

# General Terms and Conditions of Sale

*[These general terms and conditions of sale (“Terms and Conditions”) shall constitute part of a sale agreement, unless the sale agreement refers to specific terms and conditions in which case those specific terms and conditions shall apply in conjunction with the Terms and Conditions below]*

## 1. Agreement

These Terms and Conditions are intended to establish the Terms and Conditions under which **PETValue Philippines Corporation** (the “**Company**”) shall sell its products (“**Products**”) to a purchaser (the “**Buyer**”) as and when purchase orders are placed by the Buyer and accepted by the Company (“**Order**”). By placing an Order the Buyer submits an offer to buy the Products pursuant to these Terms and Conditions. The Company shall not be deemed to have accepted any such offer unless and until it ships Products to the Buyer, or accepts the Order of the Buyer in writing, whichever comes first. The Company will not be bound by any standard or printed terms presented by the Buyer unless specifically accepted by the Authorised Officer of the Company in writing. Unless explicitly objected to in writing received by the Company, the Terms and Conditions shall apply to all offers, Order confirmations, Order acceptances, or sales whether or not they applied to a prior purchase by Buyer. No employee or agent, other than the authorised officer of the Company is authorised to make the representations of the Products. “*Contract*” means these Terms and Conditions and/or the sale agreement, and/or the Order for sale of the Products by the Company.

## 2. Price

The purchase price of the Products (“**Price**”) and any other terms and conditions of sale shall be as stated in the Contract or confirmation for acceptance of the Order issued by the Company unless the Company agrees otherwise with the Buyer in writing. The Price shall be payable in the currency designated by the Company.

The Company at any time with due intimation to the Buyer may increase the Price for reasons justifiable.

## 3. Payment and Credit

Payment terms shall be as established by the Company from time to time as mentioned in the Contract. If the

Buyer fails to pay for any one or more installments of the Price when due, or if the Buyer's financial worthiness, becomes unsatisfactory to the Company, then the Company shall have the right, in addition to other remedies, available to it under the Terms and Conditions or the Contract, to (a) suspend or cancel further deliveries, (b) require immediate cash payment for further deliveries, or (c) require satisfactory security before proceeding with further deliveries. Any amounts past due over thirty days will accrue interest from their due date at the higher of (a) 6% per annum or (b) the maximum rate permitted under applicable law. The Company will invoice the Buyer for and in respect of each sale and individual consignment of the Products delivered under each Order via regular mail, electronic mail or by any other electronic means. Any invoice not objected to by the Buyer in writing within one month of shipment will be deemed to be an undisputed invoice. The Price of each delivery shall be payable by the Buyer as directed in writing by the Company or as specifically mentioned in the Order. The Price of the Products shall be due and payable within the agreed days after the receipt of invoice. The Buyer has no right to set-off against any amount due to the Buyer from the Company or any affiliated company of the Company. The payment is not deemed to be received unless it has been received in cleared funds. No partial payment by the Buyer shall constitute an accord and satisfaction or otherwise satisfy the entire outstanding balance of any invoice of the Company, notwithstanding any notation or statement accompanying that payment. Notwithstanding anything set out above, the Company reserves the right, with due intimation to the Buyer, to vary the agreed payment terms and/or to cancel or change any credit arrangements or terms granted to the Buyer. Buyer shall reimburse the Company for the cost of collection, including, without limitation, reasonable attorney's fees, of any overdue amount owed by Buyer to the Company. Buyer may not hold back or set-off any amounts owed to the Company in satisfaction of any claims asserted by Buyer against the Company.

## 4. Taxes

The Price does not include any sales, use, revenue, excise, value added or other taxes or governmental charges, all of which are the Buyer's sole responsibility. Any tax or other governmental charge payable by the Company due to the sale, delivery or use of the Products, such as, but not limited to, sales tax, use tax, retailer's occupational tax, gross receipts tax, value added tax and transportation tax, may, at the Company's option, be added to the Price.

## **5. Title and Risk of Loss**

### ***A. Domestic Sales***

The title, risk of loss for the Products delivered shall pass from the Company to Buyer the moment the Products are delivered at the agreed point of delivery.

### ***B. International Sales***

Unless otherwise agreed in writing or indicated on the Order, invoice or elsewhere in any sale agreement, title shall pass from the Company to the Buyer pursuant to INCOTERM version 2010.

However in any case, the Company can reclaim title to the Products delivered or to be delivered to Buyer if the Company has not received payment in full of the Price of the Products, the fees for any work done in relation to the Products, and any costs or damage resulting from a breach by the Buyer of its obligations in regard to the sale of the Products.

## **6. Insurance**

### ***A. Domestic Sales***

Unless otherwise stated in the Contract, the Company shall insure the Products up to the agreed point of delivery and thereafter it will be the sole responsibility of the Buyer to insure the Products.

### ***B. International Sales***

The Buyer / the Company shall be responsible for insuring the Products as per INCOTERM version 2010 as indicated in the Order, invoice or elsewhere in any sale agreement.

However, in the event, the title of the Products passes on to the Buyer but the Buyer has not made payment for the Products, in such case the Company shall be entitled to receive the insured claim amount from the insurer of the Buyer to the extent due to the Company.

The insurance provided by the Buyer must be made to cover any damages or loss on the Products for full amount of the insurable value of the Products.

## **7. Cancellation or Delay**

Other than with the express written consent of the Company, the Buyer has no right to cancel any Order it submits to the Company or to delay any delivery. If the Company allows the Buyer to cancel any Order or to delay a delivery, the Buyer shall pay the Company all costs the Company has incurred, and will incur, with respect to the cancellation or delay, including all restocking charges. It is understood and agreed between the Buyer and the Company that if this Terms and Conditions covers Products that must be

manufactured especially for the Buyer (custom made) and such an Order is suspended or terminated for any reason, the Buyer shall take delivery of and make payment for such Products as have been completed and such Products as are in process on the date notice of suspension or termination is received by the Company. If the Buyer for any reason cannot accept delivery of such custom made manufactured Products, the Buyer shall make payment therefore as though delivery has been made and the Company may in its sole discretion, store such Products for the Buyer's account and at the Buyer's expense or destroy or dispose of such Products as it deems appropriate.

## **8. Shipment and Delivery**

Unless otherwise expressly stated in the Order, time of delivery shall not be of the essence. The Buyer shall give the Company reasonable written notice of requested shipment and delivery dates. All shipment schedules and delivery dates or periods quoted by the Company are estimates only and the Company is not liable for any delay in shipment, transportation or delivery. Unless stated otherwise in the Order, selection of carrier and routing of shipment shall be at the Company's option, but the Company will not, by exercising such option to select the carrier and routing, assume any liability in connection with shipment, nor shall the carrier in any way be construed to be the agent of the Company. The Company may make partial deliveries or may discontinue deliveries of any Products, at any time, without notice. The Products shall be delivered on the terms as set out in the Order and accepted by the authorised officer of the Company or contract, or on the basis of INCOTERM version 2010, in case of international sales. Without the express written consent of the Company, Buyer shall not be entitled to refuse to accept delivery and/or return any consignment of the Products delivered by the Company.

## **9. Weights, Measurements and Quantities**

The Company's weights and/or measurements shall govern and be deemed to be accepted by the Buyer if the Buyer has not complained, of any discrepancy in weight, to the Company within 7 days of taking delivery.

On bulk marine vessel shipments, claims may not be made for shortages of less than 1.0% of the net weight. On bulk tank trucks, bulk tank cars, or packaged shipments, claims may not be made for shortages of less than 0.5% of net weight.

While the Company will make best endeavors to deliver the full quantities purchased by the Buyer, and in such consignments and intervals as indicated in the Order, such deliveries will be subject to availability and the Company has no liability to the Buyer in the event

that the actual deliveries differ from those set out in the Order. Where delivery of the Products is to be made in bulk, the Company reserves the right to deliver up to five per cent (5%) more or five per cent (5%) less than the quantity ordered, and the quantity so delivered shall be deemed to be the quantity ordered.

#### **10. Containers and Delivery Equipment**

The Buyer shall unload and return delivery equipment furnished by the Company to the carrier within twenty-four (24) hours after arrival. The Buyer shall be responsible for the cost of any damage to such delivery equipment and shall further be responsible for the costs of any demurrage or detention charges on such equipment. If shipment/delivery requires use of returnable containers title to such containers shall remain in the Company at all times. Such containers shall be returned in good condition to the Company within sixty (60) days from the date of shipment, and the Buyer shall be responsible for the cost of any damage to such containers and/or the costs of any demurrage or detestation charges with respect to such containers.

#### **11. Product Characteristics**

The Buyer represents that it has the requisite expertise, facilities and equipment to properly store, test, use and dispose of the Products. The Buyer and all its employees and others that handle the Products shall familiarize itself with the characteristics of the Products and shall comply with all laws, regulations, and standards applicable to the possession, handling, processing or use of the Products. The Buyer shall follow the safety recommendations of the Company provided that, notwithstanding any product instructions given by the Company, the Buyer shall be responsible to ensure that the Products shall be stored, tested, used, sold and/or disposed of strictly in compliance with instruction of the Company and any applicable health, safety, environmental, land use or other guidelines, standards, laws or regulations.

#### **12. Product Suitability**

Determination of the suitability of the Products for the uses and applications contemplated by the Buyer and others shall be the sole responsibility of the Buyer. The Company makes no representations or warranties with respect to their suitability for any use for which the Buyer may intend them. Any suggestions or recommendations made by the Company concerning uses or applications of the Products are believed to be reliable, but the Company makes no warranty or guarantee of the results to be obtained since the conditions of the use and application by the Buyer and others may vary and are beyond the Company's control.

#### **13. Warranties and Disclaimers**

There are no warranties, express or implied, made by the Company herein, except for the limited warranty against defects in materials set forth in the following paragraph.

The Company warrants that the Products shall meet the standard written specifications of the Company in effect as of the date of delivery.

This limited warranty is expressly in lieu of any other warranties, express or implied, including, without limitation, any implied warranty of merchantability or fitness for a particular purpose.

The Products subject to the Contract are not warranted as suitable for any particular purpose particular to Buyer. The suitability of Products for any purpose particular to Buyer is for Buyer, in Buyer's sole judgment, to determine. The Company assumes no responsibility for the selection or furnishing of Products suitable to the individual needs and purposes of Buyer.

No claim of any kind against the Company shall exceed the Price of the Products that has actually been paid to the Company under the Contract; provided further that the size of any claim shall be limited in amount to the Price of the particular Order of Products and/or the Price of the actual quantity of Products delivered for which the Buyer is making a claim. The remedy hereby provided shall be the sole and exclusive remedy of Buyer; and any right of the Buyer to loss of profits or for special, indirect, incidental, exemplary, punitive or consequential damages of any kind is hereby excluded. No charges or expenses incident to any claims will be allowed unless approved in writing by an authorized representative of the Company.

#### **14. Liability Limitations**

The Buyer assumes all risk and liability resulting from the use of the Products, whether alone or in combination with other materials.

Buyer assumes responsibility to analyze the Products, and the Company shall have no liability if Buyer uses the Products that do not conform to the standard written specifications of the Company in effect as of the date of delivery. The Buyer must give the Company written notice of any failure of the Products to comply with the Company's specifications within five days after the Buyer identifies any non-compliance. The Company shall have a reasonable opportunity to inspect the Products at issue. For any Products that the Company determines do not conform to the specifications, the Buyer's sole and exclusive remedy shall be for the

Company, at its sole discretion, to replace the nonconforming Products or refund the amount of the Price that the Buyer has already actually paid to the Company for the non-conforming Products, and in no event shall the Company's liability for any claim exceed that amount. Claims related to non-conforming Products shall be made within thirty (30) days after discovery thereof. All other claims shall be made within thirty (30) days after receipt of the Products to which the claim relates, or if for non-delivery, after the scheduled delivery date. The Buyer's failure to give the Company written notice of any claim within the applicable time period shall constitute an absolute and unconditional waiver of such claim. In no event shall the Buyer commence any action against the Company later than 90 days after the cause of action has accrued

#### **15. Indemnity**

The Buyer represents that it is familiar with the characteristics of the Products and assumes all responsibility and liability for and will indemnify and hold the Company harmless from any and all loss or injury to persons or property arising out of handling use or possession of the Products delivered to it. The Buyer shall defend, indemnify and hold the Company and its employees free and harmless from and against any and all claims, liabilities, judgments, losses, damage to property or bodily injury, economic losses or expenses (including reasonable attorneys fees) in connection with, without limitation, (a) the performance of fulfillment of this Contract by the Company and (b) Buyer's use of the Products, (c) any processing or modification of the Products in any manner by the Buyer, its employees, agents or customers, (d) any violation of law or regulation by, intentional or negligent act of, or unauthorized representation by the Buyer, its employees or agents in their use, sales, distribution or handling of Products, and (e) any violation or infringement of any patent, trademark, copyright, trade secret or other property interest of a third party. At the Company's request, the Buyer shall defend the Company, at the Buyer's expense, against any such claims made against the Company.

#### **16. Force Majeure**

The Company shall not be liable for any failure to deliver or delay in the performance of the Contract or in the delivery or shipment of the Products, or for any loss or damages suffered by Buyer by reason of such delay, if such delay is, directly or indirectly caused by, or in any manner arises from events and causes beyond the Company's reasonable control, including but not limited to accidents, acts of God, acts and omissions of any governmental authority, declared or undeclared wars, terrorism, explosions, strikes or other labor disputes, fires and natural calamities (including floods, earthquakes, storms and epidemics), changes in the law, and delays in

obtaining (or the inability to obtain) labor, materials or services through the Company's usual sources at normal prices, riots, embargoes, fuel, power, materials or supplies, delay or default of common carriers, transportation delays, or without limiting the foregoing, any other cause or causes, whether or not similar in nature to any of these herein before specified or which are beyond its reasonable control. The Company shall have the additional right, in the event of the happening of any of the above contingencies, at its sole option, to cancel any Order or any part thereof without any resulting liability or to extend the date of delivery for a period equal to the time actually lost by reason of the delay. Further, in the event that the Company is not able to produce enough Products to satisfy all outstanding Orders for any reason, the Company retains the right, in its sole discretion, to allocate its products amongst its customers.

#### **17. Waiver**

No waiver by the Company of any breach by the Buyer of any of the Terms or Conditions contained herein, or delay or failure of the Company to enforce any right or remedy, shall be construed as a waiver of any succeeding breach of the same or any other terms or conditions. Nothing contained herein shall limit the remedies of the Company in the event of the Buyer's breach of any Terms and Conditions contained herein.

#### **18. Assignment**

The Buyer shall not assign to any person or entity all or a portion of its rights or obligations under the Terms and Conditions without the prior written consent of the Company, in its sole discretion, and any attempted assignment without that consent shall be void. The Company may assign its rights under the Terms and Conditions without the consent of the Buyer in the event that the Company shall effect a reorganization, consolidate with or merge into any other corporation, partnership, organization or other entity, or transfer all or substantially all of its properties or assets to any other corporation, partnership, organization or other entity. However, in any other circumstances the Company, with intimation to the Buyer, may transfer its rights under and subject to the terms of Contract.

#### **19. Severability**

If any of the Terms and Conditions is held by a competent authority to be invalid or unenforceable, the validity of the other provisions of the Terms and Conditions shall not be affected.

#### **20. Notices and Communication**

Any notice or other communication that either party gives under the Order or any sale agreement shall be

made in writing and given either by hand, first class recorded postal delivery or facsimile transmission or electronic mail to a previously designated authorized individual or by any other electronic means.

## **21. Conflicting provisions**

In the event of any conflicting or inconsistent provisions between 1) the sale agreement, 2) these Terms and Conditions, 3) the Order, and 4) the other applicable document or correspondence, the provisions of 1) the sale agreement 2) the Terms and Conditions and 3) the Order and 4) the other applicable documents or correspondence shall always prevail respectively and take precedence with respect to any such conflicting or inconsistent provisions.

## **22. Status of the Buyer**

Nothing in the Terms and Conditions or any Order shall create or be construed as creating a partnership, joint venture, a contract of employment or relationship of employer and employee, or a relationship of principal and agent between the Buyer and the Company.

## **23. Confidentiality**

The Buyer shall undertake to keep in strict confidence all information obtained from the Company and shall not use any such information for any purpose other than the purposes originally intended. Buyer shall protect the confidentiality of all such information with the same degree of care it uses to protect its own confidential information, but in no event less than a reasonable standard of care. For the avoidance of doubt, the Price of the Products shall be deemed to be confidential information for the purposes of this Section 23.

The Buyer agrees that it would be difficult to measure any damages caused to the Company which might result from any actual or threatened breach by the Buyer of the promises set forth in this Section 23, and that in any event money damages would be an inadequate remedy for any such breach. Accordingly, the Buyer agrees that the Company shall be entitled, in addition to all other remedies that it may have, to an injunction or other appropriate equitable relief to restrain any actual or threatened breach by the Buyer of the promises set forth in this Section 23, without the necessity of proving actual damages and without the posting of any bond. Buyer further agrees that, in such event, Buyer shall reimburse the Company for its attorneys' fees and costs.

## **24. Governing Law**

The Terms and Conditions, the sale agreement, the Order and any dispute or claim arising out of or in connection within them or their subject matters or

formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the relevant laws **of the Republic of the Philippines** without regards to its conflicts of law provisions. All disputes shall be brought in the courts of the Republic of the Philippines.