



Innophos (Taicang) Trading Co., Ltd. ("Seller")
TERMS AND CONDITIONS OF SALE

1. **GENERAL.** Notwithstanding any different or additional terms or conditions in the buyer's purchase documents, this Contract is made solely upon, and is contingent upon Buyer's accepting, the terms and conditions stated above and contained herein. These Contract terms govern over any conflicting terms and conditions stated in such general terms and conditions.

2. **PRICES.** (a) The price(s) herein specified may be adjusted by Seller at any time by written notice from the Seller dispatched at least fifteen (15) days prior to the effective date of such price adjustment. Buyer shall be deemed to have consented to such adjustment unless written rejection of any price increase is given to Seller before the effective date thereof. Any such rejection by Buyer shall operate to release Seller from all further obligations to deliver and to permit Buyer to purchase elsewhere until such time as the parties shall have agreed in writing upon an adjusted price or Seller shall have consented in writing to re-establishment of the last prevailing contract price. Such adjusted price shall be paid for all Product shipped hereunder on and after the effective date thereof unless subsequently again adjusted by Seller. Seller may at its option add to the price of Product sold hereunder the amount of any increase in transportation charges for shipments to Buyer, provided that such transportation charges are payable by Seller hereunder. An agreement to maintain firm pricing for a product or limit price increases to a maximum amount or percentage as may be specified in the Special Conditions section above shall preclude Seller during the applicable period from increasing price for such product in any manner which has the effect of increasing Seller's margin in excess of costs, but shall not preclude Seller from introducing, a mechanism or adjustment hereunder to reflect Seller's changes in costs of raw materials, energy, manufacture or transportation.

(b) Except during periods when Seller has committed to firm pricing, should the Buyer receive an offer from a reputable United States manufacturer for the supply of Product of equal quality, deliverable in like quantities as the then undelivered quantity hereunder, and upon terms and conditions resulting in a lower delivered price than the price then in effect hereunder, then Seller upon receiving satisfactory written proof thereof, shall give Buyer written notice within thirty (30) days after such receipt whether or not it shall meet such lower price or such terms and conditions. If Seller decides not to meet such lower price or terms and conditions, then Buyer may purchase such Product from such other manufacturer, and the quantities so purchased shall be deducted from the contract, and Seller and Buyer shall have the right, within fifteen (15) days from Seller's notice of its decision, to terminate this contract.

3. **DELIVERY.** Any time or date stated for delivery is an estimate only and the Seller shall not be liable for failure to deliver at the specified time or on the specified date, nor shall such failure on the part of the Seller be deemed to be a breach of this Contract or any of its terms and conditions or part thereof. Overruns or underruns of up to ten percent (10%) shall constitute due performance of any Order. Unless otherwise specified herein, delivery of Product shall be Ex Works Seller's facility and title to and risk of loss of all Products will pass to Buyer upon Seller making the Products available for pickup at its facility. Buyer shall be responsible for filing and pursuing claims with carriers for loss or damage in transit. Buyer hereby represents and warrants that the Buyer is solely purchasing the Product for use in further manufacturing, and Buyer understands and agrees that it will not resell any Product to any third party other than to its own corporate affiliates for use by them in further manufacturing.

4. **PAYMENT.** All invoices shall be due and payable within thirty (30) days from the date of invoice. All invoices must be paid in accordance with the terms on the face thereof without deductions, set offs, counterclaims, backcharges or any other charges whatever and the obligations of Buyer to Seller shall remain unimpaired regardless of disputes which may arise between Buyer and other persons or entities. Each shipment shall constitute a separate and independent transaction and Seller may recover for each such shipment without reference to any other. If Buyer is in default with respect to any terms or conditions of this Contract, then, in addition to any other legal remedy available to Seller, Seller may, at its option, defer further shipments hereunder until such default be remedied (in which event Seller may elect to extend the contract period for a time equal to that for which shipments were so deferred), or, Seller may decline further performance under any order. If, in the judgment of Seller, the financial responsibility of Buyer shall at any time become impaired, then, in addition to any other remedy available to Seller, Seller may decline to make further deliveries under this Contract or any Order, except upon receipt, before shipment, of payment in cash or satisfactory security for such payment. The representations and agreements of Buyer in any application for credit from Seller are hereby incorporated by reference. Amounts unpaid after the payment term shall accrue interest compounded monthly at the annual rate of 18% or the maximum legal rate, if less. Buyer shall be responsible for, and shall reimburse Seller for, all fees and costs of collection hereunder (including but not limited to attorneys' fees and court costs).

5. **WEIGHT OF PRODUCTS.** In case of a dispute concerning the weight of Product delivered in bulk carload or

tank car shipments, shipper's weight, certified to by sworn Weigh-master, shall govern absent manifest error.

6. **LIMITED WARRANTY.** Determination of the suitability of the Product(s) supplied hereunder for the uses and applications contemplated by Buyer and others shall be the sole responsibility of Buyer, which is relying on its own skill and judgment in the selection of the Product(s) and for the determination of the efficacy and effect of the Product(s) in Buyer's products, usage and applications. All warranties by Seller pertaining to the Product(s) are expressed in this paragraph.

(a) Seller warrants that the Product, on the date of production, will comply in all material respects to the Specifications set forth on Exhibit A.

(b) Seller warrants that to the best of its knowledge the Products do not infringe any valid and issued patent in the country of manufacture. In the event of notification of breach of this warranty, Seller may at its election and as Buyer's sole remedy either thereafter provide Buyer with non-infringing Products or terminate the contract or work out an alternative solution which is mutually satisfactory to both parties.

(c) SELLER MAKES NO OTHER EXPRESS WARRANTIES; THERE ARE NO IMPLIED WARRANTIES INCLUDING WITHOUT LIMITATION TITLE, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. Buyer acknowledges that any product literature or studies related to the Product(s) made available to Buyer by Seller are provided for the general convenience of Buyer and do not constitute a warranty of the performance, suitability or efficacy of the Product(s) when used by Buyer.

(d) BUYER ASSUMES ALL RISK AND LIABILITY FOR ALL LOSS, DAMAGE OR INJURY TO PERSON OR PROPERTY, INCLUDING WITHOUT LIMITATION POLLUTION, ENVIRONMENTAL DAMAGE AND RESTORATION LIABILITY, RESULTING FROM (I) THE USE OF SAID PRODUCT IN MANUFACTURING PROCESSES OR IN COMBINATION WITH OTHER SUBSTANCES, OR OTHERWISE, (II) THE HANDLING AND DISPOSAL OF THE PRODUCT, AND (III) RAW MATERIAL FURNISHED BY THE BUYER. Buyer acknowledges that Seller has not and will not substantially participate in the design of Buyer's product nor in the integration of the Product(s) into the design of Buyer's products, usages or applications.

7. **LIMITATION OF WARRANTIES, DAMAGES AND TIME LIMIT OF CLAIMS.** All claims with respect

to allegedly nonconforming or defective Products shall be made by Buyer in writing within thirty (30) days of receipt of shipment of such Product, after which the Product shall be deemed accepted for all purposes and Seller shall have no liability for same. Claims with respect to Products must be verified by an authorized representative of Seller, and Buyer must obtain authorization and shipping instructions from Seller prior to returning any Products. Risk of loss of same shall remain with Buyer until delivery to Seller. BUYER'S SOLE REMEDY, AND SELLER'S SOLE OBLIGATION WITH RESPECT TO A BREACH OF THE FOREGOING WARRANTIES SHALL BE, AT THE SELLER'S SOLE OPTION, THE REPLACEMENT OF THE NONCONFORMING PRODUCT WITH A PRODUCT THAT MEETS THE WARRANTIES OR REFUND OF THE PURCHASE PRICE PAID FOR THE PRODUCT. IN NO EVENT SHALL SELLER BE LIABLE TO BUYER OR ANY THIRD PARTY (I) FOR SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL OR PUNITIVE DAMAGES OF ANY KIND INCLUDING WITHOUT LIMITATION LOST PROFITS, GOOD WILL OR MARKET RECOVERY OF FINISHED GOODS, OR (II) IN EXCESS OF AMOUNTS ACTUALLY RECEIVED BY SELLER FOR THE PRODUCTS AT ISSUE, REGARDLESS OF THE FORM OR BASIS OF ANY ACTION. BUYER'S FAILURE TO COMMENCE ANY CAUSE OF ACTION RELATED TO THE PRODUCTS OR OTHERWISE ARISING UNDER THESE TERMS WITHIN ONE YEAR AFTER THE DATE OF DELIVERY SHALL CONSTITUTE A WAIVER BY BUYER OF ANY OTHERWISE APPLICABLE STATUTE OF LIMITATIONS AND FOREVER BAR ALL RIGHTS TO COMMENCE ANY CAUSE OF ACTION WITH RESPECT THERETO.

8. **RETURNABLE CONTAINERS.** All returnable containers used in making deliveries hereunder are Seller's property and shall be used by Buyer only for proper storage of Seller's Product originally delivered therein. Buyer shall make a deposit as security for the return of such containers, equal to Seller's current deposit charge therefor at the time of shipment. Such deposit shall be paid, without discount, when the invoice for the contents is paid. Buyer shall return such containers to Seller's shipping point within two months from the date of original shipment, whereupon Buyer shall be credited with the amount of the deposit. If Buyer fails to return the containers in good condition and within the time specified, Seller may refuse to accept the same and may retain said deposit in addition to any other rights and remedies available to Seller. In addition, Buyer shall reimburse Seller for all reasonable costs and expenses incurred by Seller in providing any communication and emergency response system services in connection with the Product sold hereunder, except to the extent that such

services are required due to Seller's breach of this Contract or negligence.

9. **TAXES.** Buyer shall reimburse Seller for all taxes, increases in or new taxes, excises or other charges which Seller may be required to pay to any governmental authority (national, state, provincial or local) upon, or measured by, the sale, production, transportation or use of any Product sold hereunder.

10. **COMPLIANCE WITH LAWS.** Seller and Buyer shall comply with applicable laws and regulations in all materials respects, including without limitation those regarding product registration and regulation; environmental health and safety; transportation; customs and trade; anti-bribery and export controls; and any consumer fraud acts and deceptive and unfair trade practices acts. Buyer agrees to comply with all applicable U.S. export control laws, including but not limited to the Export Administration Regulations (15 C.F.R. Part 700), the Department of Treasury's economic sanctions programs (31 C.F.R. Part 500), and the Foreign Trade Regulations (15 C.F.R. Part 30) in the export, reexport, transfer or use of the Products. Buyer warrants that the Products purchased from Seller will not be used in any nuclear, chemical, biological, missile-related or other activities prohibited under the Export Administration Regulations (15 C.F.R. Part 744). If any transactions hereunder are or will be structured as a Routed Export Transaction under 15 C.F.R. §30.3 and 15 C.F.R. §758.3(b), Buyer is responsible for obtaining any required export licenses, submitting or directing its U.S. agent to submit Electronic Export Information to the U.S. Government through the Automated Export System, and complying with any other export clearance requirements set forth in the Export Administration Regulations or Foreign Trade Regulations.

11. **INDEMNITY.** Buyer acknowledges and agrees that it has expertise and knowledge in the proper handling, processing, storage, transportation, sale, use and disposal of the Products. Buyer shall assume full responsibility for proper handling, processing, storage, transportation, sale, use and disposal of the Products after shipment to Buyer, and shall defend, indemnify and hold harmless Seller and its affiliates, officers, directors, shareholders, employees, agents and representatives from and against all losses, liabilities, claims, damages, demands, actions, costs and expenses (including without limitation attorneys' fees and court costs) (collectively, "Losses"), arising out of or relating to same, including without limitation Losses arising out of or relating to the manufacture, supply, sale, distribution or use of any product using or incorporating the Products.

12. **PATENTS; TRADEMARKS; UNPATENTED INFORMATION.** If any Products sold hereunder are to be

prepared or manufactured according to Buyer's specifications or designs, Buyer shall defend, indemnify and save harmless Seller and its affiliates, officers, directors, shareholders, employees, agents and representatives against any claims or liability for violation of any intellectual property rights, including patent, trade secret or trademark rights, owned or controlled by third parties in the United States or in any other country on account of such preparation or manufacture.

The sale of Products shall not expressly or impliedly grant to Buyer any right or license of any kind under any patent, patent application, or other industrial property right owned or controlled by Seller or its affiliates, but the foregoing shall not be understood to limit in any way the right of Buyer to use and sell such Products, in the events such Products, as sold hereunder, are covered by any such patent.

13. **FORCE MAJEURE.** Neither party shall be liable for its failure to perform hereunder if said performance is made impracticable due to any circumstances beyond the reasonable control of the party affected, including but not limited to, acts of God, acts of terrorism, fires, floods, wars, sabotage, accidents, labor disputes or shortages, plant shutdown, equipment failure, voluntary or involuntary compliance with any law, order, rule or regulation of government agency or authority, or inability to obtain raw materials or necessary inputs or services including without limitation power, fuel, equipment or transportation. The affected party may omit purchases or deliveries during the period of continuance of such circumstances and the contract quantity shall be reduced by the quantities so omitted. During any period when Seller shall be unable to supply the total demands for any Product provided for in this Contract, whether caused by the circumstances specified above or otherwise, Seller may allocate any available Product among all buyers including its own divisions and departments, on such basis as it may deem fair and practical.

14. **ENTIRE AGREEMENT; AMENDMENT.** This Contract, together with the attached exhibits, constitutes the entire agreement between the parties concerning the subject matter hereof and there are no understandings, representations or warranties of any kind, express or implied, not expressly set forth herein. No modification of this Contract shall be of any force or effect unless such modification is in writing and signed by the party to be bound thereby; and no modification shall be effected by the acknowledgment or acceptance of purchase order forms containing terms or conditions at variance with those set forth herein.

15. **ASSIGNMENT; SEVERABILITY.** Neither this Contract nor any right or obligation hereunder may be assigned by Buyer without the prior written consent of

Seller. Subject to the foregoing, this Contract shall inure to the benefit of and be binding upon the trustees, successors and allowable assigns of the Parties. Any attempted assignment, sublicense or transfer of this Contract or any rights granted under it, in whole or in part, by Buyer, is in violation of the foregoing shall be null and void. If any Section of this Contract, or any part thereof, is determined to be invalid or illegal by any court or administrative agency of competent jurisdiction, then that part shall be limited or curtailed to the extent necessary to make such Section, or part thereof, valid, and all other remaining terms of this Contract shall remain in full force and effect.

16. **WAIVER.** Seller's waiver of any breach, or failure to enforce any of the terms and conditions of this Contract, at any time, shall not in any way affect, limit or waive Seller's right thereafter to enforce and compel strict compliance with every term and condition hereof. The acceptance by the Seller of any payment after the specified due date shall not constitute a waiver of the Buyer's obligation to make further payments on the specified dates. No waiver of any provision of this Agreement by Seller shall be valid unless made in writing and signed by Seller.

17. **TERMINATION; SURVIVAL.** This Contract may be terminated in accordance with Sections 17(a) and 17(b) below.

(a) Seller may terminate this Contract upon a breach of this Contract by Buyer, which breach is not cured within thirty (30) days after written notice thereof is given to Buyer.

(b) Seller may immediately terminate this Contract to the extent permitted by law, if Buyer shall be declared bankrupt or insolvent or shall make an assignment for the benefit of its creditors, or if a receiver shall be appointed for its property, or if any proceedings are commenced by or against it under any bankruptcy or similar law.

(c) In addition to provisions that by their terms survive termination, the following provisions shall survive the termination of this Contract: Sections 3, 4, 6, 7, 8, 9, 11, 12, 13, 17(c) and 18, and accrued payment obligations. Upon termination of this Contract, Buyer shall reimburse Seller for all Product ordered by Buyer but not delivered, and any raw materials, work in process, and other non-cancellable expenses incurred by Seller in connection with the supply and manufacture of the Products.

18. **GOVERNING LAW.** This Contract will be governed by and interpreted in accordance with Chinese law.

19. **DISPUTES.** If any dispute arising out of or in connection with this Contract, the parties shall use their

efforts to resolve such disputes through friendly consultation. Such consultation shall commence immediately after either party has given the other party a written notice specifying the existence, nature and key points of the dispute and the party's intention of settling such dispute through consultation. If the parties fail to resolve the dispute through consultation within thirty (30) days after such notice, either party may submit the dispute to Shanghai International Arbitration Center ("SHIAC") for arbitration in accordance with SHIAC's arbitration rules then in effect. The arbitration proceedings shall be conducted in Shanghai in English. The arbitration tribunal shall consist of three (3) arbitrators. Within 10 days of notice by either party issued following the consultation period, each party shall select one arbitrator from SHIAC's list of arbitrators for commercial disputes, and within 10 days of such selections, the two arbitrators shall select the third from such SHIAC's list of arbitrators. If any such selection by a party or the two arbitrators shall not be made on time, the chairman of the SHIAC shall make the selection in question. The arbitration award shall be final and binding on the parties and shall be enforced in accordance with its terms. Either party may petition to a court of competent jurisdiction to enforce such arbitration award. Except as otherwise stipulated by the arbitration award, each party shall bear their own costs in the arbitration and the parties shall split evenly the cost of the arbitrators.

20. **NO THIRD PARTY BENEFICIARIES.** This Contract shall be binding upon and inure solely to the benefit of the parties. The parties intend that there shall be no third party beneficiaries under this Contract, and that no person or entity, except the parties, shall have any rights or remedies under this Contract, including the right to bring any action on account of its breach or in any relation to it whether in contract, in tort, or otherwise.

21. **HEADINGS; PREPARATION; INTERPRETATION.** The headings for the various Sections herein are for reference only and are not part of the Contract. This Contract shall not be construed for or against either party by reason of any presumption of preparation by such party. Unless the context of this Contract otherwise clearly requires, references to the plural include the singular, the singular the plural and the part the whole and "or" has the inclusive meaning represented by the phrase "and/or." The words "hereof," "herein," "hereunder," and similar terms in this Agreement refer to this Contract as a whole and not to any particular provision of this Contract.

22. **COUNTERPARTS.** This Contract may be executed in two or more counterparts, including by facsimile or by portable document file ("PDF") each of which shall be

deemed an original and all of which shall together be deemed to constitute one agreement.

23. **CUMULATIVE REMEDIES.** No remedy conferred by any provision of this Contract is intended to be exclusive of any other remedy, and each and every remedy shall be cumulative and shall be in addition to every other remedy given in this Contract or existing at law or in equity, by statute or otherwise.

24. **NOTICES.** Except where specifically provided for in this Contract, all notices provided for in the Contract shall be sent postpaid by registered or certified mail, return receipt requested, via China Postal Service ("CPS") or by nationally recognized overnight courier, *e.g.*, FedEx, and shall be deemed duly given (i) three (3) days after deposit with the CPS or (ii) one (1) day after deposit with such courier. Except where specifically provided for in this Contract, notices sent by Buyer via E-mail, facsimile,

electronic means or other means not specified in this Section shall be null and void under this Contract. Irrespective of the foregoing, normal day-to-day correspondence in the ordinary course of business may also be sent via electronic means or personal delivery.

25. **RELATIONSHIP OF PARTIES.** Buyer and Seller are and will always remain independent contracting parties with respect to each other, and nothing in this Contract will be construed to place the parties in the relationship of partners, joint ventures, fiduciaries or agents. Buyer will add a provision to its website or marketing materials concerning any of Buyer's products, usages, or applications containing the Product(s) to the effect that Seller has not reviewed, endorsed, or approved any of Buyer's marketing claims concerning Seller's products, usages, or applications.

[End of General Terms and Conditions]

EXHIBIT A

SPECIFICATIONS

Seller's standard specifications apply.