Seller will be part of the indebtedness of the Buyer to the Seller.

- 6.4 Without prejudice to any other remedy of Seller, Seller, may charge the Buyer on any overdue accounts interest at a rate of 3% per annum above the prevailing Westpac Reference Rate which the Buyer acknowledges is a genuine pre-estimate of the loss the Seller is likely to suffer as a result of the Buyer's default.
- 7 **Buyers Credit**
- Seller reserves the right without prejudice to any other remedy it may have, either to terminate this contract or to suspend future deliveries hereunder forthwith by written notice if Buyer fails to pay for any one delivery on due date. If, in the Seller's opinion, Buyer's financial status becomes unsatisfactory to Seller, Seller reserves the right to require payment of the price in cash in advance or security for the price in respect of all future deliveries and for goods previously delivered. Buyer shall be liable to pay Seller interest on all overdue accounts at the prevailing rate of interest for lending at Westpac Bank Australia.
8. **Delivery**
- 8.1 All delivery dates quoted are estimates only and Seller shall not be liable for any loss or damage of any kind whatsoever caused directly or indirectly by any failure or delay in delivery, supply or completion arising from any cause whatsoever beyond the Seller's control. Buyer shall not be relieved of any obligation to accept or pay for the Goods by reason of any delay in delivery or despatch.
- 8.2 Seller reserves the right to deliver by instalments. Failure of the Seller to deliver an instalment shall not entitle the Buyer to rescind or repudiate the order or these Terms and Conditions of Sale.
- 8.3 Where Seller partially delivers an order of Goods to Buyer, Buyer shall accept partial delivery and pay Seller's invoiced price.
9. **Force Majeure**
- Deliveries may be totally or partially suspended by Seller in the event of any act of God, war, riot, fire, explosion, accident, flood, sabotage, inability to obtain fuel, power, raw materials, labour, containers or transportation facilities, governmental laws, regulations, orders, requests or action, breakage or failure of machinery or apparatus, failure of a supplier to Seller national defence requirements or any other event beyond the reasonable control of the Seller or in the event of labour trouble, strike, lockout or injunction (whether or not such labour events within the reasonable control of the Seller) which event prevents the manufacture, delivery, acceptance or consumption of a delivery of the Goods or of a material upon which the manufacture of the Goods is dependent. If, because of such an event, Seller is unable to supply the total demand for the Goods, Seller may allocate its available supply of Goods without obligation to purchase similar Goods from other sources among itself and all of its customers, including those not under contract on such basis as it determines to be equitable. During the period of total or partial suspension of delivery Buyer shall be free to purchase elsewhere at its sole risk and cost, such quantities of alternative Goods necessary to cover the shortfall of Goods not delivered by the Seller. Notwithstanding anything else contained in this contract, Seller shall incur no liability whatever as a result of such suspension, and Seller shall be under no obligation to subsequently deliver Goods not delivered during the period of suspension, but this contract shall otherwise, remain unaffected.
- 10 **Technical Advice**
- Seller assumes no liability whatever for any technical advice, recommendation, information (whether contained in data sheets or otherwise) or assistance given, or the results obtained therefrom, all such advice being given and accepted at Buyer's sole risk.
- 11 **Warranty**
- 11.1 Subject to limitations of clause 13 hereof and unless otherwise herein expressly provided, Seller warrants that all Goods sold hereunder shall meet Seller's sales specifications. Seller makes no other representations or warranties of any kind with respect to the Goods whether used alone or in conjunction with other substances.
- 11.2 To the maximum extent permitted by law, without prejudice or admission as to the operation of the *Competition and Consumer Act 2010*, all conditions and warranties expressed or implied by law, are hereby expressly excluded.
- 11.3 No person, acting without the express written authority of a director of the Seller, is authorised or permitted to give or make on behalf of the Seller any undertaking, assertion, statement, warranty admission or other representation in respect of the Goods at variance with these Terms and Conditions of Sale.
- 11.4 Where the Buyer is a consumer under the *Competition and Consumer Act 2010*, the benefits given under this warranty are in addition to the statutory rights and remedies available to the consumer under the *Australian Consumer Law*. Our Goods come with guarantees that cannot be excluded under the *Australian Consumer Law*. You are entitled to a replacement or refund for a major failure and for compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the Goods repaired or replaced if the Goods fail to be of acceptable quality and the failure does not amount to a major failure.
- 12 **Warranty Claims**
- Except where the Buyer has rights and remedies under the *Competition and Consumer Act 2010* and similar state and territory laws applicable to consumers in Australia which cannot be lawfully excluded, restricted or modified, no claim by Buyer whether for alleged damaged or defective Goods, shortage, non delivery, delay in delivery or for any other cause whatsoever need be recognised by Seller, and all such claims shall be deemed absolutely waived by Buyer, unless notified in writing to, and received by Seller at 61 Market Road Brooklyn Vic 3012 Australia within 30 (thirty) days after date of delivery (or due date for delivery) or within thirty (30) days after Buyer learns of the facts giving rise to the claim, whichever shall first occur. Unless otherwise agreed to in writing by the Seller, the Buyer shall bear the expense of claiming the warranty. Seller's liability for any and all loss or damage resulting from any cause whatsoever, including alleged negligence, shall be limited at Seller's election to the replacement of the Goods or the repair of the Goods or 'the cost of repair or replacement of the Goods in respect of which the claim is made. Any damage in excess thereof shall be borne by the Buyer.
13. **Limitation of Liability**
- Subject to these Terms and Conditions of Sale, to the full extent permitted by law, the Seller shall not be liable to the Buyer in contract, tort, law or otherwise howsoever and whatever the cause thereof, (i) for any loss of profit, hire, business contracts, revenues or anticipated savings, financial or economic loss, loss of opportunity or (ii) for damage to the Buyer's reputation or goodwill, or (iii) for any loss resulting from any claim made by any third party, or (iv) for any special, indirect or consequential loss or damage of any nature whatsoever, and none of these shall be included in any direct damages claim.
- 14 **Patents and Trade Marks**
- Seller makes no representation or warranty of any kind, expressed or implied, that the Goods supplied hereunder or the use of such Goods or articles made therefrom whether alone or in conjunction with other substances will not infringe any patent or trademark right. Buyer will forthwith notify Seller of any claim or suit involving Buyer in which such infringement is alleged and if the Seller considers itself to be affected it shall be entitled completely to control the defence or compromise of any such allegation or infringement.
- 15 **Prices**
- 15.1 Unless otherwise agreed in writing, the price charged for the Goods shall be the price ruling as determined by Indorama Ventures at the date of delivery. Any price indications or price lists are subject to alteration in accordance with the price ruling at that date.
- 15.2 Where a transaction tax, including a goods and services tax and any transaction taxes that come into existence after the

date of these Terms and Conditions, applies to any supply made under these Terms and Conditions, Indorama Ventures may recover from the Customer an additional amount on account of that transaction tax.

15.3 Notwithstanding any provision in the Contract, Indorama Ventures may increase the price of Goods after an Order Acknowledgment and prior to delivery of the Goods if the price increase results from an increase in the price of any input which comprise part of the Goods.

15.4 All prices for the supply of Goods are GST exclusive.

## 16 Risk and **Property in Goods**

16.1 Property in the Goods supplied by the Seller to the Buyer pursuant to this contract shall be and remain the property of the Seller until the Buyer has paid all sums owing to the Seller whether under this or any other contract (which payments are not to any extent subsequently claimed or clawed back by any person standing in the place of or representing the Buyer). In the event that Buyer sells such Goods prior to payment therefore or if they shall become constituents of other Goods, then the proceeds of sale thereof shall be the property of the Seller.

16.2 Risk in the Goods passes to the Buyer upon delivery (including all risks associated with unloading) or upon property in the Goods passing to the Buyer, whichever is the earlier.

## 17 **Covenants**

17.1 While the Goods remain the property of the Seller, the Buyer agrees with the Seller that:

- a) the Buyer holds the Goods as fiduciary bailee of the Seller;
- b) the Goods will be stored separately so that they are readily identifiable as the property of the Seller;
- c) the Buyer will not dispose of the Goods except with the Seller's prior written consent or in the ordinary course of the Buyer's business;
- d) the Buyer will hold all money received, relating to the sale of the Seller's Goods in a separate account on trust for the Seller and will pay such monies immediately on request to the Seller;
- e) the money received for the sale of any intermingled Goods, which contain the Goods, will be held in trust for the Seller (to the maximum extent that such "trust" monies represent the total outstanding debt owed to the Seller on all accounts by the Buyer (and will pay such monies immediately on request to the Seller);
- f) the Buyer has no right or claim to any interest in the Goods to secure any liquidated or unliquidated debt or obligation the Seller owes to the Buyer;
- g) the Buyer cannot claim any lien over the Goods;
- h) the Buyer will not create any absolute or defeasible interest in the Goods in relation to any third party, except with the Seller's prior written consent;
- i) pending payment in full for all amounts owed by the Buyer to the Seller on all accounts, the Buyer:
  - i) subject to clause 18, must not allow any person to have or acquire any Security Interest in the Goods;
  - ii) must insure the Goods for their full insurable or replacement value (whichever is higher) with an insurer licensed or authorised to conduct the business of insurance in the place where the Buyer carries on business;
  - iii) must not remove, deface or obliterate any identifying mark or number on any of the Goods; and
  - iv) must not move the Goods from the Buyer's premises.

## 17.2 Seller's Rights

- (a) If the Buyer fails to pay for any Goods within the period of credit extended by the Seller to the Buyer or the

Buyer goes into liquidation or has a receiver or receiver and manager appointed or if an encumbrance takes possession of any of its assets:

(i) the Seller may recover possession of all Goods (in which property has remained with the Seller) at any site owned, possessed or controlled by the Buyer and the Buyer agrees that the Seller has an irrevocable licence to do so without incurring any liability to the Buyer or any person claiming through the Buyer;

(ii) if required, the Buyer will assign to the Seller any rights of the Buyer to any outstanding money relating to the re-supply of the Goods. The Buyer irrevocably appoints the Seller or its nominee as its attorney to sign all documents and do all things necessary to assign the debts to the Seller under this clause, where the Buyer has failed to do so within 7 days of receiving written notice to do so, and ratifies any acts the attorney lawfully does or causes to be done with respect to any such assignment of debts.

## 18. **PPSA Further Assurances**

18.1 If the Seller determines that a PPS Law applies, or will in the future apply, to any agreement that incorporates these Terms and Conditions of Sale (Supply Agreement) or the supply of any Goods, then the Buyer must promptly upon request from the Seller:

(a) do anything (including obtaining consents, making amendments to the Supply Agreement or executing a new Supply Agreement) for the purposes of:

(i) ensuring that any Security Interest created under, or provided for by, the Supply Agreement:

(A) attaches to the collateral that is intended to be covered by that Security Interest;

(B) is enforceable, perfected, maintained and otherwise effective; and

(C) any Security Interest created under, or provided for by, the Supply Agreement has the priority contemplated by that Supply Agreement; or

(ii) enabling the Seller, on and from the Registration Commencement Time, to prepare and register a financing statement or financing change statement; or

(iii) enabling the Seller to exercise any of its powers in connection with any Security Interest created under, or provided by, the Supply Agreement; and

(b) provide any information requested by the Seller in connection with the Supply Agreement to enable it to exercise any of its powers or perform its obligations under the PPS Law.

18.2 Except if section 275(7) of the PPSA applies, each of the Seller and the Buyer agree not to disclose any information of the kind referred to in section 275(1) of the PPSA that is not publicly available.

18.3 The Buyer agrees that, on and from the Registration Commencement Time:

(a) the Seller is under no obligation to dispose of or retain any secured property the Seller seizes within a reasonable time under section 125 of the PPSA;

(b) following a default, the Buyer has no rights to redeem the secured property under section 142 of the PPSA;

(c) the Buyer has no rights to reinstate this document following a default under section 143 of the PPSA; and

(d) despite the Buyer paying for particular Goods itemised in an invoice or order or otherwise in

respect of moneys owing under or in connection with the Supply Agreement, any payments received by the Supplier from the Customer shall be applied in the following order:

- (i) first, to satisfy any obligations owed by the Buyer to the Seller which are unsecured, in the order in which the obligations were incurred;
- (ii) second, to satisfy any obligations owed by the Buyer to the Seller that are secured but which are not secured by a Purchase Money Security Interest, in the order in which those obligations were incurred; and
- (iii) third, to satisfy any obligations owed by the Buyer to the Seller that are secured by a Purchase Money Security Interest, in the order in which those obligations were incurred.

18.4 On and from the Registration Commencement Time, the Buyer waives its rights to receive:

- (a) a notice of the Seller's proposal to remove PPSA personal property which has become an accession under section 95 of the PPSA;
- (b) a notice of the Seller's proposal to exercise its rights in accordance with land law under section 118(1)(b) of the PPSA;
- (c) a notice of the Seller's proposal to enforce its security interest in an account, chattel paper or negotiable instrument under section 121(4) of the PPSA;
- (d) a notice of the Seller's proposal to dispose of any PPSA personal property under section 130 of the PPSA;
- (e) a notice of the Seller's proposal to retain PPSA personal property under section 135 of the PPSA;
- (f) details of the amounts paid to other secured parties in a statement of account provided by the Seller under section 132(3)(d) of the PPSA;
- (g) a statement of account under section 132(4) of the PPSA; and
- (h) a copy of, or notice of, any Verification Statement confirming registration of a Financing Statement or a Financing Change Statement relating to any Security Interest under, or provided for by, the Supply Agreement.

18.5 Anything that is required by the Seller to be done under this clause 18 shall be done by the Buyer at its own expense. The Buyer agrees to reimburse the costs of the Seller in connection with any action taken by the Seller under or in connection with this clause 18.

## 19. Assignment

This contract is personal to the Buyer which shall not assign its rights or delegate its performance hereunder without the written consent in writing of the Seller. The Seller may in its discretion and without notification to the Buyer sub-contract the whole or any part of the production of the Goods hereby agreed to be sold or services to be rendered.

## 20. Pallets

20.1 Seller retains the right of possession of any pallets used for the delivery of Goods, and the Buyer agrees to indemnify the Seller fully in respect of any pallets not returned in good order and condition to the Seller within twenty-eight (28) days of delivery of the Goods.

20.2 Where applicable property in the packaging used for the delivery of the Goods will remain with the Seller. The Buyer shall ensure that the packaging is kept in good order and condition and is returned to Seller within 28 days of the date of delivery. The Buyer indemnifies the Seller for any damage, which is caused to the packaging as a result of a breach of this clause.

(c) In the absence of a proven defect in Seller's system of weighing, the weight of any Goods shall be the last weight determined by Seller prior to the date of delivery.

## 21. Waiver

No waiver by the Seller with respect to any breach or default or any right or remedy shall be deemed to constitute a continuing waiver of any other breach or default or any other right or remedy unless the same be expressed in writing and signed on behalf of the Seller.

## 22. Severance

22.1 If a provision of these Terms and Conditions of Sale would, but for this clause, be unenforceable:

- (a) the provision must be read down to the extent necessary to avoid that result;
- (b) if the provision cannot be read down to that extent, it must be severed without altering the validity and enforceability of the remainder of these Terms and Conditions of Sale.

## 23. Construction of Contract

The validity, interpretation and performance of this contract shall be governed by and construed in accordance with the laws of the State of Victoria, Australia. This contract constitutes the full understanding of the parties and a complete and exclusive statement of the terms of their agreement with respect to the subject matter thereof. Except as hereinbefore expressly provided no conditions, understanding or agreement purporting to modify or vary the terms of this contract shall be binding on the Seller unless made hereafter, in writing, and signed by the Seller.

## 24. GST

24.1 If any supply made by the Seller under or in connection with these Terms and Conditions of Sale is a taxable supply, the Buyer must pay to the Seller, in addition to any amount or consideration payable by the Buyer in relation to that supply (other than as determined by this clause) (GST Exclusive Amount):

- (a) an amount (GST Amount), equal to the amount calculated by multiplying the GST Exclusive Amount for the relevant taxable supply by the prevailing GST rate at the time of that supply (currently 10%); and
- (b) the GST Amount must be paid by the Buyer without any deduction or set-off of any other amount, at the same time and in the same manner as the GST Exclusive Amount is payable or at such earlier time upon demand by the Seller.

24.2 For the purposes of this clause:

- (a) words or expressions used in this clause that are defined in A New Tax System (Goods and Services Tax) Act 1999 (GST Act) have the same meaning as given to them in that Act, unless a contrary intention appears; and
- (b) the expression "GST rate" means the percentage or rate at which GST is imposed or calculated on the value of a taxable supply for the purposes of the GST Act (currently 10%).

## 25. EXPORT

All export sales shall be subject to the additional terms set out on the face hereof or otherwise stated by Seller in writing. Terms used shall have the meaning assigned to them by the relevant provisions of Incoterms current at the date of the sale to the extent they are not inconsistent with the Terms and Conditions of Sale. The Buyer shall also comply with the Regulation 1907/2006 of 18 December 2006 as amended concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals ("REACH") regarding all substances used or manufactured in or imported into the European Economic Area.

26. **INDEMNITY**

26.1 Subject to these Terms and Conditions of Sale, and except where the Buyer has rights and remedies under the Competition and Consumer Act 2010 and similar state and territory laws applicable to consumers in Australia which cannot be lawfully excluded, restricted or modified, the Buyer shall indemnify and keep Seller indemnified against any action, claim, demand, loss, damage, cost or expense which:

- (a) Seller may suffer, incur, or is liable for arising out of, or in connection with the storage, handling, possession, or other act or omission of the Buyer (including without limitation the cancellation of any order) in respect of any Goods supplied; and
- (b) may be brought by a third party arising out of or in connection with any Goods supplied by Seller to the Buyer.

- (a) before any expiry date specified on or in relation to the Goods; and
  - (b) if, at all times after leaving Seller's premises their original sealed packaging (if any) has remained intact.
- 27.2 Any recommended or suggested price for the resale of the Goods is a recommended price only and there is no obligation to comply with the recommendation

I/We acknowledge and agree to these Terms and Conditions of Sale as amended by the Seller from time to time. I/We are duly authorized to agree to these Terms and Conditions on behalf of the Buyer.

Signed: \_\_\_\_\_  
Name: \_\_\_\_\_  
Date: \_\_\_\_\_

27. **RESALES**

27.1 Goods purchased may only be resold without alteration of their state, condition, get-up or packaging or alteration or obliteration of any of the trade marks, numbers, codes or other written matter used on or in relation to the Goods or their packaging, and may only be resold or used-