

TERMS AND CONDITIONS OF SALE

1. DEFINITIONS

In these terms and conditions:

“**Buyer**” means the person entering into a Contract with the Seller.

“**Contract**” means any contract for the sale or supply of Goods and/or Services entered into between the Seller and the Buyer;

“**Contract IP**” means IP Rights in all materials developed by the Seller or the Buyer or their servants, agents, subcontractors, consultants or Related Bodies corporates specifically for the purposes of carrying out this Contract;

“**Deliverables**” means the supply of Goods and/or Services to the Buyer;

“**Delivery**” in relation to the Goods has the meaning given to that term in clause 4(a);

“**Goods**” means all products agreed to be supplied by the Seller or a supplier which has entered into an arrangement with the Seller to supply products to the Buyer under any contract, arrangement or understanding between the Seller and the Buyer;

“**Guarantee and Indemnity**” means the guarantee and indemnity (if any) entered into by the Buyer in respect of its application for commercial credit with the Seller;

“**Heavy Vehicle National Laws**” means the *Heavy Vehicle National Law Act 2012 (Qld)*, *Heavy Vehicle National Law Application Act 2013 (Vic)*, *Heavy Vehicle National Law (NSW) (2013 No 42)*, *Heavy Vehicle National Law (ACT) Act 2013*, *Heavy Vehicle National Law (SA) Act 2013*, in force as at the date of these terms and conditions and as amended from time to time.

“**IP Rights**” means all industrial and intellectual property rights of any kind whether conferred by statute, at common law or in equity;

“**Order**” means an order for Deliverables made by the Buyer (whether by telephone, email, in-person or by facsimile) to the Seller;

“**PPSA**” means the *Personal Property Securities Act 2009* (Cth);

“**PPSR**” means the national online register established under the PPSA;

“**Quoted Date**” means the date of delivery of Goods and/or the date for performance of Services as agreed between the Buyer and the Seller;

“**Related Body Corporate**” has the meaning given in the *Corporations Act 2001* (Cth);

“**Services**” means all services agreed to be provided by the Seller or a Subcontractor;

“**Subcontractor**” means a subcontractor of the Seller engaged to perform some or all of the Deliverables; and

“**Seller**” means Wilmar Ingredients (Australia) Pty Ltd (ACN 653 545 290) and any of its agents, servants, employees and any Related Body Corporate.

2. FORMATION OF CONTRACT

(a) Each Order for Deliverables made by the Buyer and which is accepted by the Seller or its Subcontractors will constitute a Contract.

(b) No Contract is accepted or will come into existence until the Seller issues a written or verbal confirmation of order to the Buyer or, if earlier, the Seller or its Subcontractor first delivers the Deliverables to the Buyer.

3. APPLICATION OF TERMS

(a) These terms and conditions apply to all Orders, and all Purchase Order Documents electronically transmitted to the Buyer and constitute the entire agreement between the Seller and the Buyer, unless otherwise stated in the Purchase Order Documents. If there is any

conflict or inconsistency between the provisions of the Purchase Order Documents, the following order of precedence will be applied:

- (i) terms of the application for credit (if applicable);
- (ii) the Guarantee and Indemnity (if applicable);
- (iii) any signed agreement for the purchase of the Deliverables by the Buyer from the Seller;
- (iv) the Order; and
- (v) these Terms and Conditions (the **Purchase Order Documents**).

(b) No terms or conditions supplied by the Buyer in response to the Seller's Purchase Order Documents, or through the issuance of an Order will be binding upon the Seller.

(c) These Terms and Conditions may be varied at any time by the Seller on written notice to the Buyer, including by posting to the website of the Seller. If they are varied, the varied terms will apply to all subsequent Contracts formed under these terms and conditions but not any existing Contracts already formed but not yet fully performed at the date the variation takes effect.

4. DELIVERY

(a) Delivery of the Goods will be effected by the Seller:

- (i) loading (which shall include discharging) the Goods into the Buyer's own or nominated transport; or
- (ii) own or nominated transport unloading the Goods at the nominated address; or
- (iii) own or nominated transport loading (which shall include discharging) the Goods into the Buyer's container or storage facility; or
- (iv) leaving the Goods at the address for delivery.

(b) If the Buyer will not accept delivery when the Goods are ready for Delivery or the Seller is unable to effect Delivery because the Buyer has not provided the Seller with appropriate instructions, documents, licenses or authorisations, risk in the Goods passes to the Buyer, the Goods will be deemed Delivered, and the Seller may store the Goods until actual delivery, in which case, the Buyer will be liable to the Seller for all related costs, such as transport, storage and insurance.

(c) the Seller will make all reasonable efforts to have the Goods delivered to and the Services performed for the Buyer on the Quoted Date, but the Seller will not be liable for any failure to deliver or delay in delivery for any reason, and time will not be made of the essence by notice from the Buyer.

(d) Deliveries of the Goods and/or Services may be totally or partially suspended by the Seller during any period in which the Seller may be prevented or hindered from manufacture, delivery, supply or performance through any circumstances outside the Seller's reasonable control, including but not limited to strikes, lockouts or other labour difficulty, inability to obtain any necessary materials, equipment, facilities or services, power or water shortage, accidents or breakdowns of plant, machinery software, hardware or communication network. The Seller will not incur any liability to the Buyer in respect of such suspension. If the suspension lasts for more than 25 days from the Quoted Date, the Buyer is entitled to terminate the applicable Contract to which the suspension relates by written notice to the Seller.

5. ACCEPTANCE OF GOODS

The Buyer will examine the Deliverables for defects and shall notify the Seller of any defects in writing within 30 days of Delivery. If the Buyer does not notify the Seller within 30 days of Delivery the Buyer shall be deemed to have accepted the Deliverables.

6. RISK

Unless otherwise provided in these Terms and Conditions or agreed in writing by the Seller, all risk in and to the Goods passes to the Buyer on Delivery to the Buyer or its agent or to a carrier commissioned by the Buyer.

7. TITLE

- (a) All title to, property interests in or claims to the Goods are reserved to the Seller and will not pass to the Buyer until all amounts owing under a Contract have been paid in full and the Buyer irrevocably and unconditionally waives any present or future entitlement or right to claim or exercise a right of lien over the Goods until such time up until title transfers.
- (b) The Seller is the legal owner entitled to possession and control at all times of the Goods and will have the right to retake possession of Goods for which payment has not been received in full. Should it be necessary, the Buyer irrevocably authorises the Seller to enter the Buyer's premises for the purposes of retaking possession pursuant to this clause 7.
- (c) If the Buyer sells the Goods or uses the Goods before they are paid for in full, the Buyer shall hold the proceeds of such sale or the products of such use as are related to the Goods on trust for the Seller.

8. PPSA

- (a) Terms used in this clause 8 shall have the meaning given to them in the PPSA.
- (b) The Seller and the Buyer acknowledge that these terms and conditions constitute a Security Agreement.
- (c) In consideration of the Seller agreeing to supply the Goods to the Buyer on the terms set out in these Terms and Conditions, and in order to better secure the Buyer's adherence to these terms and conditions, the Buyer hereby:
 - (i) grants a Security Interest over all legal and/or equitable interest it has in any cash, uncalled capital, capital which has been called but unpaid, any choses of action, goodwill, stock, book debts and trade debtors; and
 - (ii) grants a Purchase Money Security Interest ("PMSI") in favour of the Seller over the Goods supplied or to be supplied to the Buyer pursuant to these terms and conditions.
- (d) The Buyer acknowledges and agrees that the Seller is entitled to register the Security Interest and PMSI referred to above on the PPSR.
- (e) The Buyer will use its reasonable endeavours to ensure that the Seller has first priority over any interest in or claim or right of any other person to the Goods.
- (f) To the extent permitted by law the Buyer:
 - (i) waives its right to receive notification or a copy of any Verification Statement confirming registration of a Financing Statement or a Financing Change Statement relating to a Security Interest granted by the Buyer to the Seller;
 - (ii) agrees to indemnify the Seller, on demand, for all costs and expenses, including legal costs associated with the registration, amendment or discharge of any such Finance Statement and enforcement of any Security Interest granted to the Seller by the Buyer;
 - (iii) agrees that nothing in sections 130 to 143 (inclusive) of the PPSA will apply to these terms and conditions, the Security Interest or the PMSI granted pursuant to this clause 8; and
 - (iv) agrees to waive its right to:
 1. receive notice of removal of an Accession under section 95;

2. receive notice of an intention to seize Collateral under section 123;
3. object to the purchase of Collateral by the Secured Party under section 129;
4. receive notice of disposal of Collateral under section 130; and
5. receive a Statement of Account if there is no disposal under section 132(4).

9. PRICE

- (a) Unless otherwise agreed in writing, the price charged for the Deliverables will be the price quoted for the relevant delivery period by the Seller to the Buyer prior to the date of dispatch of the Deliverables.
- (b) Any price indications or price lists are subject to alteration prior to formation of a Contract.
- (c) All prices for Deliverables are exclusive of GST which is payable by the Buyer in accordance with the relevant invoice.

10. PAYMENT

- (a) Unless otherwise agreed by the Seller in writing, payment must be made by the Buyer in Australian Dollars within 30 days from the end of month in which the invoice is received.
- (b) The Buyer agrees it is not entitled to set off or counterclaim amounts due to the Seller or to withhold or refuse payment on any ground, unless the Seller agrees otherwise in writing or the Buyer has a valid court order to do so.
- (c) Time for payment of any amount owing by the Buyer to the Seller under these terms and conditions or any Guarantee and Indemnity is of the essence.
- (d) The Buyer will be liable to the Seller for any additional costs or expenses incurred by the Seller seeking to enforce its rights in, or recover any outstanding sums due under, a Contract or the Guarantee and Indemnity.
- (e) If at any time default is made by the Buyer in the payment of monies due and payable then demand for payment or performance may be made at any time and from time to time by the Seller of the Buyer. In such case the Buyer will immediately pay to the Seller any amount that is outstanding free from any set off or deduction.

11. USE OF THE DELIVERABLES

- (a) The Buyer undertakes to the Seller:
 - (i) that it will comply with all legal requirements and directions by relevant government and statutory bodies relating to the Deliverables and to the application to which the Deliverables are put, including (but not limited to) environmental laws and the Heavy Vehicle National Laws;
 - (ii) that at all times whilst the Goods are in the Buyer's possession or under its control or in the possession or control of the Buyer's employees, agents and/or subcontractors, it will comply with such requirements; and
 - (iii) that it will procure that any person to whom it sells or gives the Goods will also acquaint themselves with and comply with such requirements.
- (b) The Buyer undertakes that it will comply with, and will ensure that its employees, agents and subcontractors comply with, the Seller's safety instructions as notified from time to time by the Seller relating to the Deliverables, including relevant material safety data sheets and/or product specifications as set out on the Seller's website from time to time.
- (c) The Buyer will indemnify the Seller on demand against any liability resulting from a breach of such requirements set out in clauses 11(a) and (b).

12. STATUTORY PROVISIONS

These terms and conditions shall be subject to the provisions of the *Competition and Consumer Act 2010* (Cth) (“**ACL**”), any statutory amendment or re-enactment thereof for the time being in force and any other applicable State and/or Commonwealth legislation (“**the Statutory Provisions**”).

13. WARRANTIES

Subject to any applicable Statutory Provisions:

- (a) The Seller warrants that the Goods and/or Services supplied are of merchantable quality and comply with the description and specifications as set out on the label or other product or services documentation for the Deliverables published by the Seller and/or the supplier of the Deliverables.
- (b) The warranties in subclause 13(a) do not apply to the extent that the non-conformance is due to (i) normal wear and tear; (ii) the Deliverables having been subject to neglect, accident, contamination, damage or misuse by the Buyer, removal, maintenance or application by the Buyer, (iii) the Buyer failed to follow the Seller's written or oral instructions or good trade practices as to storage or use of the Goods or (iv) the Buyer having altered, modified, repaired or attempted to correct a defect in the Deliverables. All other warranties express or implied, arising by operation of law or otherwise, including implied warranties or merchantability or fitness for a particular purpose are excluded.
- (c) The Seller's liability for breach of subclause 13(a) or a condition or warranty implied into this Contract by law including without limitation the Statutory Provisions (other than a condition implied by sections 51-53 of the ACL) is limited to any one of the following, as solely determined by the Seller:
 - (i) in relation to the Goods, the replacement or repair of the Goods or the supply of equivalent Goods or the refund of the price paid by the Buyer for the Goods; and/or
 - (ii) in relation to the Services, supplying the Services again or payment of the cost of having the Services supplied again.
- (d) If the Buyer is a partnership or trust, the Buyer enters this Contract personally and in its capacity as partner and/or trustee (as applicable), and represents and warrants that it has the power, to perform its obligations under this Contract.

14. BUYER INDEMNITY

The Buyer indemnifies the Seller for any loss the Seller may suffer from the non-payment by the Buyer for all such Deliverables as the Seller may from time to time at the Buyer's request supply to the Buyer.

15. LIMITATION OF LIABILITY

To the maximum extent permitted by law and notwithstanding any other clause of these terms and conditions, the Seller's total liability in contract, tort (including negligence), breach of statutory duty, misrepresentation or otherwise, arising in connection with the performance or contemplated performance of a Contract is limited to the total price payable by the Buyer under that Contract.

16. EXCLUSION FOR CONSEQUENTIAL LOSSES

To the extent the law permits and notwithstanding any other clause of these terms and conditions, the Seller will not be liable to the Buyer arising out of or in any way connected with a Contract for any consequential or indirect losses, damages or expenses of any kind, howsoever arising, and whether caused by a breach of statute, breach of contract, negligence or other tort, by the Seller or its officers, employees, agents, contractors, supplier or Subcontractor. Consequential or indirect losses, damages and expenses includes, without

limitation and for the avoidance of doubt, any loss of reputation, and any other loss, damage or expense being a probable result of a breach of Contract in the reasonable contemplation of the parties at the date of entering into that Contract.

17. INTELLECTUAL PROPERTY

- (a) Each party retains ownership of IP Rights that were owned by that party prior to the provision of the Deliverables.
- (b) All Contract IP is owned by the Seller.
- (c) The Seller provides to the Buyer a perpetual, royalty free, irrevocable, non-exclusive licence to use the Contract IP for the purposes of, and to the extent necessary to enable the Buyer the enjoyment of the Deliverables. The Buyer will limit access to the Contract IP to its employees, contractors, agents and advisers who have the need to use the Contract IP.

18. ADVICE

Any advice, recommendation, information, assistance or service given by the Seller in relation to Deliverables is given by the Seller in good faith on the information available to it or given to it by the Buyer at the relevant time. Subject to any applicable Statutory Provisions, any liability arising out of or in respect of such advice, recommendation, assistance or service provided by the Seller is excluded.

19. BUYER DEFAULT

- (a) If the Buyer does not pay the Seller any amount due under a Contract or makes payment to the Seller that is not in accordance with clause 10(a), the Seller is entitled to charge an overdue account fee on the amount outstanding at the rate equal to the Australian Taxation Office (**ATO**) 'General Interest Charge' (as published each quarter by the ATO on their website) at the date the payment was due, pro-rated over a 365 day period for each day of delay (or such other rate as the Seller may publish from time to time in lieu of that rate).
- (b) If any of the events set out in (i) to (v) (inclusive) below occur, the Seller may, at its sole option, withhold further deliveries or cancel a Contract without notice to the Buyer and without prejudice to any other action or remedy which the Seller has or might otherwise have had, and all monies owing and outstanding to the Seller on any account whatsoever and irrespective of whether the due date on any statement of account has occurred or passed will become immediately due and payable to the Seller by the Buyer:
 - (i) the Buyer makes default in any payments or is unable or states that it is unable to pay its debts as and when they fall due;
 - (ii) the Buyer being an individual commits an act of bankruptcy or has a controller or trustee appointed in respect of the Buyer's estate or any part of the Buyer's property or assets;
 - (iii) the Buyer being a company passes a resolution for its winding up or enters into liquidation or has an application for winding up filed against it;
 - (iv) a receiver, receiver and manager, controller or voluntary administrator is appointed over any part of the property or assets of the Buyer;
 - (v) the Buyer experiences any analogous events having substantially similar effects to any of the events specified above.
- (c) Without prejudice to its other rights under these terms or otherwise, the Seller may, in its sole discretion and without giving any reasons, alter or terminate the Buyer's credit limit or payment terms on written notice to the Buyer.

20. SEVERANCE

If any provision of these terms and conditions or its

application to any person or circumstance is or becomes invalid, illegal or unenforceable, the provision will, so far as possible, be read down to such extent as may be necessary to ensure that it is not invalid, illegal or unenforceable. If any provision or part of it cannot be so read down, the provision or part of it will be deemed to be void and severable and the remaining provisions of these terms and conditions will not in any way be affected or impaired.

21. TRANSACTION TAX

Where a transaction tax, including a goods and services tax ("GST") and any transaction taxes that come into existence after the date of these terms and conditions, applies to any supply made under a Contract or any Guarantee and Indemnity, the Seller may recover from the Buyer an additional amount on account of that transaction tax in accordance with clause 8 or the Guarantee and Indemnity, as the case may be.

22. INTELLECTUAL PROPERTY

No right or licence is granted to the Buyer under any patent, copyright, registered design or other industrial property right except the right to resell to Goods in the ordinary course of business.

23. SET-OFF BY SELLER

The Seller in its sole and unfettered discretion may at any time set-off any amount owing by the Seller to the Buyer (or a Related Body Corporate of the Buyer) on any account whatsoever, including any monies held by the Seller for or on account of the Buyer, against any amount owing by the Buyer to the Seller in respect of the Deliverables supplied by the Seller whether or not that amount has become due and payable.

24. ASSIGNMENT

No Contract or any Guarantee and Indemnity is assignable by the Buyer without the prior written consent of the Seller, which it may withhold in its sole discretion without giving reasons. The Seller may assign or subcontract all or any part of its rights and obligations under a Contract.

25. NOTICES

- (a) All notices given under a Contract or any Guarantee and Indemnity must be in written English and be sent by registered sign for post by Australia Post within Australia, by tracked, registered airmail by an international courier if sent internationally, by fax, or by email to the then current registered address, fax number or email address published by the recipient party or as otherwise notified by the recipient party to the sending party from time to time.
- (b) All such notices will be deemed delivered (in the absence of earlier proof of receipt and if sent in accordance with clause 25(a) above) on the second business day of the recipient if sent by post within Australia, on the fifth business day of the recipient if sent internationally by courier airmail, or at 9am on the next business day of the recipient if sent by fax or email. For these purposes, a business day does not include any Saturday or Sunday or a public holiday in the jurisdiction of the recipient.

26. CREDIT INFORMATION

If the Deliverables are provided to the Buyer on credit terms, the Buyer authorises the Seller at all times to:

- (a) provide credit information concerning the Buyer to any credit reporting body;
- (b) seek consumer credit information from a credit reporting body including a credit report containing personal credit information about the Buyer in relation to the level of commercial credit sought to be provided by the Seller;
- (c) exchange information with other credit providers; and
- (d) give any information concerning the Buyer to any part of the Seller or its related entities including the Seller's

executive, management, support staff and necessary auditors and consultants provided the recipient of the information keeps the information confidential.

27. PRIVACY

- (a) Each party must comply with all applicable Privacy Laws (Privacy Law means the *Privacy Act 1988 (Cth)* and the *Australian Privacy Principles* contained in that Act.)
- (b) The Seller agrees, in delivering the Services, that it will ensure that any person under the control of the Seller is made aware of, and complies with all applicable Privacy Laws.
- (c) In accordance with the privacy policy as published on the Seller's website, the Buyer consents to the collection and other handling of its Personal Information (as that term is defined under the Privacy Act) by the Seller providing it is for the purpose of the performance and exercise by the Seller of its obligations and rights contemplated by these Terms and Conditions or providing that it is only given to government agencies and industry research development organisations.

28. ANTI-BRIBERY

- (a) The Buyer undertakes and represents that, in all of its activities in connection with this Contract it will comply fully with all applicable anti-bribery and anti-corruption legislation, without limitation, the Australian Criminal Code Act 1995 (Cth) or similar laws of other countries (collectively, Anti-Bribery Laws) that are applicable and will remain in compliance with all such laws during the term of this Contract.
- (b) If the Buyer, or its personnel are found to be engaging, in conduct that violates or will place the Seller at material risk of liability under the Anti-Bribery Laws, including by breaching any of the representations set out in this clause, the Seller may immediately terminate this Contract by notice to the Buyer.

29. GOVERNING LAW

The Contract shall be governed and construed in accordance with the law in force in the State of Victoria. The Buyer and the Seller hereto irrevocably submit to and accept, generally and unconditionally, the non-exclusive jurisdiction of any of the courts of the State of Victoria as the Seller may elect with respect to any legal action or proceedings which may be brought at any time relating in any way to this Contract.