

# Palmamide Sdn. Bhd.

## General Terms and Conditions of Sale or Supply

Version 200509

### 1 PRICE ADJUSTMENT

The price of the Product (as herein defined) specified on the invoices issued by the Seller ("Price") is subject to adjustment to the extent of any increase in raw or auxiliary materials including but not limited to electricity, goods which the seller sources from the third parties, wages, salaries, social insurance contributions, insurance premiums, transportation charges, taxes, fees, dues, levies, fiscal and bank charges of any kind, import duty import surcharge or other governmental charge insurance or freight of any kind which is payable by the Seller. The Product shall mean the products specified on the invoices issued by the Seller and is herein defined as the Product.

### 2 PAYMENT

- (a) If and when the Buyer is bound to establish a Letter of Credit under the terms of this Contract, such Letter of Credit shall (i) be subject to Uniform Customs and Practice for Documentary Credits (1974 Revision) International Chamber of Commerce, Publication No 290 or any subsequent revision or amendment thereto, (ii) refer to this Contract by its number, (iii) be irrevocable and confirmed, and established by a prime bank satisfactory to the Seller in a form and upon terms satisfactory to the Seller, (iv) provide for partial availability against partial shipments, if partial shipments are agreed by both parties, (v) authorize reimbursement to the Seller for such sums, if any, as may be advanced by the Seller for the invoices, inspection fees, banking charges and other expenditure made by the Seller for account of the Buyer and (vi) be maintained for a period of thirty (30) days after the latest time of shipment set forth on the face hereof.
- (b) Payment shall be made within the period as mentioned on the invoice issued by the Seller or if no time is provided in the invoice, the Buyer shall pay the Seller within thirty (30) days from the date of invoice. In case the Buyer fails to pay for the Product either wholly or partially, the Buyer shall pay to the Seller overdue interest on the Price or such part thereof remaining unpaid at the rate of twelve percent (12%) per annum calculated from the due date for such payment until the actual date of payment.

- (c) The Buyer shall pay the Price and all charges and interest payable to the Seller hereunder without deduction of withholding tax or other governmental charges, levy or tax and without availing of the benefit of any right of set-off counterclaim recoupment of such other rights which the Buyer may have against the Seller, which rights shall be exercised in separate proceedings between the Buyer and the Seller. In case the Buyer is compelled by law to make any deduction or withholding tax, the Buyer shall notify the Seller and pay for such deduction or withholding tax first and the Seller shall reimburse the Buyer of such deduction.

In the event if the Seller first paid taxes, fees, dues, levies, fiscal and bank charges of any kind, duties, surcharge or other governmental charge insurance or freight of any kind, on behalf of the Buyer, if any, the Buyer shall reimburse the Seller within fourteen (14) days after receipt of the Seller's invoice for such reimbursement in respect of the taxes, fees, dues, levies, fiscal and bank charges of any kind, duties, surcharge or other governmental charge insurance or freight of any kind.

- (d) The Seller can claim payment at any time, if there is any doubt as to the solvency of the Buyer, or if the Buyer is in default in respect of accepting or taking delivery of or paying for any goods.
- (e) Any dispute between the Buyer and the Seller about the quality or any other claims submitted by the Buyer shall not give the Buyer, the right to suspend or deduct any payment of invoices.

### 3 PROPERTY AND RISK

Property legal, equitable or otherwise in the Product or any part thereof shall remain with the Seller and not pass from the Seller to the Buyer until the Seller has received full payment of due amount from the Buyer. Notwithstanding the foregoing provisions the risk of any loss or damage to or deterioration of the Product or any part thereof arising from whatsoever causes after delivery of the Product shall be borne by the Buyer.

#### **4 DELIVERY, SHIPMENT AND SHIPPING SPACE**

- (a) Where applicable, in the case where the Contract is made on an F.O.B. basis or any other terms under which the Buyer has to secure or arrange shipping space the Buyer shall give the Seller shipping instructions in time and provide necessary shipping space, otherwise, the Seller at its sole discretion and for the Buyer's risk and account may either (i) arrange shipping space and make shipment, (ii) dispose of the Product, or (iii) terminate all or part of this Contract without prejudice to the Seller's right to recover costs, expenses, losses and damages from the Buyer resulting from such termination.
- (b) Where applicable, in the case where the Seller is required to ship or deliver the Product, to the Buyer and the Seller shall, at its sole discretion and for the Buyer's risk and account shall arrange shipping space and make shipment or other forms of delivery of the Product to the Buyer.
- (c) Marine bill of lading through bill of lading, waybill air waybill, cargo receipt or any other similar document issued by Seller's carriers or the Seller's agents or forwarding agents shall be accepted by the Buyer as negotiable shipping or delivery document. Date of such document shall be deemed to be the date of shipment or date of delivery.
- (d) The Seller shall use his best endeavour to deliver at the times stated but the delivery dates shall be regarded as estimate and the Seller shall not be liable for any loss resulting from delay in delivery.
- (e) Where applicable, the Seller shall not be liable to the Buyer for any damage to or loss of any of the Product through faulty packaging if the Product has been accepted by any railway or shipping company or other carrier.
- (f) If it is agreed that delivery by the Seller is to be made in tank trucks, rail tankers or drums of the Product, the Seller is not to be made liable to contamination or other detriment to the Product due to lack of cleanliness or other faults or unsuitability of the containers for transportation. In the event the containers are provided by the Buyer, the Seller is entitled but not obliged to clean the containers at the Buyer's costs and any liability on the part of the Seller for damage to the container or the contents is excluded even if occasioned by the negligence of the Seller's servants or agents.

#### **5 LICENCES AND APPROVALS**

The Buyer shall be obligated at its own expense to procure any import licence required for the import, sales, marketing and distribution of the Product into the country of destination and ensure that all approvals and consents of the relevant authorities are obtained and comply with all the laws, rules and regulations of the country of destination in respect of the sale, marketing and distribution of the Product.

#### **6 MARINE INSURANCE**

Insurance of C.I.F. sales or sales on other terms where the Seller is to effect insurance at its own expense and its own discretion may be effected for the C.I.F. amount of the Product plus ten percent (10%). Unless otherwise stated herein, insurance to be covered shall be for marine insurance only, free from particular average F.P.A. (Institute Cargo Clause). The Seller may at its own discretion, insure for an amount in excess of the amount mentioned above and/or risks other than F.P.A. mentioned above, at the Buyer's expense.

#### **7 FORCE MAJEURE**

- (a) The Seller shall not be liable for any delay in shipment or delivery, or non-delivery, of all or any part of the Product, or for any other default in performance of this Contract due to the occurrence of any event of force majeure (hereinafter called "Force Majeure") including without limitations any flood, drought, ice, frost, log, wind, typhoon, hurricane, tidal wave, landslide, lightning, earthquake or other act of God, prohibition of exportation, refusal to issue export licence, law, regulation, order, direction or guidance of any government or instrumentality thereof, intervention of civil naval or military authorities, war or hostilities or the threat or apprehension thereof, warlike condition, riot, civil commotion, insurrection, mobilization, revolution, blockade, embargo, strike, lockout, slowdown, sabotage, fire, explosion, plague or other epidemic, quarantine, prolonged failure or shortage of electric current, shortage of petroleum products, fuel or energy sources of other raw materials, accidents to or breakdown of machinery or plant, unavailability or shortage of shipping space or transportation facilities, port facilities or loading or unloading facilities, perils of the seas, accident of navigation action or any other event of any nature whatsoever beyond control and affecting the activities of the Seller.
- (b) On the occurrence of any event of Force Majeure, the Seller shall have the option either (i) to extend the time of delivery

of the Product or performance of its other obligations under this Contract during such period as the event of Force Majeure shall continue or (ii) to terminate this Contract or (iii) to hold a discussion with the Buyer to resolve the matter amicably and in the event of the Seller exercising such option, the Buyer shall accept such extension of time or termination or discussion as the case may be, without any claim against the Seller.

- (c) On the occurrence of any event of Force Majeure, the party who is affected by the Force Majeure may give notice to the unaffected party as soon as is practicable in respect of the occurrence of the Force Majeure event.

## 8 PATENTS, TRADE MARKS, ETC

- (a) The Buyer shall hold the Seller harmless from all liability for infringement of patent, trade mark, brand, utility model, design, pattern, copyright or other industrial property rights in the Product, whether within or outside the Seller's country.
- (b) Nothing herein contained shall be construed as transferring any patent, trade mark, utility model, design, pattern, copyright or other industrial property rights in the Product, all such rights being expressly reserved to the Seller as the true and lawful owner thereof. The Buyer acquires no right, title or interest whatsoever in the patent, trade mark, utility model, design, pattern, copyright or other industrial property rights associated therewith or to the Product. The Buyer shall not register the patent, trade mark, utility model, design, pattern, copyright or other industrial property rights associated therewith or to the Product.
- (c) In case any dispute and/or claim arises in connection with the above right and/or rights, the Seller reserves the right to terminate this Contract hereof at the Seller's discretion and the Seller shall not be responsible to the Buyer for all losses and/or damages caused thereby.

## 9 WARRANTY

- (a) Unless expressly provided under this Contract, the Seller gives no warranty, express or implied, as to the fitness of the Product for any particular purpose of the merchantability thereof or intended use of the Product by the Buyer.
- (b) No responsibility is implied or will be accepted by the Seller for any consequential or indirect damages arising from malfunctioning of the Product.

## 10 DEFAULT

Without limiting the Seller's remedies at law, the Seller may, by a fourteen (14) days written notice to the Buyer, forthwith terminate this Contract and any other contract with the Buyer, delay or suspend shipment or delivery, stop the Product in transit, if any of the following events occurs:-

- (i) If the Buyer fails to perform any material provision of this Contract within fourteen (14) days after receipt of a written notice (including without limitation failure to pay any amount when due hereunder or to establish the Letter of Credit by the date stated on the face hereof or to procure any import licence required hereunder) or
- (ii) If the Buyer shall become unable to pay its debts generally as they become due or shall hold a meeting of its creditors, or shall make a general assignment for the benefit of creditors, or shall file a petition in bankruptcy, or shall be adjudicated or declared bankrupt or insolvent, or shall file a petition or answer seeking consenting to or acquiescing in any reorganization, arrangement, adjustment, composition, readjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation, or shall file an answer admitting or not contesting the material allegations of a petition or answer filed against it for or proposing any such relief, or if any proceeding against the Buyer of the type referred to herein seeking any such relief shall not have been dismissed within thirty (30) days after the commencement thereof, or
- (iii) If a trustee, receiver or liquidator of the Buyer or of any material part of the Buyer's assets or properties shall be appointed with the consent or acquiescence of the Buyer, or if any such appointment, not so consented to or acquiesced in, shall remain unvacated or unstayed or such trustee, receiver or liquidator shall, not have been dismissed or discharged for an aggregate of thirty (30) days (whether or not consecutive); or
- (iv) In the event the Buyer fails and/or delays in taking delivery of the Product from the Seller within the specified time in the Delivery Order or for more than one (1) month from the date of the Seller's estimated time of delivery date, then the Seller shall be entitled to terminate the Contract, without any liability, and further, without prejudice to rights of the Seller to claim for any antecedent breach arising from the breach of the Contract by the Buyer under this clause. The Buyer shall be responsible for all the costs (including but not limited to the differential cost of the price of the raw materials and

other components of the Product which are ordered by the Buyer and the market price of the raw materials and the other components of the Products) incurred by the Seller as a result of the termination under this clause.

#### **11 CLAIMS**

- (a) Any claim by the Buyer of whatever nature arising under this Contract or in respect of the Product for non-compliance of any specifications under this Contract shall be made within one (1) month from date of receipt of the Product. Unless full written notice of the Buyer's claim, accompanied by an independent party's reports or any other relevant documents as may be required by the Seller when the quality or quantity of the Product is in dispute, shall arrive at the Seller's office during such one (1) month period, the Buyer will be deemed to have waived such claim.
- (b) In the event of a breach of this Contract by the Seller, the Buyer's exclusive remedy and the Seller's limit of liability shall be restricted to the damages which shall in no event exceeds the price of the Product which is stated in the invoice provided always that such claim shall be determined at the sole discretion of the Seller. Settlement of such claim shall be by way of replacement or repair of the Product. No claim or dispute whatsoever shall release the Buyer from its obligation to pay to the Seller for the Product.
- (c) All Products from the Buyer shall be subject to proper storage requirement as instructed by the Seller.
- (d) Notwithstanding herein contained, the Seller shall not be liable for any compensation or other damages of any kind to the Buyer upon the cancellation of this Contract by the Seller for whatsoever reason and the Buyer hereby agrees to waive, to the full extent permitted by law any statutory or other rights which it may have in connection with the cancellation of this Contract,

#### **12 NO WAIVER**

No failure by the Seller to give written notice of any default by the Buyer in performing any provision of this Contract shall constitute a waiver thereof, no delay by the Seller in enforcing any of its rights hereunder or at law, be deemed a waiver of such rights or shall a waiver by the Seller of any default of the Buyer be deemed a waiver of any other subsequent default.

#### **13 NO ASSIGNMENT**

The Buyer shall not transfer or assign this Contract or any part hereof without the Seller's prior written consent. Notwithstanding herein otherwise contained, the Seller has the right to assign all or part of its rights and obligations under this Agreement to any subsidiary or holding company or its associate or affiliates within the Seller's Group or its related company without prior approval of the Buyer.

#### **14 ABRITRATION**

- (a) Any dispute, controversy and/or difference which may arise between the parties hereto, out of or in relation to or in connection with this Contract, or any reach hereof shall, unless settled without undue delay by amicable arrangement of the parties hereto, be referred for settlement to arbitration in Kuala Lumpur, Malaysia or such other country, as the Seller may designate in accordance with the rules for Arbitration of the Kuala Lumpur Regional Arbitration Centre or other relevant rules. The award shall be final and binding upon the parties hereto, and judgement such award may be entered in any court or tribunal having jurisdiction there over.
- (b) By agreeing to sub-clause (a) above, the parties do not intend to deprive any court of its jurisdiction to issue pre-arbitral injunction, pre-arbitral attachment or other order in aid of the arbitration proceedings and the enforcement of any award.

#### **15 TRADE DEFINITIONS AND GOVERNING LAW**

Trade and Shipping terms shall have the meanings defined in the Incoterms 1953 (International Rules for the Interpretation of Trade Terms) as amended, unless otherwise specifically provided in this Contract. Notwithstanding anything herein otherwise contained, this Contract shall be governed by and construed under the laws of Malaysia unless otherwise agreed by both parties.

#### **16 SEVERABILITY**

If any one or more of the provisions or terms herein or part thereof shall be invalid, void, illegal or unenforceable in any respect by operation of law or otherwise the validity, legality or enforceability of the remaining provisions or terms of part thereof shall not in any way whatsoever be affected or impaired thereby.

## **17 ENTIRE AGREEMENT AND MODIFICATION**

This Contract may not be modified nor any right be waived by either party except the Seller has given notice in writing or by cable or telex to the Buyer.

## **18 CHANGES IN THE PRODUCT**

The Seller will, at its own discretion, make additions or modifications to the specifications of the Products without incurring any liability towards the Buyer.

## **19 ORDERS, ACCEPTANCE AND CANCELLATION OF ORDERS**

The Buyer shall within a reasonable time, submit to the Seller a written order indicating the required quantity of the Product, the required delivery date, the delivery place which is agreed by the both parties or other relevant information pertaining to the order of the Product. The Seller shall issue an invoice to the Buyer accordingly. The Buyer shall contact the Seller immediately if such acknowledgement letter is not received within twenty four (24) hours after issuing order failing which the Seller shall not be responsible to the Buyer for any losses and damages. Cancellation or amendment of the orders cannot be effected by the Buyer without the Seller's agreement and the Buyer shall be bound to accept and pay for such ordered Product accordingly. In the event the Order is cancelled or amended by the Buyer, the Buyer shall be responsible for all the Product price, costs, losses, damages, claims and liabilities incurred by the Seller as a result of such cancellation or amendments.