

INEOS OXIDE LTD

CONDITIONS OF SALE

1. Formation of Contract and Application

These Conditions shall exclusively govern all Contracts between the Seller and Buyer. Any offer made by the Seller is subject to and deemed to incorporate the Conditions. In the event of any conflict, whether actual or potential, with any of the terms or conditions contained in Buyer's purchase order, conditions of purchase or any other communication whether oral or written of Buyer, these Conditions shall prevail.

2. Delivery and Risk

a. Acceptance of an order is subject to supplies being available or becoming available. If supplies are not available for delivery by the estimated delivery date, the Seller reserves the right to delay delivery.

b. Any time or date for delivery given by the Seller is given in good faith but is an estimate only and time of delivery shall not be of the essence.

c. Seller reserves the right to deliver up to 10% more or 10% less than the quantity ordered and in such event Buyer shall pay for the actual quantity delivered. The actual quantity delivered shall be determined at the works or store of Seller or Seller's agent and shall be deemed to be the quantity of the Goods delivered, unless Buyer or Buyer's agent shall notify any discrepancy in accordance with sub-paragraph (g) below.

d. Where the Goods are to be delivered in instalments, each delivery shall constitute a separate contract. Default by the Seller in respect of any one or more of the instalments in accordance with these Conditions shall not entitle Buyer to bring any claim on or terminate any other Contract.

e. Buyer shall be solely responsible for the proper unloading or discharging of Goods delivered pursuant to a Contract and mode of delivery as shall be set out in the Seller's quotation or as otherwise agreed in writing and risk shall pass to Buyer on delivery. All international trade terms used (including but not limited to FOB and CIF) shall have the meaning given to them by INCOTERMS 2000 (as revised from time to time) except where inconsistent with these Conditions.

f. If Buyer fails to take delivery of the Goods or any part thereof at the times stated for delivery, Seller may cancel such delivery and all other outstanding deliveries or instalments may claim from Buyer any losses (including loss of profits), costs (including the cost of all labour and materials used), damages, charges and expenses suffered by Seller as a result of such failure. As a consequence of the failure of the Buyer or the Buyer's agent to promptly discharge or unload any delivery, regardless of the mode of delivery, all demurrage charges incurred by the Seller shall be payable by Buyer in respect of the delays caused as a result of such failure.

g. Buyer or Buyer's agent shall, as soon as reasonably practicable and no later than seven days from the date of receipt of the Goods, examine the Goods in order to ascertain whether they accord with the Contract. In the event of there being a discrepancy between the Goods delivered and the Contract, Buyer or its agent shall forthwith notify Seller in writing giving sufficient details. Seller shall be permitted to investigate the matters raised in Buyer's written notification before the Goods in question are used or returned by Buyer. If Buyer fails to comply with the notification provisions contained in this sub-paragraph, the Goods shall be deemed to have been delivered and accepted in conformity with the Contract.

h. Buyer or Buyer's agent shall within three days of delivery submit in writing to carrier and Seller or Seller's agent all claims for damages to or partial loss of Goods in transit and the delivery note must be endorsed accordingly. If Buyer fails to comply with the notification provisions contained in this sub-paragraph, the Goods shall be deemed to have been delivered and accepted in conformity with the Contract.

3. Price and Payment

a. The price of the Goods shall be the price quoted in writing by the Seller.

b. Buyer shall pay the price of the Goods in full without any deduction, set off or abatement on any grounds 30 days following the date of delivery unless otherwise agreed in writing. Time of payment shall be of the essence of the Contract. If Buyer fails to make any payment on the due date then, without prejudice to any other right or remedy available to Seller, Seller shall (at its option) be entitled to:

- treat the Contract as repudiated by Buyer and suspend any further deliveries to Buyer, claim damages from Buyer and charge Buyer interest (both before and after any judgement) on the amount unpaid, at the rate of 2 per cent per month above the Bank of England base rate from time to time, until payment in full is made; or
- affirm the Contract, claim damages from Buyer and charge Buyer interest (in accordance with sub-paragraph 3.b.i.)

c. All returnable packages, pallets and other containers should be returned in good condition and Buyer shall inform Seller of the date of despatch. Buyer shall be charged the cost of replacement of such packages, pallets or containers where it fails to return them as aforesaid within a reasonable time of delivery.

4. Liability for Storage and Collection

a. If in the opinion of Seller, the storage tank or other installation (or any valve, filling line, pump or other equipment required to be used in connection therewith) into which the Goods would be transferred on delivery to Buyer is unsuitable for its intended use, Seller shall be entitled to refuse to make delivery of the Goods or any part thereof without giving notice. Such refusal shall not expose Seller to any liability whatsoever. Notwithstanding the foregoing, delivery by Seller shall not be construed as an admission on the part of Seller as to the suitability of such storage tank or installation.

b. Where Buyer provides any collection vehicle, ship or any other container for the collection or storage of Goods, Buyer hereby warrants that any such vehicle, ship or container or anyone acting on Buyer's behalf shall comply with all relevant legislation and applicable health and safety requirements. Seller accepts no responsibility whatsoever in relation to any collection vehicle, ship or other container whether or not Seller has previously inspected such.

5. Title

a. Notwithstanding delivery and the passing of risk in the Goods, the property in the Goods shall not pass to Buyer until such time as Buyer shall have paid to Seller the full price in respect of all Goods sold by Seller to Buyer under any and all Contracts or Seller shall have written to Buyer notifying Buyer that the property in the Goods has passed to Buyer.

b. Until such payment, Buyer shall carefully store the Goods in such a way as to enable them to be clearly identified as the property of Seller or where co-mingled with Goods of the same type, to identify such quantity as belongs to Seller. Buyer shall keep such Goods insured against all loss or damage howsoever caused at its own expense.

c. Seller reserves the immediate right of repossession of any Goods to which Seller has retained title as aforesaid and Seller and its servants are granted an irrevocable right and the licence to enter into any premises where the Goods are stored to effect such a repossession.

d. Buyer is not prevented or restricted from selling in the ordinary course of business Goods which have been processed or converted provided that any sale shall be as the principal and not as agent for Seller.

7. Remedies for Defective Performance

a. The obligations of the Seller under the Contract are limited such that in the event of a breach by the Seller of the warranty at Condition 8(a) below the Seller shall only be obliged (and shall have no further liability in contract, negligence or otherwise for any defect in the quality of the Goods or fitness for purpose of the Goods) at its option either to credit the price (if already paid) attributable to the defective Goods or replace any defective Goods.

b. In the case of a shortfall in the quantity of Goods, the sole remedy of the Buyer shall be for the Seller (at its option) to make good such shortfall within a reasonable time or credit the price of the quantity of Goods corresponding to the shortfall.

8. Liability

a. Seller warrants that the Goods shall at the time of delivery comply with Seller's specification for the Goods as agreed with the Buyer. Subject to this, all warranties and representations expressed or implied by statute, common law or otherwise in relation to the Goods are hereby excluded to the fullest extent permitted by law.

b. The Seller shall not be liable to the Buyer in contract, tort, including negligence or breach of statutory duty or otherwise howsoever and whatsoever the cause thereof for (i) any economic loss of any kind whatsoever, including without limit loss of profit, business, contracts, revenues or anticipated savings; or (ii) for damage to the Buyer's reputation and goodwill; or (iii) for any loss resulting from any claim made by any third party; or (iv) for any special, indirect or consequential loss or damage of any nature whatsoever.

c. Nothing in these Conditions shall exclude or limit the liability of the Seller for death or personal injury caused by the Seller's negligence or fraudulent misrepresentation.

d. Without prejudice to Conditions 8(b) and (c) the Seller's liability in contract, tort (including negligence or breach of statutory duty or otherwise arising) by reason of or in connection with the Contract shall be limited to the greater of the

Contract price or the amount receivable by the Seller for the claim under its insurance policy covering such risks provided that nothing in this condition shall oblige the Seller to obtain any insurance or claim upon any insurance which it holds.

9. Force Majeure

The Seller may without liability delay, reduce or ultimately cancel deliveries of Goods if the Seller is prevented, hindered, or delayed in or from carrying out its obligations under the Contract as a result of circumstances beyond its reasonable control. Such circumstances being herein referred to as Force Majeure shall be any occurrence arising from contingencies, circumstances or causes which are beyond the reasonable control of the Seller, including but not limited to the following circumstances: imposition of or compliance with any applicable law, regulation, decree, order or request of any governmental authority, nationalisation, expropriation, confiscation, riot, public disturbance, national or company strike, lockouts, fire, flood, earthquake, storm, explosion or any other act of God, breakdown of machinery or facilities, or inability to obtain equipment, fuel, energy or key raw materials on terms that Seller considers practical. Seller shall not be liable to Buyer for any loss or damage which may be suffered by Buyer as a direct or indirect result of Seller being prevented from, delayed or hindered in undertaking these obligations by reason of Force Majeure. If Force Majeure circumstances exist, Seller may apportion available supply of Goods amongst its customers on an equitable basis and/or may reduce any quantity of Goods ordered by the Buyer.

10. Termination

In the event that:

a. the Buyer fails to pay the Seller on the due date any sum payable under the Contract;

b. the Buyer makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction) or passes a resolution for its voluntary winding-up or has a petition for its compulsory winding-up presented against it, or an encumbrancer takes possession, or a receiver or administrative receiver is appointed, or any of the property or assets of Buyer, or the occurrence or sufferance of anything equivalent to any of the foregoing under any jurisdiction other than England and Wales, or

c. Buyer ceases, or threatens to cease, to carry on business;

then, without prejudice to any other right or remedy available to Seller, Seller shall be entitled to suspend any further deliveries under a Contract without any liability to Buyer, if the Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary, require payment in advance for all or any such deliveries and terminate the Contract forthwith by written notice to the Buyer.

11. Third Party Rights

a. In the case of Goods supplied pursuant to an International Supply Contract only, the Seller shall have no liability to the Buyer if the Goods infringe or are alleged to infringe the rights of any third party.

b. In respect of all sales other than those under an International Supply Contract, if it is alleged that the Goods infringe the rights of a third party or if the Seller in its reasonable opinion believes such an allegation is likely to be made, the Seller may at its own option and expense:

- modify or replace the Goods so as to avoid the infringement; or
- procure for the Buyer the right to continue to use the Goods; or
- repurchase the Goods at the price paid by the Buyer.

12. Infringement and Trade Marks

a. Buyer shall indemnify and keep indemnified Seller fully on demand against any and all losses, damages, cost and expenses incurred by or ordered against Seller as a result of infringement or alleged infringement of the rights of any third party and which arise from the carrying out of any work required to be done to the Goods in accordance with the requirements or specifications of Buyer (or the manufacture of the Goods in accordance with the specifications of the Buyer).

b. Buyer will not do or authorise any third person to do any act which would or might damage or be inconsistent with the trade marks used by Seller in relation to the Goods or to the goodwill associated therewith and, in particular, will not do or authorise the alteration, obliteration covering up of any such trade marks or incorporation of other marks (in the whole or in part) onto the Goods. Any goodwill arising as a result of the Buyer's permitted use of the Seller's trade marks shall at all times accrue to the Seller. All advertising, promotion and selling materials supplied by Seller to Buyer shall remain the property of Seller and Buyer shall not permit any other person to make use thereof.

13. General

a. Variation of these Conditions can only be made by Seller, without prior written agreement.

b. If any provision or part of a provision of these Conditions shall be, or be found by any court of competent jurisdiction to be, invalid or unenforceable, such invalidity or unenforceability shall not affect the other provisions or parts of such provisions of these conditions, all of which shall remain in full force and effect.

c. Buyer shall not be entitled to assign the Contract without obtaining Seller's prior written consent to such assignment.

d. Notwithstanding any other Condition, where Goods are sold for export outside the United Kingdom:

- the Uniform Laws on International Sales Act 1967 shall not apply and the Seller shall be under no obligation to give notice under Section 32(3) of the Sale of Goods Act 1979;
- section 26(3) of the Unfair Contract Terms Act 1977 shall apply and notwithstanding Condition 8(c) all liabilities for injury or death arising directly from the use of the Goods are expressly excluded.

e. A person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement but this does not affect any right to remedy of a third party which exists or is available apart from this Act.

f. The Contract shall be governed by and construed in accordance with English law and the parties hereby submit to the exclusive jurisdiction of the English Courts provided that Seller may sue Buyer in the Courts of any country, such proviso being for the sole benefit of Seller.

g. These Conditions are also available in Dutch, French, German, Italian and Spanish however in the event of any conflict with the English version, the English version shall prevail.

14. Definitions

"Buyer" means the person, firm or company who has requested any Goods;

"Conditions" means the standard terms and conditions of sale set out herein;

"Contract" means any contract for the supply of Goods between the Seller and Buyer;

"Goods" means any goods supplied or to be supplied by the Seller;

"International Supply Contract" means as defined in s26 of the Unfair Contract Terms Act 1977;

"Seller" means Ineos Oxide Limited and its successors and assigns.

Revised May 2003