

## General Terms and Conditions of Purchase

*These general terms and conditions of purchase (“Terms and Conditions”) shall constitute part of the sale agreement (if any) unless the sale agreement refers to specific terms and conditions in which case those specific terms and conditions shall apply in conjunction with the Terms and Conditions below.*

### 1. Agreement

These are the Terms and Conditions under which **Indorama Eleme Fertilizer and Chemicals Limited (“Company”)** purchases products from a seller (“**Seller**”), and shall apply to all orders and offers placed by the Company (“**Order**”) and agreements concluded by the Company with the Seller in relation to the purchase by the Company of the supplies or materials (“**Products**”) described in the relevant Order or agreement. The Company’s purchase of the Products is expressly conditioned on the Seller’s acceptance of these Terms and Conditions. The Company expressly notifies the Seller of its objection to and rejection of any different and/or additional terms proposed by the Seller in any acceptance or other document issued by the Seller, and the Company will not be bound by any standard or printed terms or conditions presented by the Seller. Unless explicitly objected to in writing received by the Company, these Terms and Conditions shall apply to all Orders or purchases by the Company whether or not they applied to a prior purchase by the Company. The Company reserves the right to revoke any Order at any time before acceptance by Seller.

*“Contract” means these Terms and Conditions, the sale agreement (if any) and the Order for purchase of the Products by the Company.*

### 2. Price

The price payable for the Products (“**Price**”) shall not be higher than that stated in the Order and unless otherwise stated shall be:

- a. inclusive of all charges including without limitation packaging material, packing, shipping, loading, carriage, insurance and delivery of the Products to the delivery address and any duties, imposts, levies or taxes (including without limitation any sales or use tax) other than value added tax; and
- b. fixed for the duration of the applicable Contract.

Seller covenants that if it should at any time prior to the delivery of the Products sold hereunder sell similar Products in similar quantities to any third party at lower prices, it will notify the Company in writing of such lower prices, and the Company shall be entitled to receive the full benefit of such lower prices from the date of such sale to any third party.

No variation in the Price nor extra charges can

be made (whether on account of increased material, labor or transport costs, fluctuation in rates of exchange or otherwise) without the prior written consent of the Company. Any unilateral change of the Price by Seller, even partial, shall entitle the Company to cancel the corresponding Order partially or totally as the Company considers appropriate without charge or penalty.

### 3. Payment

Payment terms shall be as set forth in the Order. The Seller will separately invoice the Company for and in respect of each purchase and consignment of the Products delivered under each Order.

Unless otherwise stated in the Order or the sale agreement the Seller shall invoice the Company for each purchase and consignment of the Product on or after delivery of such Product to the Company and the Company shall pay such invoice net within 60 days from the invoice date.

Without prejudice to any other right or remedy, the Company reserves the right to set off any amount owing or asserted to be owing at any time from the Seller or associated company of the Seller to the Company against any sums payable by the Company to the Seller or associated company of the Seller.

If for any reason the Price cannot be determined, the Seller fails to deliver any one or more compliant consignments of the Product when due, the Seller breaches any term of the Contract, and/or the Seller’s financial worthiness becomes unsatisfactory to the Company, the Company shall have the right, in addition to all other remedies available to it under the Contract or at law or in equity, to (a) suspend or cancel the Order in whole or in part, (b) suspend or cancel further payments to the Seller, (c) recover all payments which it has already made to the Seller, (d) refuse to accept further deliveries of the Products, (e) recover from the Seller any expenditure incurred by the Company in obtaining the Products in substitution from another supplier, and/or (f) claim damages for any additional costs, losses or expenses incurred by the Company which are in any way attributable to the matters stated above, including without limitation loss of profits and the cost of collection.

Notwithstanding anything set out above, the Company reserves the right, with due intimation to the Seller, to vary the agreed payment terms (including the Price) and/or to cancel or change any credit

arrangements or terms agreed with the Seller.

#### **4. Title and Risk of Loss**

##### **A. Domestic Purchases**

The title for the Products shall pass from the Seller to the Company when the Products are delivered at the agreed point of delivery or when the Company has paid for the Products in part or in full, whichever is earlier. The risk of loss for the Products shall remain with the Seller until the Products are delivered at the agreed point of delivery and accepted by the Company.

##### **B. International Purchases**

Unless otherwise agreed in writing in the Contract, the title and risk of loss for the Products shall pass from the Seller to the Company in accordance with Incoterms 2020 on a CFR basis.

#### **5. Insurance**

##### **A. Domestic Purchases**

Unless otherwise agreed in writing in the Contract, the Seller shall insure the Products up to the agreed point of delivery and thereafter it will be the Company's responsibility to insure the Products.

##### **B. International Purchases**

Unless otherwise agreed in writing in the Contract or indicated in any Order issued by the Company, the Seller and the Company respectively shall be responsible for insuring the Products in accordance with Incoterms 2020 on a CFR basis.

Any insurance policy taken out by the Seller must cover all damage and loss to the Products up to the full insurable value of the Products.

Notwithstanding any other provision of the Contract, in the event of any damage to the Products before the title passes to the Company, the Company shall be entitled to receive the proceeds of any insurance policy taken out by the Seller up to the amount due to the Company.

#### **6. Cancellation or Delay**

The Company shall be entitled to cancel any Order in whole or in part by giving notice in writing to the Seller at any time prior to delivery and acceptance by the Company of the Products. The Company shall also have the right to terminate the Contract at any time and for any reason by giving notice in writing to the Seller. In such event(s), the Company's sole liability shall be to pay to the Seller the agreed price for such Products as have already been delivered and accepted by the Company at the time of cancellation and/or termination.

The Seller must deliver the Products to the

Company within the schedules prescribed in the Order or as agreed in the Contract. If the Products are not delivered on the due date then, in addition to all other remedies available to it under the Contract or at law or in equity, the Company shall have the right to (a) suspend or cancel the Order in whole or in part, (b) suspend or cancel further payments to the Seller, (c) recover all payments which it has already made to the Seller, (d) refuse to accept further deliveries of the Products, (e) recover from the Seller any expenditure incurred by the Company in obtaining the Products in substitution from another supplier, and/or (f) claim damages for any additional costs, losses or expenses incurred by the Company which are in any way attributable to the Seller's failure to deliver the Products on the due date, including without limitation loss of profits and the cost of collection.

Other than with the express written consent of the Company, the Seller has no right to cancel any Order or to delay any delivery. If the Company allows the Seller to cancel any Order or to delay a delivery, the Seller shall pay the Company all costs incurred by the Company which are in any way attributable to such cancellation or delay.

#### **7. Shipment and Delivery**

Delivery on the Order must be made in the quantities and on the dates specified by the Company. The Company, at its discretion, may reject the early delivery of the Products. Time is of the essence with respect to the Order.

The Products shall be properly packed, clearly labeled and adequately protected against damage and deterioration in transit. Unless otherwise stated in the Order, the Products shall be delivered during normal business hours to the Company's place of business or other place as may be specified in the Order. The Seller shall ensure that each delivery is accompanied by a delivery note which is prominently displayed and which shows, inter alia, the Order number, date of Order, number of packages and contents. The Company shall not be deemed to have accepted the Products until the Company has had fifteen (15) days to inspect them following delivery or within a reasonable time (which in any case shall not be less than fifteen (15) days) after any latent defect in the Products has become apparent. The Seller shall supply the Company on delivery of the Products with all operating and safety instructions, warning notices clearly displayed, and other information as may be necessary for their proper use, maintenance and repair. Where delivery of the Products is to be made in bulk, the Company reserves the right to accept up to five per cent (5%) more or five per cent (5%) less than the quantity ordered, and the quantity so delivered shall be deemed to be the quantity ordered if the Company so elects. The Seller will repair or replace the Products damaged or lost in

transit or during off-loading, whether or not by the Company, or stacking free of charge.

The Products shall be delivered on the terms as set out in the Contract or on the basis of Incoterms 2020 in the case of international purchases. The Company shall be entitled to refuse to accept delivery and/or return any consignment of the Products delivered by the Seller, in accordance with the Contract.

#### **8. Product Characteristics and Suitability**

The Seller undertakes to deliver Products of the quantity, quality and description which correspond strictly to the technical specifications, quantity and description in the Order and/or the sample accepted by the Company and/or in any applicable specification supplied by the Company to the Seller. The Company's weights and/or measurements shall govern. The Products shall be without fault and shall be new and unused unless otherwise specified. The Seller shall comply with all applicable guidelines, standards, laws and regulations concerning the manufacture, packaging, packing and delivery of the Products. Upon reasonable prior notice, the Company shall have the right to inspect and test the Products, including without limitation at the loading port, and the Seller shall facilitate any such request. The Company may return any rejected Products at the Seller's risk and expense and/or require the Seller to replace any rejected Products within a reasonable time as stipulated by the Company. The right to reject shall extend to the whole or any part of a consignment. The Seller shall reimburse the Company for all costs, losses, damages and expenses incurred by the Company which are in any way attributable to the Seller's failure to provide Products which are compliant with the applicable technical specifications, quantity and description and/or the rejection of the Products, including without limitation any expenditure incurred by the Company in obtaining other products to replace the rejected Products, loss of profits and the cost of collection.

#### **9. Changes to the Order**

The Company may at any time by written notice to Seller require changes to the Order including without limitation changes in the drawings or specifications, method of shipment, quantities, packing or time or place of delivery. Where applicable, the Seller agrees to promptly provide the Company with written quotations reflecting any changes to the prices, shipment or delivery dates as a result of any such requirement. Any claim or adjustment proposed by the Seller which may prejudice the Company must be approved by the Company in writing before such proposed claim or adjustment becomes binding on the Company.

#### **10. Warranties**

The Seller represents and warrants to the Company that the Products shall be of satisfactory quality, material and workmanship, merchantable, free of defect in design, material and workmanship and fit for any purpose for which they are intended and shall conform to the specifications and quantity set forth in the Order. In addition, the Seller represents and warrants that (a) the Products shall be adequately contained, packaged or labeled and shall conform to the affirmations of fact stated thereon, (b) the Products will comply with all applicable guidelines, standards, laws and regulations, including without limitation any voluntary codes of conduct relating to the Products and their sale, use and supply (c) in performing its obligations hereunder, the Seller shall fully comply with all applicable guidelines, standards, laws and regulations, (d) the Products or the intended use thereof do not infringe the intellectual property rights of any third party, and (e) any services included in the Products shall be performed in a professional manner, in accordance with applicable industry standards. Seller further represents and warrants that it is able to transfer and does transfer to the Company good and marketable title to the Products. All the representations and warranties set forth in this Section 10 shall survive acceptance of the Products and shall be in addition to any other warranties, express or implied, available to the Company. Neither inspection nor acceptance of the Products shall impair any of the foregoing warranties.

#### **11. Limitation on Liability**

The Company's liability and Seller's recovery, for any injuries, losses, damages, expenses, costs and/or other liabilities occasioned by, arising out of and/or relating to any suspension or cancellation of an Order by the Company (including any refusal by the Company to accept delivery of the Products), any breach of the Contract by the Company, and/or any other act or omission of the Company (including its negligence), shall be limited to the lesser of (a) the actual and direct costs incurred by Seller for its manufacture of the Products in question prior to such cancellation, breach, or other act or omission, or (b) the Price of the Products actually delivered pursuant to the Order. In no event shall the Company be liable to the Seller for any punitive, special, consequential, indirect, exemplary and/or incidental damages, including without limitation any loss of business, profit or goodwill. The Seller shall be absolutely barred from commencing any action or proceeding against the Company later than 90 days after the cause of action has accrued.

#### **12. Indemnity**

Without prejudice and in addition to any other provision of the Contract, the Seller will indemnify, hold harmless and, if applicable and upon the Company's request, defend at Seller's sole cost and expense, the Company, its agents, servants, officers, directors and employees, the Company's distributors, dealers and all entities which purchase the Products or products into which the Products are incorporated, and their respective customers, harmless against any suit, action, proceeding, judgment, liability, cost, damage, loss, claim and expenses (including without limitation loss of profits and the cost of collection) occasioned by, arising out of, relating to and/or alleging any claim for injury, death, damage or loss to any person or any property, breach of any guidelines, standards, laws or regulations, or any consequential or incidental damages resulting therefrom, caused or contributed to by (a) any fault, defect or alleged defect in the Products (including by reason of strict liability in tort), (b) any breach by the Seller of the Contract, (c) any breach by the Seller of applicable guidelines, standards, laws or regulations, (d) any act, omission, fault, or negligence of Seller or anyone acting on its behalf, and/or (e) any infringement, misappropriation or other violation of the patent, trade secret, trademark, trade name, or other intellectual property right of any other person, firm, corporation or other entity arising from the manufacture, sale or use of any of the Products. In connection with the Products or otherwise, if the Seller's employees, agents, sub-contractors or other representatives are on or present at any premises of the Company, the Seller shall be and is responsible for the acts and omissions of such persons within or about the Company's premises and agrees to indemnify and hold the Company harmless against liability for damage to property or injury to or death of persons arising out of such acts or omissions of such persons. In the event of a claim against the Company which may be the subject of indemnification, the Company shall provide written notification thereof to the Seller. The Seller shall provide the Company with such reasonable assistance in the prosecution of any defense as the Company may request. The Seller will, in respect of any claim or suit, reimburse the Company for the legal and other actual defense expenses paid by the Company and/or the Company's insurance carriers, and for the actual amount of any settlement or final judgment award paid by the Company and/or the Company's insurance carriers. Without prejudice to the generality of the foregoing, the Seller shall indemnify the Company against all actions, claims, demands, costs, charges and expenses arising from and/or incurred by reason of any infringement or alleged infringement of copyright, patent, registered design or other property right.

#### **13. Force Majeure**

The Company shall not be liable for any failure or delay in the performance of the Contract, or for any

loss or damages suffered by the Seller by reason of such failure or delay, if such failure or delay is directly or indirectly caused by or in any manner arises from events and causes beyond the Company's reasonable control, including without limitation accidents, acts of God, acts and omissions of any governmental authority, declared or undeclared wars, terrorism, explosions, pandemics, strikes or other labor disputes, fires and natural calamities (including without limitation floods, earthquakes, storms and epidemics), changes in the law, delays in obtaining (or the inability to obtain) labor, materials, services, fuel, power, materials or supplies through the Company's usual sources at normal prices, riots, embargoes, delay or default of common carriers, transportation delays, or without limiting the foregoing, any other cause or causes, whether or not similar in nature to any of those herein before specified, which are beyond the Company's reasonable control. The Company shall be entitled to, at its sole option and without any charge or penalty, cancel any Order or any part thereof, obtain the Products covered by the Order from other sources and/or reduce the quantity of the Products specified in any Order upon the occurrence of an event of force majeure. The Company may also terminate, with intimation to the Seller, the total Order if the force majeure event has been in effect for a period beyond 3 months.

#### **14. Waiver**

No waiver or amendment of any provision of the Contract shall be valid or binding on the Company unless the waiver or amendment is made in writing and signed by an authorized representative of the Company. No waiver by the Company of any breach by the Seller of the Contract (including without limitation any of the Terms or Conditions contained herein) shall be construed as a waiver of any succeeding breach of the same or any other term of the Contract. Failure or delay by the Company to enforce any of its rights under the Contract shall not be taken as or deemed to be a waiver of such right. Nothing contained herein shall limit the remedies of the Company in the event of the Seller's breach of the Contract.

#### **15. Assignment**

The Seller shall not assign to any person or entity all or a portion of its rights or obligations under the Contract without the prior written consent of the Company, and any attempted assignment without such consent shall be void. The Company may assign its rights under the Contract without the consent of the Seller in the event that the Company shall effect a reorganization, consolidate with or merge into any other corporation, partnership, organization or other entity, or transfer all or substantially all of its properties or assets to any other corporation,

partnership, organization or other entity. In any other circumstances, the Company, with intimation to the Seller, may transfer its rights under and subject to the terms of Contract.

#### **16. Severability**

If any provision of the Contract is held by a competent authority to be invalid or unenforceable, the validity of the other provisions of the Contract shall not be affected.

#### **17. Notices and Communication**

Any notice or other communication that either party gives under the Contract shall be made in writing and given either by hand, first class recorded postal delivery, facsimile transmission or electronic mail to a previously designated authorized individual. For the purposes of this provision, any employee or agent of the Seller who has accepted an Order shall be deemed to be an authorized individual of the Seller.

#### **18. Conflicting provisions**

In the event of any conflicting or inconsistent provisions between (1) the sale agreement (if any), (2) the Order, (3) these Terms and Conditions, and (4) any other applicable document(s) or correspondence (including for the avoidance of doubt any other specific terms and conditions referred to in the sale agreement (if any) or any other document), the provisions of (1) the sale agreement (if any), (2) the Order, (3) these Terms and Conditions, and (4) such other applicable document(s) or correspondence shall prevail respectively and take precedence with respect to any such conflicting or inconsistent provisions.

The English language version of the Contract (including without limitation these Terms and Conditions) shall be controlling in all respects and shall prevail in the event of any conflicts or inconsistencies with translated versions, if any.

#### **19. Status of the Seller**

Nothing in the Contract shall create or be construed as creating a partnership, joint venture, a contract of employment or relationship of employer and employee, or a relationship of principal and agent between the Seller and the Company.

#### **20. Confidentiality**

The Seller undertakes to keep in strict confidence all information obtained from the Company and shall not use any such information for any purpose other than the purposes intended in the Contract. The Seller shall protect the confidentiality of

all such information with the same degree of care it uses to protect its own confidential information, but in no event shall the Seller use less than a reasonable standard of care. For the avoidance of doubt, the Price of the Products shall be deemed to be confidential information for the purposes of this Section 20.

The Seller agrees that it would be difficult to measure any damages caused to the Company which might result from any actual or threatened breach by the Seller of the promises set forth in this Section 20, and that in any event money damages would be an inadequate remedy for any such breach. Accordingly, the Seller agrees that the Company shall be entitled, in addition to all other remedies that it may have, to an injunction or other appropriate equitable relief to restrain any actual or threatened breach by the Seller of the promises set forth in this Section 20, without the necessity of proving actual damages and without the posting of any bond. The Seller further agrees that, in such event, the Seller shall reimburse the Company its attorney's fees and costs on an indemnity basis.

#### **21. Governing Law**

In the case of domestic purchases, the Contract shall be governed by and construed in accordance with the laws of Nigeria without regards to its conflicts of law provisions. In the case of international purchases, the Contract shall be governed by and construed in accordance with the laws of Singapore without regards to its conflicts of law provisions. For the avoidance of doubt, the application of the United Nations Convention on Contracts for the International Sale of Goods is expressly excluded.

Any dispute arising out of or in connection with this Contract, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration in Singapore in accordance with the Arbitration Rules of the Singapore International Arbitration Centre for the time being in force, which rules are deemed to be incorporated by reference in this clause. The Tribunal shall consist of one (1) arbitrator. The language of the arbitration shall be English.

Nothing in the Contract shall or shall be construed so as to limit the right of the Company to take proceedings against the Seller in the courts of any country in which the Seller has assets or in any other court of competent jurisdiction, nor shall the taking of proceedings by the Company in any one or more jurisdictions preclude the taking of proceedings by the Company in any other jurisdiction (whether concurrently or not) if and to the extent permitted by applicable law.