

# Taiko Palm-Oleo (Zhangjiagang) Co., Ltd.

## General Terms and Conditions of Sale or Supply

Version 1 Feb 2019

### 1. Validity and Scope of Application

1.1 These General Terms and Conditions of Sale and or Supply (“GTC”) shall exclusively apply to all business transactions for the sales or supplies, deliveries and or the services associated with the sales or supplies of the products or deliverables (“the Products”) by Taiko Palm-Oleo (Zhangjiagang) Co., Ltd. (“the Supplier”) to a customer (“the Buyer”).

1.2 This GTC shall form an integral part of the Supplier’s quotations to the Buyer and supersede any conflicting terms contained on the Buyer’s purchase order or any document or instrument submitted by the Buyer unless expressly agreed to in writing by the Supplier.

1.3 Any deviation from the GTC is subject to the written approval of the Supplier.

### 2. Formation of the contract

2.1 The written acceptance by the Supplier of the Buyer’s offer by way of an order or purchase order or contract confirmation or commercial terms and contracts shall form a contract (“the Contract”).

### 3. Products Quality

3.1 The quality of the Products is exclusively determined by the Supplier’s specifications provided under the Contract.

### 4. Price

4.1 Prices of the Products will be agreed between the parties in each individual case.

4.2 The price and all charges and interest payable by the Buyer hereunder are exclusive of any applicable goods and or services tax (VAT or SST, as the case may be and any other governmental charges, duties or levies.

4.3 Unless agreed by the Parties in writing in relation to the transport of the Products (e.g. according to INCOTERMS Clause), the price shall be the price ex works and any

other costs (e.g. loading, freight and customs duties) shall be borne by the Buyer., dispatch and transport shall be at the risk of the Buyer.

### 5. Payment

5.1 Payment shall be made by the Buyer to the Supplier within the period mentioned on the invoice issued by the Supplier or within thirty (30) days from the date of the invoice, whichever is earlier (the “Due Date”).

5.2 Failure to pay by the Due Date constitutes a fundamental breach of contractual obligations and the Supplier shall be entitled to charge interest from the Due Date until the date of actual payment at a rate of 9 percentage points above the base interest rate announced by Central Bank of Malaysia on the Due Date if the amount is invoiced in Ringgit or, if invoiced in any other currency, at a rate of 9 percentage points above the base rate of the central bank of the country of the invoiced currency at the Due Date. The interest rate is on per annum basis.

5.3 If the Supplier becomes aware of the facts, which indicates a serious deterioration in the Buyer’s financial circumstances, the Supplier shall be entitled to withdraw from the contract in whole or part without any further notice. This shall not in any event prejudice the Supplier’s rights to file any claims against the Buyer.

5.4 Any dispute between the Buyer and the Supplier about the quality or any other claims submitted by the Buyer shall not give the Buyer the right to suspend or deduct any payment in the invoices.

### 6. Set-off, Counter-claim or Right of Retention

6.1 The Buyer shall not be allowed to set off the payment by counter-claim or to exercise the rights of retention.

### 7. Delivery, shipment of the Products

7.1 Delivery shall be in accordance with the INCOTERMS clauses published by the International Chamber of Commerce. The relevant version being the one which is

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effective on the date the Contract is concluded between the parties.

- 7.2 The Supplier shall use its best endeavours to deliver at the times stated in the Contract but the delivery dates shall always be regarded as non-binding estimates only.
- 7.3 In the event that the Buyer is in default of acceptance, the Supplier is entitled to claim compensation for any expenditure arising as a result thereof (e.g. costs of return transport, demurrage, storage, redelivery or disposal).
- 7.4 The Supplier shall not accept delay in delivery/collection dates, which shall be an event of termination under Clause 14.1 and for each day of delay by Buyer in accepting any delivery (whether partial/full), Seller is entitled to charge additional cost.
- 7.5 The Supplier shall be entitled to make partial deliveries and may be invoiced by the Supplier immediately.
- 7.6 For deliveries in bulk, the Buyer accepts a tolerance of plus minus (+/-) 2.5% for quantities and for other deliveries a tolerance of plus minus (+/-) 0.5% ("Tolerances"). Save for manifest error, documents for quantities shall amongst others include the weight certificates, bills of lading, sea-way bills, liner-way bills and freight receipts, and shall be decisive. The Buyer shall accept deliveries which are within the Tolerances and shall not be entitled to object to or reject the Products by reason of the surplus or shortfall and will pay the invoiced price for the quantity of Goods delivered.
- 7.7 The Supplier and the Buyer shall respectively be responsible for compliance with Applicable Laws and or all laws and regulations regarding import, export, transport, storage and/or use of the Products.
- 7.8 In the event the Buyer requests the Supplier to arrange for shipment to deliver the Products, the Supplier shall at its sole discretion arrange shipping space and make shipment or other forms of delivery of the Products to the Buyer, at the Buyer's risk and account.
- 7.9 It is agreed, if delivery of the Products is via tank trucks, rail tankers, pipelines or drums of the Products, the Supplier shall not be made liable for contamination or

other detriment to the Products whatsoever due to lack of cleanliness or other defaults or unsuitability of the containers for transportation. In the event the containers are provided by the Buyer, the Supplier is entitled but not obliged to clean the containers at the Buyer's costs and any liability on the part of the Supplier for damage to the container or the contents is excluded.

## 8. Retention of Title and Risk

- 8.1 Title to the Products (ownership) shall remain with the Supplier until the Buyer has paid the purchase prices= in full, in accordance with Clause 5 on **Payment**. Any Products where payment has yet to be received in full shall be treated as retained products ("Retained Products") by the Supplier where title to such remains with the Supplier.
- 8.2 If the Buyer carries out any treatment, processing, combination or mixing of the Retained Products with products from another source to make a new item or mixed item respectively, the Supplier is entitled to co-ownership in proportion to the invoice value of the Retained Products at the time of delivery.

## 9. Claims for Damage in Transit

- 9.1 Notice of claims arising out of damage in transit must be lodged by the Buyer directly with their appointed insurance agent within three (3) working days after the delivery of the Products.

## 10. Inspection of Products, Notification and Claims

- 10.1 Upon the receipt of the Products, the Buyer shall immediately inspect the same, in particular as to condition and quantity, even if samples have been previously sent, by analysis or otherwise, exercising such care as customary or appropriate in the circumstances.
- 10.2 Any defects which can be detected during the inspection as described in clause 10.1 must be notified by the Buyer to the Supplier without undue delay, at the latest within fourteen (14) calendar days from receipt of the Products. If the defect(s) are not recognisable at the time of inspection and which come to light later, it shall be notified by the Buyer to the Supplier immediately following such discovery subject to Clause 10.6 hereof.
- 10.3 The Buyer is deemed to have waived any claim for defects should there be a breach of the obligations as

stated in Clause 10.1 and Clause 10.2 and/or failure to submit its claim to the Supplier in accordance with Clause 10.6 hereof.

10.4 Notification must be in writing and must precisely describe the quantity, nature and extent of the defects, accompanied by an independent third party's reports.

10.5 If the Products are defective and the Buyer has notified the Supplier within the period prescribed in Clause 10.2 aforementioned, the Supplier shall have the right to choose whether to remedy the defect within a reasonable deadline by undertaking repair or supply the Buyer with non-defective replacement products unless otherwise required under Applicable Law and/or Jurisdiction.

10.6 Buyer's claim for defective products shall be limited to three (3) months **from the receipt by the Buyer of the Products**, unless longer periods are mandatory required by Applicable Law and Jurisdiction.

#### 11. Warranties

11.1 Unless expressly provided under this GTC and/or the Contract, as the case may be, the Supplier gives no warranty, express or implied, as to the merchantability of the Products, fitness of the Products for any particular purpose even if such purpose is known to the Supplier. The Buyer shall undertake its own assessment, investigations, inspections and tests.

#### 12. Limitation of Liability

12.1 The Supplier shall only be liable for damages caused by the willful or gross negligent conduct of the Supplier, its representatives, employees or other vicarious agents and shall be limited to those typically arising directly from the Contract and/or this GTC.

12.2 To the extent permitted by Applicable Law and/or Jurisdiction, the Supplier exclude all liability for any indirect, special, incidental and/or consequential loss or damage, loss of profits, loss of production, goodwill, business opportunity or anticipated savings or benefits and all warranties conditions or terms other than those expressly set out in this GTC and/or the Contract. The Supplier shall only be liable for breach of obligation which is of considerable significance to the

achievement of the purposes of the Contract (cardinal obligation) and/or this GTC.

12.3 The Buyer's exclusive remedy and the Suppliers' limit of liability shall be restricted to the damages which shall in no event exceed the price of the Products which is stated in the invoice. No claim or dispute whatsoever shall release the Buyer from its obligation to pay to the Supplier for the Products.

12.4 The above shall also apply for the benefit of employees of the Supplier in the event of a direct claim asserted by the Buyer against them.

#### 13. Force Majeure

13.1 The Supplier or the Buyer shall not be liable for any default in performance of the Contract and/or this GTC due to any incident or circumstance beyond the Supplier's or the Buyer's control including without limitations any flood, drought, ice, frost, wind, typhoon, hurricane, tidal wave, landslide, lightning, earthquake or any 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 or 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 Supplier or the Buyer (hereinafter called "Force Majeure").

13.2 On the occurrence of any event of Force Majeure, the Supplier shall have the option (i) to extend the time of delivery of the Products or performance of its other obligations; or (ii) to terminate the Contract and/or this GTC in case the occurrence lasts more than three (3) months; or (iii) to hold a discussion with the Buyer to resolve the matter amicably and in the event of the Supplier 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 Supplier.

13.3 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 without delay in respect of the occurrence of the Force Majeure event.

#### 14. Termination

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

- (i) If the Buyer fails to perform any material provision of the Contract and/or this GTC within fourteen (14) days after receipt of a written notice; 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 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 shall be appointed with the consent or acquiescence of the Buyer; or
- (iv) In the event the Buyer fails and/or delays in taking delivery of the Products from the Supplier within the specified time in the Contract, then the Supplier shall be entitled to terminate the Contract, without any liability, and further, without prejudice to rights of the Supplier to claim for any antecedent breach arising from the breach of the Contract and/or this GTC 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 Products which are ordered by the Buyer and the market price of the raw materials and the other components of the Products) incurred by the Supplier as a result of the termination under this clause.

#### 15. Applicable Law and Jurisdiction

15.1 The Contract and/or this GTC shall be governed by the laws of Malaysia [\*\*depending on the country of the Supplier's place of incorporation] and excluding its conflict of laws principles and the UN Convention on Contracts for the International Sale of Goods. Any dispute arising out of or in connection with the Contract and/or this GTC shall be subject to the exclusive jurisdiction of the courts of Malaysia.

#### 16. Export Control and Controlled Use

16.1 The Buyer shall not supply, import or export the Products contrary to sanctions imposed by (i) Malaysia, the United Nations, the European Community and/or other applicable countries and other applicable export or import restrictions.

16.2 The Products must not in any way be used or disposed of in connection with any actual or suspected use relating to (i) nuclear, chemical or biological weapons or their delivery systems; or (ii) precursors for prohibited or controlled substances.

#### 17. Licences and Approvals

17.1 The Buyer shall be obligated at its own expense to procure any licences required for the import, sales, marketing and distribution of the Products 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 import, sales, marketing and distribution of the Products.

#### 18. Patents, Trade Marks, etc.

18.1 The Buyer shall indemnify and hold the Supplier harmless from any and all claims of third parties arising from infringement of patent, trade mark, brand, utility model, design, pattern, copyright or other industrial property rights, whether within or outside the Supplier's country resulting from the Products and/or the use thereof and not from the Products as such and its specifications.

18.2 Nothing herein contained shall be construed as transferring any patent, trade mark, utility model, brand,

design, pattern, copyright or other industrial property rights in the Products, all such rights being expressly reserved to the Supplier as the true and lawful owner thereof. The Buyer acquires no right, title or interest whatsoever in the patent, trade mark, brand, utility model, design, pattern, copyright or other industrial property rights associated therewith or to the Products.

## 19. Miscellaneous

### Notice

19.1 Any notice request or other communication required herein to be given by either of the parties hereto to the other shall be in writing and shall be sent to such other party at its address provided by the parties or such address as the party may have notified in writing to the other party for this purpose, by hand, registered post, express courier, service email or facsimile.

### Amendments

19.2 No amendment and addition to this GTC or to the Contract shall be valid unless agreed between the parties in writing. The same shall apply to any amendment of this written form clause which shall be granted by notification in accordance with Clause 19.1.

### Waiver

19.3 No provision of this GTC or of the Contract shall be deemed waived by any party unless such waiver shall be in writing and signed by the party against whom enforcement of any such waiver is sought.

### Severability

19.4 If any provision of the GTC herein is or becomes illegal, invalid or unenforceable in any respect under the Applicable Law, then the effectiveness of the remaining provisions shall not be affected in any way.

### No Assignment

19.5 The Buyer shall not transfer or assign the Contract and/or this GTC or any part hereof without the Supplier's prior written consent. Notwithstanding herein otherwise

contained, the Supplier has the right to assign all or part of its rights and obligations under the Contract and/or this GTC to any of its subsidiaries; holding company; associates; or affiliates within the Supplier's group of companies without the prior approval of the Buyer.

## Changes In The Products

19.6 The Supplier reserves the right to make additions or modifications to the specifications of the Products which are required to conform to the statutory requirements of the Applicable Law and/or which do not materially affect the quality or performance of the Products.

## Inadequacy of Damages

19.7 Damages may not be adequate remedy for breach by the Buyer. The Supplier shall be entitled to remedies of injunction, specific performance or other equitable relief for any threatened or actual breach.

## Confidentiality

19.8 The Buyer shall not, without the Supplier's written consent, disclose any confidential information, including but not limited to documents, drawings, schematics, plans, designs, specifications, know-how, discoveries, production methods, product and pricing information disclosed to the Buyer by the Supplier. The Buyer shall take reasonable precaution against any such confidential information being acquired by unauthorized persons and shall not employ any such confidential information for its own use for any purpose whatsoever. The Supplier shall retain title to all such confidential information and the Buyer shall, at the Supplier's request, return or delivery all such tangible confidential information to the Supplier. The term "confidential information" as used herein shall not include information which is generally published or lawfully available to the Buyer from other sources or which was known to the Buyer prior to disclosure thereof to the Buyer by the Supplier.

## Buyer's indemnity

19.9 The Buyer shall at all times indemnify and keep indemnified, compensate and hold the Supplier and its respective officers, directors, agents, employees or contractors and subcontractors harmless against any and all losses, costs, liabilities, claims, demands, penalties, causes of action and damages of any nature whatsoever which the Supplier may suffer or incur directly or indirectly arising from any breach of the Applicable Laws by the Buyer and for any personal injury, death or property damage to third parties arising out of or in connection with the performance of the Buyer's obligations under this GTC.

#### **Anti-corruption laws**

19.10 The Buyer acknowledges that the Supplier may be subject to the relevant anti-bribery anti-corruption laws. Under such anti-corruption laws, it is unlawful to pay or to offer to pay anything of value to government officials, government employees, political candidates, or political parties, or to persons or entities who will offer or give such payments to any of the foregoing, in order to obtain or retain business or to secure an improper commercial advantage. The Buyer shall comply fully at all time with all applicable anti-corruption laws, of [*Malaysia, China, Singapore, Indonesia*] in which it conducts business with the Supplier. The Buyer further acknowledges that it is familiar with the provisions of the applicable anti-bribery and anti-corruption laws and shall not take or permit any action that will either constitute a violation under, or cause the Supplier to be in violation of, the provisions of such laws.