

Vikudha General Terms and Conditions of Sales (2019)

These general terms and conditions of sales ("**Conditions**") are between Vikudha Overseas Corporation Limited (or Vikudha Limited, or any other affiliated company within the Vikudha group of companies) ("**Seller**") and each person or legal entity which enters into an agreement with Seller for the purchase of Goods ("**Buyer**").

1. Definitions

Under these Conditions, the following terms have the following meanings:

"**Certificate of Analysis**" means a certificate showing the analysis of a representative sample of the Goods for physical composition and for specifications;

"**Goods**" means goods sold by Seller and purchased by Buyer;

"**Parties**" means Buyer and Seller;

"**Sales Contract**" means Vikudha's standard sales contract between Seller and Buyer stipulating the conditions of sale and purchase of Goods, incorporating these Conditions, but excluding the Certificate of Analysis forwarded to Buyer, and any other documents incorporating product specifications; and

"**Tax**" means all forms of taxes, duties, imposts, charges, withholdings, rates, levies or other governmental impositions of whatever nature and by whatever authority imposed, assessed or charged together with all costs, charges, interest, penalties, fines, expenses and other additional statutory charges, incidental or related to the imposition.

2. Acceptance

2.1 All sales by Seller to Buyer whether initiated by written purchase order, electronic means, telephone or any other method, will be subject to the Conditions set forth herein.

2.2 The Conditions set forth herein supersede any conflicting terms or conditions which Buyer purports to apply under any Buyer's standard terms and conditions, purchase order, confirmation of order, specifications, shipping instructions or other document issued by Buyer.

2.3 No variations from these Conditions shall be binding upon Seller unless specifically agreed to in writing by an authorized representative of Seller.

2.4 Each order or acceptance of a quotation for Goods by Buyer shall be deemed to be an offer by Buyer to buy Goods subject to these Conditions.

2.5 In addition to these Conditions, certain Goods sold by Seller are sold in collaboration with the manufacturers and/or licensors, and such Goods are sold subject to their respective manufacturers and/or licensors terms and conditions of sales, which are available upon Buyer's written request.

3. Acceptance and Cancellation of Orders

No order for Goods placed by Buyer shall be binding on Seller unless and until accepted by Seller. Seller reserves the right to reject any order for any reason. Once submitted to Seller, an order may not be changed or cancelled by Buyer unless such change or cancellation is expressly agreed to in writing by an authorized representative of Seller. Any such agreement to change or cancel an order may be conditioned upon Buyer paying a change or cancellation charge intended to compensate Seller for costs incurred, including but not limited to storage and shipping costs, costs incurred in purchasing, change and cancellation costs imposed on Seller by Seller's suppliers, disposal costs incurred in disposing of Goods in accordance with the law and any other costs resulting from a change or cancellation of an order placed by Buyer.

4. Export Terms

4.1 The latest Incoterms 2010 apply to all Sales Contracts between Seller and Buyer.

4.2 Subject to Sections 4.3, 6.1 and 6.2, if there is any conflict between the Incoterms and the Sales Contract, the latter shall prevail.

4.3 Unless otherwise stipulated under Incoterms 2010 as applied to the particular shipment, Buyer shall be responsible for complying with any legislation or regulations governing the importation of goods into the country of destination.

- 4.4 Buyer shall be responsible for processing all registrations and importation permits to import the Goods and shall comply, prior to importing the Goods, with all applicable laws and other requirements including but not limited to those regarding labelling, safety and usage, handling and disposal of hazardous materials, import and export of materials, and with all other applicable laws and regulations.
- 4.5 Unless otherwise provided in these Conditions, each Party must pay the costs allocated to it under Incoterms 2010 applicable to this Sales Contract.

5. Shipments

- 5.1 The delivery location and other shipment terms are stated in Seller's quotation, shipping advice, or other documents issued by Seller. If the terms of shipment require Seller to pay freight, then selection of carrier and routing of shipment shall be at Seller's option. Buyer shall give Seller reasonable written notice of its desired order and shipment dates, and Buyer and Seller shall establish a mutually acceptable shipment schedule.
- 5.2 Shipment dates given by Seller are based on Seller's best estimate, and are subject to, among other things, production limitations and factory schedules. Seller will use its commercially reasonable endeavour to ensure timely shipment but the shipment dates are not guaranteed.

6. Risk and Title

- 6.1 Unless otherwise stipulated under Incoterms 2010 as applied to the particular shipment, the risk of loss of, and liability for injury and damage caused by, the Goods passes from Seller to Buyer on the Goods being placed on board the vessel at the loading port. Buyer is solely responsible for notifying the carrier as to any damage to or loss of Goods in transit.
- 6.2 Unless otherwise stipulated under Incoterms 2010 as applied to the particular shipment, if all or part of the Goods is lost or damaged after the Goods passes from Seller to Buyer on the Goods being placed on board the vessel at the loading port, Buyer must pay to Seller the full amount for the Goods. Buyer shall not await the settlement of any insurance claim before making payment.
- 6.3 Ownership of the Goods shall not pass to Buyer until Seller has received in full all sums due to Seller in respect of the Goods and all other sums which are or which become due to Seller from Buyer on any account.
- 6.4 Until the ownership of the Goods has passed to Buyer, Buyer shall hold the Goods or their sales proceeds on a fiduciary basis as the Seller's bailee.

7. Pricing and Terms of Payment

- 7.1 If at any time in Seller's opinion, the financial capacity of Buyer becomes impaired or unsatisfactory to Seller or inadequate to meet the obligations hereunder, the terms of payment may at Seller's option, be revised, and Seller may require cash or other satisfactory security before making further shipments to Buyer.
- 7.2 In addition to any other legal remedy, if Buyer fails to fulfill the terms of payment, Seller may at Seller's sole discretion defer further delivery of Goods or cancel all further delivery of Goods to Buyer.
- 7.3 The price for the Goods shall be the price set out in Seller's standard Sales Contract, unless subsequently changed and confirmed by Seller in writing.
- 7.4 Seller reserves the right to vary prices at any time at Seller's sole discretion, including additional costs incurred in terms of packing or freight. Seller also reserves the right to increase prices to recover any additional costs arising from variation or delay caused by Buyer's instructions or failure by Buyer to give Seller adequate information or instruction.
- 7.5 All payments have been calculated without regard to GST (or VAT or any taxes analogous thereto). The GST treatment of the supply of Goods must be determined pursuant to the laws of the jurisdiction where a taxable transaction for GST purposes is deemed to take place. If GST is payable on any amount payable to Seller, Buyer must pay to Seller an amount equal to the GST at the rate applicable.
- 7.6 All payments must be made without any withholding of or deduction for or on account of any Tax unless such withholding or deduction is required by applicable law. Buyer must increase the amount of any payment which is required to be made subject to a withholding or deduction to the extent necessary to ensure that, after the making of the required withholding or deduction, Seller receives the same

amount it would have received had no such withholding or deduction been made or required to be made.

7.7 All Taxes which are not allocated by the applicable Incoterms and which arise:

- (a) in the shipment's country of origin, are for Seller's account; and
- (b) in the country of the shipment's destination, are for Buyer's account.

7.8 Buyer shall make all payments due under the Sales Contract in full without any deduction whether by way of set-off, counter claim, discount, abatement or otherwise, unless Buyer has an arbitral award requiring an amount equal to such deduction to be paid by Seller to Buyer.

8. Payment Default

8.1 If Buyer fails to pay Seller all sum by the due date specified in Seller's invoice or standard Sales Contract, Buyer shall be liable to pay interest to Seller at the rate of 1% per month for the period beginning on the calendar date immediately next to the due date and ending on the date funds are received by Seller.

8.2 In the event Buyer defaults on its payment, Buyer shall be responsible for paying Seller all costs including the full amount of the attorney's fees and other expenses of collection resulting from any such default.

9. Duty of Care

9.1 Buyer has a responsibility to ensure all Goods supplied are stored and used responsibly and in accordance with all the appropriate requirements and recommendations (which shall include but not be limited to Buyer maintaining correct and appropriate licenses and authorizations to import, purchase stock, distribute, process, promote and supply the Goods). Buyer shall take all appropriate precautions to ensure safe and suitable installation, handling and use of the Goods. Buyer shall be responsible for taking all steps necessary to eliminate or reduce the risk to health and safety arising out of possession and use of the Goods.

10. Warranties

10.1 Seller warrants that Goods delivered hereunder shall at the time of delivery conform with the quantity and description stated in the Sales Contract.

10.2 The Certificate of Analysis forwarded to Buyer, and any other documents incorporating product specifications, only reflect information provided to Seller by Seller's suppliers or manufacturers of the Goods. Therefore, Seller makes no representations or warranties, and assumes no obligations or liabilities, as to the correctness and completeness of the information on the Certificate of Analysis or any other documents incorporating product specifications.

10.3 Seller makes no other representations or warranties of any kind, express or implied, as to merchantability, fitness for a particular purpose, for use in connection with any equipment or other product or item, conformity with product specifications on the Certificate of Analysis or any other documents forwarded to Buyer, or any other matter with respect to the Goods sold, whether used alone or in connection with any other substance. Where the Goods are incorporated or form part of another product or contain or hold other products or substances, Seller shall not be liable for any loss or damage to such other product or substance arising out of any defect in the Goods.

10.4 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Sales Contract.

10.5 Recommendations by Seller, if any, covering the use, properties or qualities of Goods delivered hereunder are believed to be reliable, but Seller makes no warranty whatsoever with respect thereto. Use or application of Goods sold by Seller to Buyer hereunder is at the discretion of Buyer without any liability or obligation on the part of Seller except as expressly warranted by Seller in writing. Any advice and information with respect to suitability and application of the Goods shall not relieve Buyer from undertaking his own investigations and tests. Buyer is solely responsible for determining the Goods' suitability for Buyer's intended uses and application.

10.6 Seller shall not be liable for a breach of its warranty of quality under Section 10.1 or shortage in quantity unless:

- (a) Respecting shortage in quantity and recognizable non-inherent defects (the existence of which can be easily and quickly established at the port of destination), Buyer gives written notice of defect to Seller, together with all supporting documents, within the earlier of (A) **seven days** after the Goods arrive at the port of destination, or (B) **two days** from the date when Buyer opens the shipping container for inspection (but in the event that it is not practical for Buyer to inspect the Goods within five days after the Goods arrive at the port of destination, Buyer must notify Seller within three days after the Goods arrive at the port of destination, in which case Seller may, acting reasonably, grant an extension in writing, however, if no notification is provided by Buyer within the three-day time frame, or no extension is granted, the original time limitation herein for making a claim applies);
 - (b) Respecting defects concerning composition of the Goods or their chemical or physical characteristics (which is discoverable only through chemical or laboratory analysis or specific expert inspection), Buyer gives written notice of defect to Seller, together with all supporting documents including testing reports referred to in Section 10.9, **within thirty days** from the date when the Goods are arrived at the port of destination; and
 - (c) Seller is given a reasonable opportunity after receiving the notice to verify the defect.
- 10.7 Buyer's right to make a claim for defect of quality or shortage of quantity shall be extinguished if it fails to submit its claim notice within the required time periods under Section 10.6(a) and (b).
- 10.8 Seller shall not be liable for a breach of its warranty of quality under Section 10.1 if:
- (a) Buyer makes use of the Goods before inspection;
 - (b) Buyer makes any further use of such Goods after giving the notice; or
 - (c) the defect arises because Buyer failed to follow Seller's instructions as to the storage or use of the Goods, or (if there are no Seller's instructions) good trade practice.
- 10.9 For the purpose of Section 10.6, no evidence from Buyer shall be deemed as acceptable unless it is supported by a testing report issued from Société Générale de Surveillance, Bureau Veritas or an equivalent internationally recognized inspection agency.

11. Limitation of Damages

Seller's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, in connection with the performance of the Sales Contract shall be limited to the Sales Contract price; and Seller shall not be liable to Buyer for any loss of production, loss of profit, loss of business, loss of goodwill, in each case whether direct, indirect or consequential.

12. Indemnification

Buyer assumes all risks and liability for loss, damages or injury to persons or to the property of Buyer or others arising out of the use or presence of the Goods. Buyer agrees to indemnify and hold harmless Seller against any liability, damages, losses, costs and expenses in connection with any suit or claim, including but not limited to, any loss of use, loss of profits, damages or injuries to persons or property arising out of or relating to any use of Goods, whether such claim is made by Buyer's customer or other third parties.

13. Force Majeure

Delivery dates are approximate, commencing from the receipt of all information, Seller assumes no liability to Buyer for delay or default in delivery due to strikes, boycotts, riots, wars, accidents, fires, floods or other acts of God, explosions, vandalism, government embargoes, priorities or regulations, transportation delays, shortages of labor, fuels, materials, supplies, power transportation facilities or any other similar causes beyond Seller's reasonable control (each as a "**Force Majeure Event**"). If there is a Force Majeure Event, under no circumstances shall Seller have any liability for damages of any kind resulting in whole or in part from Seller's delay in delivering or failure to deliver any Goods to Buyer.

14. General

- 14.1 Seller's failure to strictly enforce any term or condition contained in the Conditions shall not constitute a waiver of Seller's right to enforce such Conditions at any time in the future. If any provision of these Conditions is held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not be affected. The paragraph headings contained herein are for convenience only and are not being considered in interpreting these Conditions. These Conditions are intended to be binding upon, inure to the benefit of, and be enforceable by, the Parties hereto, and their respective heirs, personal representatives, successors and assigns.
- 14.2 The Parties to the Sales Contract do not intend that any term of the Sales Contract be enforceable by any person that is not a party to it.
- 14.3 The Buyer shall not, without Seller's prior written consent, assign or purport to assign or transfer to any other party any contract or agreement subject to these Conditions.
- 14.4 All notifications to be given by Buyer to Seller referred to in these Conditions must be in writing and delivered.
- 14.5 The language for communications shall be in English.

15. Governing Law and Jurisdiction

- 15.1 The Parties' rights and obligations arising out of or in connection with this Sales Contract shall be governed by the law of Singapore.
- 15.2 The Vienna Convention on the International Sale of Goods (1980) does not apply to, and is excluded from, this Sales Contract.
- 15.3 Parties hereby agree that all disputes which cannot be resolved amicably shall be resolved by arbitration by Hong Kong International Arbitration Centre in accordance with its rules. The language of the arbitration is English. The place of arbitration is Singapore.