

**K C TEW SDN. BHD. (923528-P) ('K C Tew')**  
**STANDARD CONDITIONS OF SALES & PURCHASE CONTRACT ('S&P')**  
02<sup>nd</sup> October 2014

- 1 **General:** These terms and conditions as updated from time to time and which can be found at K C Tew's website (<http://www.kctewsb.com>). (**Conditions**), together with the K C Tew Sales and Purchase Contract between K C Tew and its customer (**Customer**) (where applicable) and all documents specified on it, constitute the entire terms of the Agreement to supply Product to the Customer (**Agreement**). The Conditions exclude and supersede all prior discussions, representations and arrangements and any other oral or written terms and conditions whether or not they are endorsed on, delivered with or referred to in any purchase order or other document delivered by the Customer to K C Tew.
- 2 In the event of ambiguity, conflict or confusion between the documents constituting the Agreement, the terms of the K C Tew Salt Supply Contract (where applicable) prevail. The definitions contained in the K C Tew Salt Supply Contract (where applicable) apply to these Conditions.
- 3 **Orders:** K C Tew may accept or reject orders it receives. Accepted orders cannot be cancelled without K C Tew's consent which may be refused or given with conditions. The supply of Product is subject to availability. The supplies of partial shipments are permitted unless otherwise agreed in writing. K C Tew reserves the right to suspend or discontinue the supply of Product to the Customer. If K C Tew is unable to supply all of the Customer's order, the Agreement continues to apply to any part of the order supplied.
- 4 **Price:** Unless otherwise agreed by K C Tew in writing, prices for product are:
  - 4.1 those stated in a written quotation or in the Contract Pricing Schedule attached to the Agreement (where applicable) – to the extent of any inconsistency in pricing of a particular Product, the document which is dated the latest prevails;
  - 4.2 subject to alteration by K C Tew without notice from time to time; and
  - 4.3 quoted exclusive of GST and all taxes.
- 5 **Payment:** Unless otherwise agreed by K C Tew in writing, the terms of payment for the Product are Cash Against Document (CAD) on the date of invoice without deduction or set off. Time is of the essence. Invoices shall be issued and will be payable in respect of every delivery notwithstanding that the balance of the order has not been nor will be delivered for any reason. Where any payment is not made by the due date, K C Tew may charge interest on any overdue portion from the date the payment was due until the date payment is made (both dates inclusive) at a rate equal to 1% above the indicator lending rate for the time being advised by K C Tew's Bank.
- 6 **Delivery:** Unless otherwise stated, delivery of the products shall be EXW. All quoted delivery or consignment dates are estimates only. K C Tew is not obliged to meet such dates and will not be liable to the Customer by reason of delays caused by any reason whatsoever.
- 7 **Incoterm:** Unless otherwise stated or agreed by K C Tew in writing for special arrangement or other interpretation, the Incoterm incorporated in the S&P contract are pre-defined commercial terms published by the International Chamber of Commerce (ICC)-Incoterms® 2010, having been published on January 1, 2011.
- 8 **Quality:** If the Customer does not advise K C Tew in writing of any fault, damage or defect in the Product or failure of the Product to comply with the terms of a contract made pursuant to this Agreement on the time of delivery (a) the Customer is deemed to have accepted the Product and is deemed to agree that the Product is not faulty, damaged or defective or non-compliant; and (b) the Customer releases and discharges K C Tew from and against any claims, actions, loss or liability relating to any fault, damage or defect in the Product.
- 9 If the Customer advises K C Tew in writing of a fault, damage or defect in the Product on the time of delivery then K C Tew may, at its sole discretion discuss with the Customer amicably solution, provided that the Customer has not used the Product and the Product is maintained in the same condition as they were delivered and, where appropriate, in the original packaging, and K C Tew will have no additional liability to the Customer. K C Tew may charge a reasonable handling fee for replacement solution.
- 10 **Risk:** Risk in the Product passes to the Customer on delivery. The Customer must insure the Product at its cost, from delivery until paid for in full, against such risks as are usual or common to insure against in a business of a similar nature to the Customer. The Customer holds the proceeds of that insurance on trust for K C Tew up to the amount it owes K C Tew in respect of that Product, and must keep such proceeds in a separate account until the liability to K C Tew is discharged and must immediately pay that amount to K C Tew on demand.
- 11 **Title:** Until all monies owing by the Customer to K C Tew are paid in full for the Product and notwithstanding any credit granted to the Customer, legal and equitable title to the Product is retained by K C Tew. Until then, the Customer is a bailee of the Product. The Customer (a) holds the Product as bailee and fiduciary agent of K C Tew; and (b) must keep it in its possession and control, in good repair and condition, excluding fair wear and tear and stored separately and marked so that the Product is clearly and easily identifiable as K C Tew's property and inform K C Tew of the location of the Product, if requested. Should the Product be lost or damaged after delivery to the Customer and prior to payment the Customer shall indemnify K C Tew for such loss or damage.
- 12 If the Customer sells the Product before payment in full to K C Tew or if the Customer uses the Product in a manufacturing or preparation process of its own or some third party, it must hold all of the proceeds of any sale or dealing in the Product on trust for K C Tew, and must keep such proceeds in a separate account as the beneficial property of K C Tew and the Customer must pay such amount to K C Tew on demand.
- 13 Notwithstanding any other provision to the contrary, K C Tew reserves the following rights in relation to the Product until all amounts owed in respect of the Product and all other Product supplied to the Customer by K C Tew at any time are fully paid (a) legal and equitable ownership of the Product (b) to retake possession of the Product and (c) to keep or resell any of the Product repossessed.
- 14 **Termination:** K C Tew may by written notice to the Customer terminate the Agreement if (a) the Customer fails to perform any of its obligations under the Agreement; (b) the Customer dies or becomes incapacitated, or ceases, or indicates that it is about to cease, to carry on business; (c) anything happens that reasonably indicates that there is a significant risk that the Customer is or will become unable to pay debts as they fall due; or (d) a step is taken to have a receiver, receiver and manager, provisional liquidator or administrator appointed to that person or any of its assets.
- 15 If the Agreement is ended because of the Customer's default and the Customer owes K C Tew money, the money is immediately payable to K C Tew and bears interest and K C Tew is entitled to enter the Customer's premises and repossess any Product in the Customer's possession or control.
- 16 **Force Majeure:** K C Tew will not be liable for any loss incurred as a result of delay or failure to make any supply of Product or to observe any provisions of this Agreement due to an event of force majeure, being any cause or circumstance beyond K C Tew's reasonable control, including but not limited to, any lack of production capacity or raw materials, strikes, lockouts, labour disputes, fires, floods, acts of God or public enemy, malicious or accidental damage, delays in transport, breakdowns in machinery or restrictions or prohibitions by any government or any semi-governmental authorities or embargoes. During the continuance of an event of force majeure K C Tew's obligations under this Agreement will be suspended. The Customer must accept delivery of the Product notwithstanding any delay in delivery caused by any force majeure event.
- 17 The Agreement is confidential. The Customer will not request any disclosure be made, disclose or authorise the disclosure, of any information of the kind applies and in that case only K C Tew is entitled to make the disclosure.
- 18 Any payment made by the Customer to K C Tew may be applied by K C Tew in any manner it sees fit.
- 19 **Miscellaneous:** K C Tew waives a right under this Agreement only if it does so in writing.
- 20 K C Tew may assign or otherwise deal with the benefit of any contract made pursuant to the Agreement.
- 21 The rights and remedies provided in these Conditions will not affect any other rights or remedies available to K C Tew.
- 22 This Agreement is governed by and must be interpreted in accordance with the laws of Malaysia and the parties irrevocably submit to the exclusive jurisdiction of the courts of Malaysia.
- 23 K C Tew may amend or vary this Agreement by notifying the Customer in writing of the amendment or variation, or (in the case of the Conditions) by uploading the amended Conditions onto K C Tew's website. Each time the Customer places an order with K C Tew, and on each day during the term of the Agreement, the Customer acknowledges receiving, or having the opportunity to review, a copy of the Conditions which can be found at K C Tew's website (<http://www.kctewsb.com>).
- 24 If any provision of this Agreement is unenforceable, illegal or void, that provision is severed and the other provisions of this Agreement remain in force.
- 25 Any notice to be given to a party under the Agreement must be in writing and must be sent by post, facsimile or email to the address of that party shown in the quotation, purchase order or order acknowledgement. Notice is deemed to have been given at the time it would have been received in the normal course of post if sent by post, or if otherwise given at the time it was actually received.
- 26 The Customer indemnifies K C Tew from and against, and must pay K C Tew on demand for, all actions, costs, claims, demands, losses, expenses and liabilities howsoever arising (including those brought by third parties) sustained or incurred by K C Tew or its related entities or their respective officers, employees, consultants and agents as a result of any breach of the Agreement, negligence, willful misconduct or fraud by the Customer or its related entities or their respective officers, employees, consultants and agents.