



## TRONOX GENERAL TERMS AND CONDITIONS OF SALE AND DELIVERY

**I. General** (1) These General Terms and Conditions of Sale and Delivery (the "Terms" or this "Contract") shall automatically apply to and be an integral part of any contract for purchase of Material from Tronox (the "Seller"). No addition to, variation, novation or agreed cancellation of any Terms and Conditions of this Contract shall be binding upon the Parties unless reduced to writing and signed by or on behalf of the Parties. Any alteration to these Terms shall only be effective if reduced into writing and signed by both Parties. The provisions of these Terms shall accordingly take precedence over any other terms and conditions of sale between the Parties. (2) "Parties" shall refer to the Buyer and Seller collectively, and "Party" shall mean either of them, as the context may require. The term Seller as used in this Contract shall include all companies in which the Seller has a direct or indirect interest of fifty percent (50%) or more. (3) "Special Terms" shall refer to the contents of the cover page to this agreement which contains the details of any and/or all amendments to this agreement as agreed between the Parties. Accordingly, the contents of the Special Terms shall supersede the General Terms and Conditions contained herein. (4) This Contract read with the Special Terms constitutes the sole record of agreement between Parties in relation to the subject matter hereof. Neither Party shall be bound by any express, tacit or implied term, representation, warranty, promise or the like not recorded herein. This Contract supersedes and replaces all prior commitments, undertakings or representations, whether oral or written, between the Parties in respect of the subject matter thereof. (5) If Seller agrees in writing to any addition or modification to Terms, remaining Terms shall remain unimpaired and the Buyer shall not be entitled to derive any rights from any such addition or modification in any later contract or other legal relationship. (6) The headings contained in these Terms are included for mere convenience of reference and shall not affect their construction or interpretation. (7) Any electronic communication between Seller and Buyer shall be considered to be a "writing" and/or "in writing". The electronic communication system used by Seller shall serve as sole proof for the content and the time of delivery and receipt of such electronic communication. (8) Any reference to day, month or year shall be construed as Gregorian calendar days, month or year.

**II. Order Confirmation** (1) Seller shall issue an Order Confirmation to Buyer specifying the price, quantity, delivery time, availability of material. Such Order Confirmation shall be binding on the Parties. (2) The Order Confirmation shall not incorporate any Terms that are in conflict with the Terms, unless agreed in writing by both Parties.

**III. INVOICING.** (1) The prices invoiced shall be the price as agreed when Order Confirmation was issued plus VAT, if applicable. (2) Seller's shall issue a Certificate of Weight or Packing List which shall be final and binding for settlement purposes. However, Buyer may at Buyer's expense and time arrange for an independent weight check at a certified weighing station; provided, Seller shall only consider claims for differences in weight where difference is in excess of 1.5% of the invoiced weight.

**IV. Payment.** (1) Payment shall be made in accordance with the agreed payment as reflected on the Order Confirmation. (2) Payment shall not be deemed to have been affected until relevant amount has been cleared into one of the Seller's designated bank accounts. (3) The Seller reserves the right to use payments for settlement of invoices issued on Buyer which have been outstanding longest, plus any interest on arrears and costs accrued thereon, in the following order: costs, interest, principal claim. (4) Buyer shall not have the right to withhold payments. Counterclaims may only be offset if they are uncontested or have come res judicate.

**IV. Shipment.** (1) The Seller shall deliver material in accordance with the agreed INCOTERMS®2010. Any additional costs resulting from special shipping requests made by Buyer shall be borne by Buyer, as shall any additional costs resulting from rerouting a consignment, storage expense, etc. (2). The risk of destruction, loss or damage shall pass to the Buyer upon delivery as defined by the agreed INCOTERMS® 2010.

**V. Delivery** (1) The Seller shall be entitled in its discretion to deliver the full Quantity of material, alternatively partial deliveries shall be permissible until such time as the full Quantity of material has been delivered. For the purpose of the Terms, each partial delivery shall be regarded as an independent delivery. While Seller shall use its best endeavors to ship or deliver the material covered hereby in accordance with the Buyer's wishes, Seller accepts no responsibility or liability, nor shall it entertain any Claims, for any loss incurred by the Buyer due to delays in shipment or delivery caused by any reason whatsoever. (2) The date of delivery shall be the day on which the material is put at the Buyer's disposal in accordance with INCOTERMS®2010. (3) The trade terms used in this Contract shall have the same meaning as those defined by INCOTERMS® 2010 and any subsequent amendments.

**VI. Retention of Title** (1) Title to the material shall not pass to the Buyer until it has fulfilled all obligations arising from its business transactions connection with the Seller, which shall include (but not be limited to) settling accessory claims, claims for damages, and honoring checks and bills. Title to the material shall also remain with the Seller if the Seller's claims have been included in a current account and the balance of this account has been acknowledged. (2) If the Buyer defaults in its obligations to the Seller, the Seller shall have the right without granting a respite, without waiving any other rights or remedies and without cancelling the Contract, to demand the return of the material to which it retains title. The Buyer is obligated to co-operate in the return of the aforementioned material. If expressly requested by Seller and without prejudice to any other rights held by Seller in law, Buyer shall pay Seller a penalty in USD of 0.25% of the value of each invoice/s for each day Buyer remains in default of this obligation. Acceptance of the returned material shall not constitute cancellation of the Contract unless the Seller has expressly declared this in writing. If the Seller cancels Contract, it shall have the right to demand compensation for having permitted Buyer to use the material for a certain period. (3) If material to which Seller retains title are processed into new products, the Buyer shall be deemed to be affecting such processing on behalf of Seller without thereby acquiring any claims against the Seller. The Seller's title shall thus extend to the products resulting from the processing. If material to which title is retained by Seller are processed together with, mixed with or attached to material to which title is retained by third parties, Seller shall acquire co-ownership of the resulting products in the ratio of the invoice value of the material owned by it to the invoice value of the material owned by those third parties, and if such material, as a result of such mixing or attaching, become part of a principal matter of Buyer, the Buyer assigns in advance his title to the new item to the Seller. (4) The Buyer shall be under obligation to provide, on behalf of Seller, adequate storage of the material to which the Seller retains title, to service and repair them at its expense and insure them at its expense against loss and damage up to an amount which may reasonably be expected of a prudent business man. Buyer assigns in advance to the Seller any claims which may accrue to it under such insurance policies. Where cession and assignment is expressly prohibited in any such insurance policies, the Buyer undertakes to, and therefore shall, pay over to the Seller any proceeds received in terms of any such insurance policies. (5) As long as Buyer duly meets its obligations to Seller, it shall have the right to, in the normal course of business, do as it wishes with the material to which Seller retains title. The Buyer shall not, however, have the right to pledge, mortgage or otherwise encumber the material to which the Seller retains title. When reselling the material, Buyer shall make the passing of the title subject to full payment for the material by customers. (6) By consent, the Buyer assigns in advance to the Seller any claims which may arise from a resale of the material to which the Seller retains title, together with any incidental rights and security interests (including bills of exchange or letters of credit), so as to provide Seller with security for all claims it has against Buyer as a result of the business connection. If material to which Seller retains title are sold together with other material at a single price, the assignment shall be limited to that portion of invoice value which covers the material to which Seller retains title. If Buyer sells material in which Seller has co-ownership pursuant to clause VIII, the assignment shall be limited to the portion of the invoice value which corresponds to Seller's co-ownership. If Buyer uses material to which Seller retains title for processing a third party's production on a contract basis: it assigns in advance its contractual claim against the third party to Seller in order to provide it with security for its claim. Where such claim is not capable of cession and assignment, Buyer undertakes to, and therefore shall, pay over to Seller any proceeds received in terms of any such contractual claim against a third party. (7) As long as Buyer duly meets its obligations to the Seller, it may collect claims from a resale or from contract processing itself. It shall not have the right to assign or pledge such claims as security itself. (8) If the Seller believes its claims to be at risk, Buyer shall, at the Seller's request, inform its customers of the assignment of its claims to the

Seller and supply Seller with all necessary information and documents. Any acts of third parties aimed at seizing material to which Seller retains title or at appropriating claims assigned it shall be brought to the Seller's attention by Buyer immediately. (9) If the value of the security provided to Seller exceeds by more than 20 percent the value of the claims to be safeguarded, Seller shall, at Buyer's request bring the excess coverage down to 20 percent by releasing security of its own choice.

**VIII. Notification of Defects** (1) Notification of non-compliance to specification or other defects shall only be recognized if filed in writing within thirty (30) days of receipt of the material, together with supporting evidence, samples and packing slips, stating the invoice number and date, and the markings on the packaging. (2) Material which are the subject of a complaint shall only be returned to Seller once Parties have agreed the non-compliance is sufficiently serious to warrant the return of the material. (3) The Buyer's wrongful non-acceptance or rejection of material or cancellation or repudiation of the Contract and/or the Buyer's order shall entitle the Seller to recover from the Buyer, in addition to any other damages caused by such action: (i) in the case of material which reasonably cannot be resold by the Seller to a third party, the price of such material; or (ii) in the case of material which can be resold by the Seller or where an action for the price is not otherwise permitted by law, damages equal to five percent (5%) of the price for the material as liquidated damages.

**IX. Damages.** Except as provided in Clause XIII, Seller's liability for damages of any kind, including damages for material furnished in accordance with the Contract not being as warranted, shall not be greater in amount than the purchase price Buyer paid plus substantiated transportation costs, for the material from the point of delivery to Buyer's place of business in respect of which such damages are claimed. Failure of Buyer within thirty (30) days after receipt of material delivered hereunder to give notice in writing to Seller the material is not as warranted shall be an unqualified acceptance of such material and a waiver by the Buyer of any and all claims with respect thereto.

**X. Warranty.** The Seller warrants it has good and marketable title to the material covered hereby, such material shall conform to the Seller's guaranteed specifications, and such material, in the form, condition and state as sold by the Seller do not infringe any South African, United States, German, Dutch, or Australian patent. No other warranty of any kind, express or implied, is made by the Seller concerning the material covered hereby. **NO IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR PURPOSE SHALL APPLY** The foregoing warranty is exclusive and in lieu of all other warranties, representations, conditions or other terms, express implied, statutory, contractually or otherwise, including, without limitation, any warranty of merchantability, suitability or fitness for any purpose, or absence of infringement of any claim in any intellectual property right covering the material.

**XI. Patents & Technical Advice.** (1) Except where produced in accordance with a design, process or formula of the Buyer, the Seller further warrants the material supplied by it hereunder, in the form, condition and state as sold by the Seller, does not infringe any South African, United States, German, Dutch or Australian patent; provided, the Seller shall have no responsibility with respect to any claim of infringement that results from the use, consumption, combination or other processing of such material. (2) Technical advice provided by the Seller verbally, in writing or by way of trials or samples is given in good faith but without warranty of any kind, and shall not be considered as in any way altering the respective rights and obligations of the Seller and the Buyer as set forth herein nor as an endorsement of Buyer's intended uses of material (where known to the Seller) or as representing that the Buyer may use the materials in a particular manner without infringing the proprietary rights of third parties. (3) Should the Buyer be placed on notice of a claim of infringement within the scope of Seller's warranty in **Clause X**, Buyer shall promptly notify the Seller and tender defense of the same to Seller, including providing all information considered necessary by Seller for evaluating the claim and developing a response. Buyer shall not admit liability nor in any manner prejudice any defense it (or the Seller) might have in respect of any claim or part thereof. The Seller at its sole discretion shall either (i) defend at its expense and through counsel of its choosing, and if the claim is sustained pay all costs and damages awarded by final, non-appealable judgment in compensation for such Infringement; (ii) refund purchase price of materials to the Buyer, whereupon the Buyer shall assume responsibility for the defense of the claim and Seller's obligations to Buyer shall be considered as fully met; (iii) provide an acceptable, non-infringing alternative to materials at no cost to Buyer for the Buyer's use and indemnify the Buyer against past infringement liability up to the purchase price of materials or (iv) procure a release and license from the patent holder on the Buyer's behalf. (4) A material failure on the Buyer's part to provide requested information or assistance to the Seller in defending a claim of infringement shall nullify any obligation or liability of the Seller to the Buyer under this Paragraph and shall require the reimbursement by the Buyer of any sums paid and expenses incurred in the investigation and defense of the claim in question. (5) Where a claim of infringement is made against the Buyer such that the Seller's warranty under **Clause X** does not apply and the Seller is joined as a party or incurs costs in its own defense or on the Buyer's request and behalf, or where a claim of infringement is made against the Seller by reason of the Seller's making and selling materials to Buyer in accordance with a design, process or formula of the Buyer, then the Buyer shall defend, indemnify and hold harmless the Seller, its affiliates and the respective agents, officers, employees, directors and representatives of each in respect of such claim. (6) When using Seller's products for manufacturing purposes or when processing them into new products, the Buyer shall not have the right, without the Seller's prior consent, to use the Seller's product designations, (especially its trademarks) on the resulting products or on the packaging thereof or in any relevant printed matter or advertising literature, particularly by mentioning the Seller's products as components of its own product. The supply of material under a trademark shall not be deemed agreement to the use of this trademark for the products manufactured therefrom.

**XII. Applicable Law, Interpretation of Trade Terms** (1) The parties' rights and obligations arising out of or in connection with the Contract and these Terms shall be governed by and construed in accordance with South African law OR Western Australian law, as applicable. No uniform laws governing the international sale of movable property or the conclusion of international sales contracts for movable property, both dated July 17, 1973, nor the UN agreement on the sale of material dated April 11, 1980, shall apply. (2) Customary trade terms shall be interpreted in accordance with the latest version of the Incoterms as published by the International Chamber of Commerce and set out by the Seller in the Order Confirmation. (3) Seller shall pay the customs and import duties in accordance with agreed INCOTERMS®2010. Any other charges, taxes and costs connected with the purchase Contract in the country of destination shall also be borne by Buyer.

**XIII. Places of Performance and Jurisdiction, Invalidity of Individual Clauses.** (1) "Place of Performance" for delivery shall be governed by the agreed INCOTERMS®2010. (2) "Place of Performance" for payment shall Seller's nominated bank account which shall be stated on Invoice. (3) Place of Jurisdiction and venue for suit for both Parties shall be Pretoria, South Africa or Perth, Western Australia, as applicable. Seller shall furthermore have the right to sue the BUYER at the BUYER's place of business or domicile.

**XIV. Assignment** This Contract is not assignable or transferable by the Buyer in whole or in part (whether by way of cession, delegation, encumbrance or otherwise), except with prior written consent of the Seller and any purported assignment (transfer, delegation, cession and/or encumbrance) without such consent shall be void.

**XV. Force Majeure. Impediments to Performance.** Force majeure of any kind, unforeseeable production, traffic or shipping disturbances, acts of God, laws, statutes, fire, floods, drought, unforeseeable shortages of labor, utilities including electricity supply or raw materials supplies, strikes, lockouts, acts of government or other administrative measures, orders or decrees from any court, war, terrorism, riot, sabotage, accident, epidemic, and any other hindrances beyond the control of the party obliged to perform which diminish, delay or prevent production, shipment acceptance or use of the material, or make it an unreasonable proposition, shall relieve the party from its obligation to supply or take delivery, as the case may be, as long as and to the extent the hindrance prevails: provided that, if, as a result of the hindrance, supply and/or acceptance is delayed by more than eight weeks, either party shall have the right to cancel



the Contract by written notice to the other party. Should the Seller's supply be limited for any such reason, the SELLER shall have the right to fairly distribute any available supply among its customers in such manner as the Seller may determine.

**XVI. Taxes** All taxes and duties now and hereafter imposed on the export of the material under this Contract in the country of origin shall be for the sole account of the Seller. All taxes and duties now and hereafter imposed on the import of the material by the country of destination or any intermediate country shall be for the sole account of Buyer. All other charges, taxes and costs connected with the purchase Contract shall also be borne by Buyer.

**XVII. Divisible Contract.** If this Contract contemplates or provides for multiple deliveries or shipments, each such delivery or shipment shall be considered as a separate sale, but always governed by these Terms. Neither failure of nor delay in any delivery, nor shortage in quantity or defect in quality in any delivery shall invalidate the Contract as to other deliveries.

**XVIII. Export of Materials.** Buyer understands and agrees any export (and/or re-export) of materials purchased from Seller is or may be subject to applicable export laws and regulations and compliance with these laws and regulations shall be Buyer's sole responsibility.

**XIX Anti-Bribery and Corruption.** The Buyer warrants that as it relates to the material purchased from Seller – (1) it complies with all anti-bribery, anti-corruption and anti-money laundering laws, regulations and/or policies of the United Kingdom of Great Britain and Northern Ireland ("UK"), Canada, European Union ("EU"), the United States of America ("USA"), Organisation for Economic Co-operation and Development ("OECD") and the United Nations ("UN") and South Africa to which Seller and/or any of its shareholders and/or any of Seller's shareholders conducts business (such laws, regulations and/or policies are hereinafter collectively referred to as the "International Anti-Bribery Laws"); (2) it complies with all laws, regulations and policies relating to economic or trade sanctions or export controls of the UK, Canada, EU, USA, OECD and the UN to which the Seller and/or any of the Seller's shareholders is or are the Seller's Employer's shareholders conducts business (such laws, regulations and/or policies are hereinafter collectively referred to as the "Sanctions Laws"); (3) it has adequate anti-corruption compliance programs, policies and procedures ("Anti-Corruption Program") in place to enable compliance with all anti-bribery, anti-corruption and anti-money laundering laws, regulations and/or policies as well as economic or trade sanctions or export control related laws, regulations and/or policies to which it is subject, including but not limited to the provisions of the Corruption of Foreign Public Officials Act of Canada, United Kingdom Bribery Act 2010, the U.S. Foreign Corrupt Practices Act, the US OFAC Regulations, the US Export Administration Regulations and the South African Prevention of Organised Crime Act of 1998 (collectively, the "Anti-Bribery and Sanctions Legislation").

**XX. Breach.** (1) Should Buyer or Seller materially breach any essential Term of this Contract and fail to remedy such breach within seven days after receiving written notice requiring such remedy, then the other Party shall be entitled, without prejudice to its other rights in terms of this Contract or in terms of any applicable law, including any right to claim damages, to claim immediate specific performance of all of the defaulting Party's obligations then due for performance or to cancel this Contract. Notwithstanding anything to the contrary contained in this Contract, neither Party shall be entitled to cancel or rescind this Contract after the performance by both Parties of their obligations which are required to be performed on the Closing Date in terms of this Contract. (2) Should the Buyer (i) be wound up, liquidated, deregistered or placed under business rescue, in any such event whether provisionally or finally and whether voluntarily or compulsorily, or pass a resolution providing for any such event; or (ii) have any application or other proceedings brought against or in respect of it in terms of which it is sought to be sequestrated or placed under curatorship if a natural person, or, if not a natural person, deregistered, wound up, liquidated or placed under business rescue, in any such event whether provisionally or finally; or (iii) have any judgment or similar award ("**Judgment**") awarded against it and fail to satisfy the Judgment within thirty (30) days after becoming aware thereof and (iv) if the Judgment is appealable, fail to appeal against the Judgment within the time limits prescribed by law or fail to diligently prosecute such appeal thereafter or ultimately fail in such appeal; or (v) if the Judgment is a default judgment, fail to apply for the rescission thereof within the time limits prescribed by law or fail to diligently prosecute such application thereafter or ultimately fail in such application; or (vi) if the Judgment is reviewable, fail to initiate proceedings for the review thereof within the time limits prescribed by law or fail to diligently prosecute such proceedings thereafter or ultimately fail in such proceedings; or (vii) be or become insolvent or commit any act which is or, if it were a natural person, would be an act of insolvency as defined in the Insolvency Act No 24 of 1936; or (viii) being a company, be deemed to be unable to pay its debts in terms of the Companies Act No 71 of 2008; or (ix) compromises or attempt to compromise with, or defer or attempt to defer payment of debts owing by it to, its creditors generally, then the Seller shall be entitled, without prejudice to its other rights in law including the right to claim damages, to cancel the Contract or to claim immediate specific performance of all of Buyer's obligations, whether or not otherwise then due for performance and/or to retain any amounts already paid by the Buyer to the Seller as liquidated damages.

**XXI. General** (1) Without prejudice to any other Term and Conditions of this Contract, any successor-in-title, including any executor, heir, liquidator, business rescue practitioner, curator or trustee, of either Party shall be bound by this Contract. (2) Each Term of this Contract is, notwithstanding the grammatical relationship between that Term and the other Terms of this Contract, severable from the other Terms of this Contract. Any Term of this Contract that is or becomes invalid, unenforceable or unlawful in any jurisdiction shall, in such jurisdiction only, be treated as pro non scripto to the extent that it is so invalid, unenforceable or unlawful, without invalidating or affecting the remaining Terms of this Contract, which shall remain of full force and effect. The Parties declare that it is their intention that this Contract would have been executed without that invalid, unenforceable or unlawful term if they were aware of that invalidity, unenforceability or unlawfulness at the time of the execution of this Contract. (3) The signature by either Party of a counterpart of this Contract shall be as effective as if that Party had signed the same document as the other Party. (4) The Seller may, at its election, claim damages in lieu of any penalty or compensation provided for in this Contract, in accordance with the provisions of the Conventional Penalties Act No 15 of 1962. (5) To the extent that the provisions of the Consumer Protection Act No 68 of 2008 does not apply to the Parties, the procedure in **Clause VIII** (Notification of Defects) shall apply in respect of allegedly defective material.