

INEOS VINYLs Sales GmGH – Terms and Conditions of Purchase for Goods and/or Services

1 DEFINITIONS

- 1.1 In these Conditions the following words and expressions shall have the following meanings:
- "Affiliate"** means any person that directly or indirectly controls, or is controlled by, or is under common control with, the Buyer at any time; and for this purpose control over any person shall mean the power to direct the management or policies of that person;
- "Business Day"** means any day (other than a Saturday or Sunday) on which clearing banks are open for business in the City of London for the transaction of normal banking business;
- "Buyer"** means **INEOS VINYLs SALES GMBH**(Company Number HRB 131775) whose registered office is at Inhausersieler Strasse 25 26388 Wilhelmshaven Germany
- "Conditions"** means these terms and conditions of purchase for Goods and/or Services;
- "Contract"** means a legally binding contract between the Seller and the Buyer for the sale and purchase of Goods and/or Services ordered under a Purchase Order and accepted by the Seller in accordance with these Conditions;
- "Currency"** means the currency specified in the Purchase Order;
- "Delivery Address"** means the delivery address stipulated in the Purchase Order or such other address agreed in writing between the Parties;
- "Delivery Date"** means the delivery date as set out in the Purchase Order or as otherwise agreed between the Parties;
- "Document"** includes without limitation, any document in writing, any drawing, map, plan, diagram, picture or other image, tape disk or other device or record embodying information in any form;
- "Force Majeure Event"** means any event affecting the performance of any provision of the Contract arising from or attributable to acts, events, omissions or accidents which are beyond the reasonable control of a Party including fire, explosion, earthquake, subsidence, structural damage, epidemic or other natural physical disaster, war, riot, crowd disorder, strike, labour dispute, terrorist action, civil commotion and any legislation, regulation, ruling or omissions (including failure to grant any necessary permissions) of any relevant government, court or authority;
- "Goods"** means the goods to be delivered by the Seller as either set out in the Purchase Order or as specified in a Schedule to these Conditions and includes, without limitation, any Service Deliverables;
- "In-put Materials"** means all Documents, information and materials provided by the Buyer or its Affiliates relating to the Goods and/or the Services including without limitation computer programs, data, reports and specification and any in-put materials specified in a Schedule to these Conditions;
- "Intellectual Property Rights"** means all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for an renewals or extensions of such rights and all similar or equivalent rights or forms of protection in any part of the world;
- "Party"** and **"Parties"** means the Seller or the Buyer or both the Seller and the Buyer (as is applicable);
- "Price"** means the price of the Goods and/or Services as set out in the Purchase Order or as specified in a Schedule to these Conditions;
- "Purchase Order"** means the Buyer's written or oral purchase order;
- "Regulation"** means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended from time to time);
- "Quantity Required"** means the quantity of Goods to be delivered and/or Services to be performed by the Seller to the Buyer as set out in a Purchase Order or otherwise agreed in writing between the Parties;
- "Seller"** or **"Supplier"** means the seller of the Goods and/or supplier of Services;
- "Services"** means the services to be performed by the Seller as either set out in the Purchase Order or as specified in a Schedule to these Conditions;
- "Service Deliverables"** means all Documents, products and materials delivered by the Seller or its agents, subcontractors or employees in relation to the Services in any form, including without limitation any service deliverables specified in a Schedule to these Conditions;
- "Specification"** means the specification of the Goods and/or Services as set out in the Purchase Order or as specified in a Schedule to these Conditions.
- 1.2 Any reference in these Conditions to:-
- (a) a statute or a provision of a statute shall be construed as a reference to that statute or provision as amended, re-enacted or extended at the relevant time;
 - (b) a Clause or Schedule is to a clause in these Conditions or a schedule to these Conditions; and
 - (c) a person includes an individual, a firm, a corporation, an unincorporated association, a government, a state, an agency of government or state, and an association, partnership and joint venture (whether or not having a separate legal personality).
- 1.3 The headings in these Conditions are for convenience only and shall not affect their interpretation.

- 1.4 Where the context dictates, the singular shall include the plural and vice versa and any gender includes the other gender.
- 1.5 In the event of any inconsistency or conflict between the terms of these Conditions, the Purchase Order and the Schedules the following order of precedence shall apply:
- (i) the Purchase Order;
 - (ii) the Schedules;
 - (iii) these Conditions.

2 BASIS OF PURCHASE

- 2.1 Each Purchase Order constitutes a separate offer by the Buyer to purchase the Goods and/or Services subject to these Conditions and the Contract.
- 2.2 Provided the Buyer has not previously withdrawn the Purchase Order (which it may do at any time prior to acceptance, by written or oral notice to the Seller), the Purchase Order shall be deemed to be accepted on the occurrence of the earlier of:
- (a) the issue by the Seller of an acknowledgement of the Purchase Order;
 - (b) notification by the Seller that the Goods are ready for delivery and/or Services are ready to be performed; or
 - (c) delivery of the Goods (or any part of the Goods) and/or performance of the Services (or any part of the Services);
- and such occurrence shall create a Contract.
- 2.3 These Conditions shall apply to the Contract to the exclusion of all other terms and conditions including, but without limitation, any under which a quotation or invoice for the Goods and/or Services has been given to the Buyer or subject to which a Purchase Order has been accepted or purported to be accepted by the Seller.
- 2.4 The Purchase Order will automatically lapse unless unconditionally accepted by the Seller in writing within 30 days of its date. Should the Seller purport to accept the Buyer's Purchase Order after 30 days of its date, the Seller shall be deemed to be offering to sell the Goods and/or Services on the terms of these Conditions and any acceptance by the Buyer of the Seller's offer shall be subject to the terms of these Conditions.
- 2.5 Subject to clauses 2.6 and 2.8, no variation to the Purchase Order or these Conditions shall be binding unless agreed in writing between the authorised representatives of the Parties.
- 2.6 In the event of any queries, inaccuracies, typographical, clerical or other error or omission in the Purchase Order, the Buyer shall contact the Seller and such document shall be subject to correction without any liability on the part of the Buyer.
- 2.7 Any Purchase Order which has been accepted by the Seller pursuant to clause 2.2 may only be cancelled, postponed or varied by the Seller with the prior consent of the Buyer.
- 2.8 The Buyer may at any time prior to delivery of all or part of the Goods and/or performance of all or part of the Services cancel or amend a Purchase Order by written notice to the Seller. If the Buyer cancels or amends a Purchase Order its total liability to the Seller shall be limited to payment to the Seller of all costs reasonably incurred by the Seller in fulfilling the Purchase Order up until the date of receipt of the written notice of cancellation or amendment. The Seller shall promptly provide to the Buyer written evidence of costs incurred or likely to be incurred as a result of receipt of a written notice of cancellation or amendment as reasonably requested by the Buyer.

3 SPECIFICATIONS, QUALITY, WARRANTIES AND REPRESENTATIONS

- 3.1 The Seller shall at all times provide the Goods and/or Services in accordance with, and shall comply with, the terms of the Schedules to these Conditions. The Buyer shall at all times comply with the terms of the Schedules to these Conditions.
- 3.2 The Buyer is relying on the skill and judgment of the Seller in relation to the Goods and/or Services and without prejudice to any other terms set out in these Conditions, including but not limited to any terms implied by statute in favour of a purchaser, the Seller represents, warrants and undertakes to the Buyer that the Goods and/or Services shall:-
- (a) comply with the Specification;
 - (b) be of satisfactory quality and fit for the purpose expressly or impliedly made known to the Seller;
 - (c) be free from defects in design, materials and workmanship and should conform and comply in every way with the Purchase Order, and any specifications, samples and any other descriptions or instructions issued by the Buyer (including without limitation the Specification);
 - (d) be made from high quality materials and by properly qualified skilled and experienced persons;
 - (e) be designed and manufactured so as to be safe and without risk to health or property when properly used;
 - (f) include all necessary information about the use of the Goods and/or Services and all instructions and warnings relating to the Goods and/or Services as may be necessary for the safe use of the Goods and/or Services and for the Buyer to comply with its obligations under all application health and safety legislation and regulations;

- (g) comply with all relevant laws, regulations, orders, rules and codes of practice from time to time in force and obtain and maintain all necessary licences, authorisations and consents required to provide the Goods and/or Services;
 - (h) be marked in accordance with the Buyer's instructions and any applicable regulations or requirements of the transport carrier, and also be properly loaded, secured, stowed and carried so as to reach their destination in a safe, uncontaminated and undamaged condition;
 - (i) not infringe any Intellectual Property Rights of any third party.
- 3.3 The Seller also represents, warrants and undertakes that:
- (a) it shall comply with all applicable regulations and other legal requirements concerning the manufacture, packaging and delivery of the Goods, the performance of the Services and the creation of the Service Deliverables;
 - (b) it has full title to the Goods and that the Goods shall be transferred to the Buyer with full title guarantee, free of all charges, licences, liens, mortgages and encumbrances; and
 - (c) the Services shall be performed with reasonable care and skill and in accordance with generally recognised commercial practices and standards in the industry for similar services.
- 3.4 Without prejudice to any other express or implied right or remedy which the Buyer may have, if any of the Goods and/or Services are not supplied strictly in accordance with the Contract (including without limitation the Specification), the Buyer shall be entitled to avail itself of any one or more of the following remedies:
- (a) to cancel the Contract (in whole or in part);
 - (b) to reject the Goods and/or Services (in whole or in part) and return the Goods to the Seller at the risk and cost of the Seller on the basis that if the Price has already been paid by the Buyer, a full refund of the Price of any Goods and/or Services so rejected shall be paid immediately by the Seller;
 - (c) to refuse to accept any further deliveries of the Goods and performance of the Services but without liability to the Seller;
 - (d) to require the Seller to carry out at the Seller's expense any work necessary to make the Goods and/or Services comply with the Contract;
 - (e) to carry out itself at the Seller's expense any work necessary to make the Goods and/or Services comply with the Contract;
 - (f) to require the Seller to supply replacement Goods or re-perform the Services without delay in accordance with the Contract.
- 3.5 The Buyer and/or the Buyer's employees, agents and representatives shall be permitted to inspect and test the Goods at any time prior to delivery (including without limitation during manufacture, processing, storage, loading and unloading, whether at the premises of the Seller or any third party) and the Seller shall provide the Buyer with all facilities reasonably required for such inspection and testing.
- 3.6 Without prejudice to its other rights and remedies the Buyer may have whether in law or otherwise, if as a result of inspection or testing pursuant to clause 3.5 the Buyer is not satisfied that the Goods will comply in all respects with the Contract, the Buyer shall be entitled to any one or more of the remedies described within clause 3.4.
- 4 DELIVERY OF GOODS AND PERFORMANCE OF SERVICES**
- 4.1 Save as otherwise provided in a Schedule, the Seller shall deliver the Goods to the Buyer and/or perform the Services in accordance with the Delivery Date and if no date is agreed Delivery of the Goods and/or performance of the Services will take place within 7 days of the date of the Purchase Order, unless otherwise agreed in writing between the Seller and the Buyer.
- 4.2 Delivery of Goods shall be deemed to be made on the earliest occurrence of:
- (a) delivery of the Goods by the Seller or by a third party carrier engaged by the Seller to the Buyer at the Delivery Address; or
 - (b) collection of the Goods by the Buyer or a third party carrier engaged by the Buyer from the Seller.
- 4.3 The Seller shall supply the Buyer in good time with any instructions or other information required to enable the Buyer to accept delivery of the Goods and/or receive the Services.
- 5 PRICES AND PAYMENT**
- 5.1 The Price is:
- (a) exclusive of all applicable value added tax (which shall be payable by the Buyer subject to receipt of a valid VAT invoice); and
 - (b) inclusive of all charges for shipping, carriage, insurance and delivery of the Goods and/or Services and any duties, imposts or levies other than value added tax;
- unless otherwise agreed in writing between the Parties;
- 5.2 Unless otherwise agreed in writing between the Parties, the Seller shall be entitled to invoice the Buyer on or at any time after delivery of the Goods and/or completion of the Services but not before delivery of the Goods and/or completion of the Services, and each invoice shall quote the number of the Purchase Order and any applicable value added tax.
- 5.3 Unless otherwise agreed in writing between the Parties, the Buyer shall pay the Price in the Currency by the end of the second month following the month of invoice or, if later, after acceptance of the Goods by the Buyer.
- 5.4 Payment shall be effected as agreed in writing between the Parties.

- 5.5 The Buyer shall be entitled to withhold payment if the Goods and/or Services do not comply with the Specification or otherwise fail to conform with this Contract subject to notifying the Seller without undue delay of any non-conformity upon the Buyer's knowledge.
- 5.6 No increase in the Price may be made (whether on account of increased material, labour or transport costs, fluctuation in rates of exchange or otherwise) without the prior written consent of the Buyer.
- 6 RISK AND PROPERTY**
- 6.1 Until delivery of the Goods to the Buyer in accordance with clause 4.2, the Goods shall be at the risk of the Seller.
- 6.2 The title in the Goods shall pass to the Buyer upon delivery in accordance with clause 4.2, unless payment for the Goods is made prior to delivery, in which event title shall pass to the Buyer once payment has been made. In the event that payment is made prior to delivery of the Goods, the Seller must appropriate the Goods to this Contract immediately upon payment.
- 7 FORCE MAJEURE**
- 7.1 Neither Party shall be liable to the other or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of its obligations in relation to a Contract or these Conditions if the delay or failure is due to a Force Majeure Event.
- 7.2 If the Seller is or anticipates that it will be prevented or hindered from delivering the Goods or performing and/or completing the Services by the Delivery Date due to a Force Majeure Event, then the Seller shall notify the Buyer immediately and the Buyer shall be entitled to cancel or suspend the Contract without liability if it reasonably believes that delivery of the Goods and/or performance of the Services shall not be completed within 7 days of the due Delivery Date with immediate effect by giving notice in writing to the Seller.
- 7.3 In the event of suspension pursuant to Clause 7.2, the Buyer shall be relieved of its obligations for the period of such suspension including but not limited to the payment of any part of the Price due during the period of suspension.
- 7.4 In the event of cancellation or suspension of the Contract pursuant to Clause 7.2, the Seller shall repay to the Buyer that part of the Price paid (if any) in respect of any period or periods affected by such cancellation or suspension apportioned on a basis which shall be fairly and reasonably attributable to such cancellation or suspension.
- 8 DEFAULT AND TERMINATION OF THE CONTRACT**
- 8.1 Either Party shall be entitled to terminate the Contract immediately upon the occurrence of any of the following:
- (a) the other Party being in material breach of any term of these Conditions or the Contract and such breach not being capable of remedy;
 - (b) the other Party being in material breach of any term of these Conditions or the Contract and failing to remedy such breach within 28 days of receipt of written notice specifying the breach and requiring it to be remedied;
 - (c) the other Party (being an individual or firm) becomes bankrupt or goes into sequestration, or (being a partnership) is wound up by the court or becomes bankrupt or goes into partnership administration or sequestration, or (being a body corporate) is wound up by the court or is voluntarily wound up by reason of its inability to pay its debts or an administrator or receiver is appointed of any part or all of its income or assets and in any case if the other Party enters into any informal or voluntary arrangement (whether or not in accordance with the Insolvency Act 1986) with or for the benefit of the general body of creditors of the individual, the partnership or the body corporate, or the other Party ceases or threatens to cease, to carry on business; or
 - (d) the other Party suffering the equivalent or any similar or analogous event in (c) (above) in any jurisdiction.
- 8.2 Without prejudice to any of its other rights or remedies, the Buyer shall have the right to terminate the Contract immediately without any liability to the Seller:
- (a) if the Seller fails to deliver the Goods and/or complete performance of the Services on the Delivery Date and such failure is not remedied by delivery and/or performance (as appropriate) within 7 days of receipt of a written notice specifying the non-delivery and/or non-performance and requiring the Goods to be delivered and/or the Services to be performed; or
 - (b) if the Goods and/or the Services do not comply with the Contract.
- 9 CONFIDENTIALITY AND THE BUYER'S PROPERTY**
- 9.1 Each Party hereby undertakes not at any time to divulge any of the terms of the Contract or use any information in relation to the other Party's business or any other information received from the other Party in relation to the Contract of a confidential or proprietary nature other than for the purposes expressly envisaged by these Conditions provided that the Buyer can divulge such information to any party to whom it assigns or transfers all or part of this Contract.
- 9.2 All In-put Materials and all other materials, equipment and tools, drawings, specifications and data supplied by or on behalf of the Buyer to the Seller shall, at all times, be and remain the exclusive property of the Buyer, but shall be held by the Seller in safe custody at its own risk and maintained and kept in good condition by the Seller until returned to the Buyer. They shall not be disposed of or used other than in

accordance with the Buyer's written instructions and authorisation and shall be returned to the Buyer immediately upon termination of the Contract.

10 INDEMNITIES

10.1 Without prejudice to any of the Buyer's rights under any condition, warranty or other term expressed or implied in these Conditions or by statute or by common law, the Seller shall be liable to the Buyer for and shall indemnify and keep the Buyer indemnified against any and all liabilities, claims, actions, demands, expenses, costs (including but not limited to legal costs and other professional costs), proceedings, losses (including but not limited to loss of profit) or damage:

- (a) caused by a breach of any warranty given by the Seller to the Buyer in connection with the Goods and/or Services;
- (b) caused by any delays, defaults, non-deliveries (including but not limited to non-delivery of the Quantity Required) or non-performance (in whole or in part) arising other than as a result of negligence on the part of the Buyer; and
- (c) incurred by the Buyer in connection with any alleged or actual infringement of any third party's Intellectual Property Rights or other rights arising out of the use or supply of the Goods and/or the Services.

10.2 Where the Seller is performing Services pursuant to the Contract, neither Party intends that the rights and obligations conferred by the Contract or its termination or expiry will constitute a "relevant transfer" (as defined in the Regulation). If, notwithstanding such intention, the Regulation applies to transfer the employment of any person employed or engaged by the Seller (or its agents or subcontractors) to the Buyer or any replacement provider of services identical or substantially similar to the Services ("Replacement Provider") then in the event that the Buyer or the Replacement Provider serves a notice terminating the employment of such person within six months of the date of such transfer, the Seller shall indemnify the Buyer and the Replacement Provider and keep those two parties indemnified at all times against any and all liabilities, claims, actions, demands, expenses, costs (including but not limited to legal costs and other professional costs), proceedings, losses (including but not limited to loss of profit) or damage suffered or incurred by the Buyer and the Replacement Provider which arise from any claim or claims by any such employees or by any employee representatives in relation to the transfer or termination of any such contract of employment or collective agreements (including, without limitation any claim for breach of contract or wrongful dismissal, unfair dismissal, failure to inform and consult under the Regulations or the Trade Union and Labour Relations Consolidation Act and any entitlement to a redundancy payment).

11 GUARANTEE

The Seller consents to the Buyer transferring any guarantee or similar rights given by the Seller to the Buyer in relation to the Goods and/or the Services to any third party to whom the Buyer sells, hires or disposes of such Goods and/or the Services.

12 INSURANCE

12.1 The Seller shall at its own expense maintain at all times with an insurance office of good repute public liability insurance in respect of all commercial risks which shall be no less than £5 million in respect of any one claim and no less than £20 million in total.

12.2 The Seller shall produce to the Buyer details of the insurance maintained under this clause at any time on demand by the Buyer.

13 COSTS AND EXPENSES

Each Party shall be responsible for all the costs and expenses incurred by it in connection with and incidental to the preparation and completion of each Contract.

14 RELATIONSHIP OF PARTIES

Nothing in these Conditions or any document referred to in it or any arrangement contemplated by the Parties shall be construed as creating a partnership or joint venture between the Parties for any purpose and neither Party shall have the power or authority to bind the other Party or impose any obligations on it for the benefit of any third party.

15 AMENDMENTS AND VARIATIONS

Subject to clauses 2.6 and 2.8, no variation or amendments to the Contract or these Conditions shall be binding unless agreed in writing by an authorised representative of the Buyer.

16 WAIVERS

No delay in exercising or failure to exercise any of the rights of either Party arising from or in connection with the Contract or these Conditions shall operate as a waiver or release of that right. Any such waiver or release must be specifically granted in writing signed by the Party granting it.

17 ASSIGNMENT

17.1 The Buyer shall be entitled to perform any of the obligations undertaken by it and to exercise any of the rights granted to it under the Contract or these Conditions through any Affiliate and any act or omission of such Affiliate shall for the purposes of the Contract be deemed to be an act or omission of the Buyer.

17.2 Any Affiliate of the Buyer may utilise the Goods and the Services and the Buyer is permitted to purchase any Goods and Services from the Seller on behalf of an Affiliate of the Buyer.

17.3 The Buyer may at any time assign or transfer (in whole or in part) any of its rights and/or obligations under the Contract or these Conditions. The Seller may not assign, sub-contract, sub-license or otherwise dispose of any of its rights and/or obligations arising from the Contract or these Conditions without the prior written consent of the Buyer (such consent not to be unreasonably withheld or delayed).

17.4 If required to do so to give legal effect to any permitted assignment pursuant to the provisions of clause 17.3, the Parties shall enter into a novation agreement and shall use all reasonable endeavours to procure that the assignee or transferee enters into such novation agreement.

18 SEVERABILITY

If any term, clause, condition or part of the Contract is found by any court, tribunal, administrative body or authority of competent jurisdiction to be illegal, invalid or unenforceable then that provision shall, to the extent required, be severed from the Contract and shall be ineffective without, as far as is possible, modifying any other provision or part of the Contract and this shall not affect any other provisions of the Contract which shall remain in full force and effect.

19 DISPUTE RESOLUTION

19.1 The Parties shall use their best efforts to negotiate in good faith and settle any dispute that may arise out of or relate to these Conditions or the Contract or any breach thereof. If any such dispute cannot be settled amicably through ordinary negotiation between appropriate representatives of the Parties, the dispute shall be dealt with using the escalation procedure set out in this clause 19.

19.2 The dispute shall be referred by either Party to the chief executives of each of the Parties and they or their nominees shall meet in good faith in order to try and resolve the dispute. If the dispute or difference is not resolved as a result of such meeting either Party may (at such meeting or within 14 calendar days of its conclusion or after the expiry of 28 days following the date of referral to the chief executives) commence proceedings in accordance with clause 23.

20 ENTIRE AGREEMENT

20.1 The Contract, including these Conditions and any document referred to herein including without limitation the Purchase Orders, represents the entire agreement between the Parties relating to the sale and purchase of the Goods and/or Services and supersedes all previous agreements, arrangements and understandings between the Parties relating to the sale and purchase of the Goods and/or Services.

20.2 The Seller agrees that it will have no remedy in respect of any untrue representation innocently or negligently made by or on behalf of the Buyer prior to entering into this Contract upon which the Seller relied in entering into this Contract whether such representation was made orally or in writing. Nothing in this Contract or these Conditions will exclude or limit the liability of the Buyer for fraudulent misrepresentation.

20.3 Each Party agrees that its only remedy for breach of the Conditions or the Contract shall be for breach of contract.

20.4 If these Conditions or the Contract is translated into any language other than English, the English language text shall prevail.

21 NOTICES

21.1 Notices under these Conditions may be served by personal delivery, by first class post or by facsimile.

21.2 Notices shall be deemed to be served:

- (a) on delivery when delivered personally; or
- (b) on receipt of a printout confirming due transmission when transmitted by facsimile to the facsimile number notified by the other Party; or
- (c) two (2) days after mailing if sent by mail, provided the postage is properly paid and such notice is correctly addressed to the respective Party at its registered office, or such other address as shall have been notified to the other Party in writing.

22 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

Save for parties to whom the Buyer has transferred rights to pursuant to clause 11, an entity which is not expressly a Party to the Contract shall have no right under the Contracts (Rights of Third Parties) Act 1999 or otherwise to enforce any term of the Contract and the provisions of the Contracts (Rights of Third Parties) Act 1999 shall be expressly excluded from the Contract.

23 GOVERNING LAW

These Conditions and the Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed and construed in accordance with English law and subject to the provisions of clause 19 the Parties hereby agree to submit to the exclusive jurisdiction of the English Courts, save that the Buyer may elect to bring proceedings in the country where the Seller is incorporated.