GENERAL TERMS AND CONDITIONS OF SALE

1. Definitions. Capitalized terms used but not defined herein have the following meanings:

a. “Agreement” means any offer, proposal, bid, quotation, purchase order, confirmation, or agreement regarding the sale of Goods or provision of Services.

b. “Goods” means any goods sold by Umicore to Buyer pursuant to or in connection with an Agreement, including, without limitation, stationary catalysts and all equipment, parts, and materials related thereto.

c. “Services” means any services provided by Umicore for or at the direction of Buyer pursuant to or in connection with an Agreement, including, without limitation, station service and testing.

d. “Terms” means these General Terms and Conditions of Sale.

e. “Umicore” means Umicore Denmark A/S.

2. Applicability and Entire Agreement. These Terms apply to and are incorporated into any Agreement to which they are attached or referenced. Together with the Agreement, these Terms: (i) constitute the entire agreement between you (“Buyer”) and Umicore for the sale of Goods and provision of Services; and (ii) supersede all prior discussions, proposals, negotiations, representations, and agreements regarding the same. The sale of any Goods and provision of any Services are subject to and in consideration of these Terms, which will not vary except with the written authorization of Umicore.

3. Orders. All proposals, bids, and quotations provided by Umicore are non-binding offers. All deliveries are irrevocable and non-transferable. All purchase orders are subject to acceptance by Buyer, even if submitted pursuant to a proposal, bid, or quotation, which will only be deemed accepted upon written confirmation by Umicore. Once accepted, all orders are non-cancellable.

4. Delivery and Acceptance.

a. Goods. Unless otherwise set forth in the Agreement, all Goods will be delivered FCA Umicore’s facility (Incoterms® 2010). Umicore reserves the right to cause Goods to be shipped from an affiliate’s facility and risk of loss passes to Buyer upon acceptance of the applicable Services, whether by way of delivery, shipment, or otherwise. In case of shipment, delivery consists of a separate sale. All delivery times set forth in the Agreement are non-binding estimates, and Buyer may not reject Goods or be entitled to a reduction in price because Goods are delivered outside of such times. Buyer shall inspect all Goods within five (5) business days of their receipt and provide Umicore with written notice of acceptance or rejection. If Buyer fails to provide Umicore with such notice, then Goods will be deemed accepted by Buyer “AS IS.”

b. Services. Umicore shall use reasonable efforts to provide the Services pursuant to the schedule set forth in the Agreement. Any such schedule is a non-binding estimate for the provision of the Services, or will be reduced in price because Services are provided outside of such schedule. Unless otherwise set forth in the Agreement, Umicore may subcontract the provision of the Services. To enable Umicore to provide the Services, Buyer shall: (i) provide Umicore with reasonable access to Buyer’s facilities, equipment, and personnel; (ii) promptly respond to any request for information, approvals, authorizations, or decisions reasonably necessary to provide the Services; and (iii) promptly notify Umicore of any dangerous, operational, or special conditions that may affect the provision of the Services.

5. Price and Transfer of Title. Unless otherwise set forth in the Agreement, the price of Goods and Services excludes all taxes, duties, fees, travel expenses, and other charges, which are the responsibility of Buyer. If Umicore is required to collect or pay any such taxes, duties, fees, travel expenses, or charges upon the sale of the Goods under any law or regulation, Buyer may not reject Services or be entitled to a reduction in price because Services are provided outside of such schedule. Unless otherwise set forth in the Agreement, Umicore may subcontract the provision of the Services. To enable Umicore to provide the Services, Buyer shall: (i) provide Umicore with reasonable access to Buyer’s facilities, equipment, and personnel; (ii) promptly respond to any request for information, approvals, authorizations, or decisions reasonably necessary to provide the Services; and (iii) promptly notify Umicore of any dangerous, operational, or special conditions that may affect the provision of the Services.

6. Payment Terms. Unless otherwise set forth in the Agreement, Buyer shall pay for Goods and Services within thirty (30) days of the date of the applicable invoice. If Buyer’s creditworthiness changes, then Umicore may demand advance payment for Goods and Services or other means of financial security, including a letter of credit. In addition to any other legal remedy, if Buyer is in default, then Umicore may cancel all further deliveries of Goods to Buyer and cease all Services. Buyer shall be liable for all costs and expenses, including attorneys’ fees, in connection with collecting such amounts.

7. Ownership reservation / Security. If Buyer has not settled the full contract sum, see Clause 6, prior to shipment, see Clause 5, the Goods will remain Umicore’s property, until payment in full has been made. If relevant, Buyer is obliged to mark the Goods as Umicore’s property and is in other respects obliged to keep the Goods separate from Buyer’s other assets. In the event that Buyer has failed to properly mark the Goods as Umicore’s property according to these Terms, as applicable, and have no effect on the remaining provisions. Buyer may not assign its rights or delegate any of its obligations under the Agreement or these Terms to any subsidiary or affiliates of Umicore. The Warranty does not cover Goods that: (a) have been subject to process, use, or environmental conditions other than those set forth in the Agreement; (b) have been subject to misuse, negligence, accident, or improper maintenance, or have been altered or repaired in any manner other than in accordance with Umicore’s examination, or (c) based on Umicore’s examination, or (d) in case of intentional or unavoidable faults, or claims whatsoever, arising out of the transportation, unloading, and storage of the Goods, or the sale of the Goods by Umicore, whether or not by reason of the sale of any other property, including without limitation, lands, buildings, machinery, equipment, and materials related thereto. Any delay of less than four weeks will not constitute a material breach. A material breach of the Agreement is defined as any delay of forty-five (45) days or more after the installation of the Goods to be shipped from an affiliate’s facility and refund of the purchase price or other means of financial security, including a letter of credit, or other means of financial security, including a letter of credit, or other means of financial security, including a letter of credit, or any delay of less than four weeks will not constitute a material breach. A material breach of the Agreement is defined as any delay of forty-five (45) days or more after the installation of the Goods or the completion of the Service, or the sale of the Goods or Services.

12. Intellectual Property. Umicore hereby grants Buyer a limited, perpetual, world-wide, royalty-free, fully paid-up, non-exclusive license to use the Goods and benefits of the Services as specified in the Agreement with the license granted under these Terms, as applicable, and have no effect on the remaining provisions. Buyer may not assign its rights or delegate any of its obligations under the Agreement or these Terms to any subsidiary or affiliates of Umicore. The Warranty does not cover Goods that: (a) have been subject to process, use, or environmental conditions other than those set forth in the Agreement; (b) have been subject to misuse, negligence, accident, or improper maintenance, or have been altered or repaired in any manner other than in accordance with Umicore’s examination, or (c) based on Umicore’s examination, or (d) in case of intentional or unavoidable faults, or claims whatsoever, arising out of the transportation, unloading, and storage of the Goods, or the sale of the Goods by Umicore, whether or not by reason of the sale of any other property, including without limitation, lands, buildings, machinery, equipment, and materials related thereto.
13. Insurance. Buyer shall, at its sole cost and expense, procure and maintain policies of insurance providing, at a minimum, the following coverages and limits with carriers acceptable to Umicore: (i) comprehensive general liability insurance identifying Umicore as an additional insured, covering bodily injury, death, personal and advertising injury, and property damage from premises, operations, independent contractors, products, and completed operations, with limits of at least EUR 2 million per occurrence and EUR 4 million in the aggregate; and (ii) workers compensation insurance with limits not less than any statutory limits for the country in which the Goods are to be used and the Services are to be performed. Except as prohibited by applicable law, all such policies must waive subrogation against Umicore and its parent companies and affiliates, including their respective members, managers, directors, officers, and employees. At Umicore’s request, Contractor shall provide Umicore with certificates of insurance evidencing such coverage. Buyer shall provide Umicore with at least thirty (30) days’ prior written notice of a cancellation or material change in Buyer’s insurance.

14. Confidentiality. Buyer shall treat the Agreement and any confidential information provided by Umicore as confidential and shall not disclose it, or its contents, to any third party without the prior written consent of Umicore.

15. Setoff. Umicore may, without prejudice to its other rights and remedies, setoff any liability that Umicore owes to Buyer against any liability that Buyer owes to Umicore, regardless of whether such liability is matured or liquidated.

16. Force Majeure. Umicore shall be excused from its obligations under the Agreement to the extent prevented by circumstances beyond its reasonable control, including, without limitation, fire, flood, natural disaster, change in applicable law, difficulty sourcing raw materials, war, equipment breakdown, strike, lockout, labor dispute, and interruption in utilities or transportation.

17. Compliance. Buyer shall handle, store, process, use, and transfer Goods in compliance with all applicable: (i) safety information provided by Umicore; and (ii) laws, rules, and regulations, including, without limitation, those regarding environmental health and safety. Buyer hereby represents to Umicore that Buyer is a sophisticated consumer and possesses all requisite skill and expertise necessary to handle, store, process, use, and transfer the Goods, which may contain toxic, hazardous, or otherwise dangerous substances; and (b) has all necessary licenses, certificates, permits, and consents required to use the Goods and have the Services provided.

18. Governing Law and Venue. The Agreement and these Terms are governed by the laws of Denmark without regard to its conflict-of-law principles. Any claim or controversy arising out of the Agreement or these Terms must be brought exclusively in a court of competent jurisdiction located in Copenhagen, Denmark. Buyer hereby waives any and all defenses that it may have regarding such jurisdiction or venue. The U.N. Convention on Contracts for the International Sale of Goods does not apply to the Agreement or these Terms.

19. Changes. Umicore shall have no liability to Buyer for any costs, lost profits, or other damages resulting from any design or specification change or product discontinuance. If Buyer desires product changes, then Buyer must submit a written request to Umicore for consideration. Within a reasonable period thereafter, Umicore shall notify Buyer of its acceptance or rejection of Buyer’s request. If accepted, Umicore shall provide Buyer with its charges for the product change and a proposed implementation date.

20. Government Approvals. Each party is responsible for complying with and obtaining any approvals and/or permits as may be required under law, ordinances, regulations, and rules and as may be applicable to the performance of their respective responsibilities and obligations under this Agreement.

21. No Waiver. No waiver by Umicore of any of the provisions of the Agreement or these Terms is effective unless explicitly set forth in writing and signed by Umicore. No failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from the Agreement or these Terms operates or may be construed as a waiver thereof. No single or partial exercise of any right, remedy, power, or privilege hereunder precludes any other or further exercise of thereof or the exercise of any other right, remedy, power, or privilege.

22. No Third-Party Beneficiaries. The Agreement is for the sole benefit of the parties thereto and their respective successors and permitted assigns, and nothing herein, express or implied, is intended to or confers upon any other person or entity any legal or equitable right, benefit, or remedy of any nature whatsoever.

23. Notices. All notices, request, consents, claims, demands, waivers, and other communications hereunder (each, a “Notice”) must be in writing and addressed to the parties at the addresses set forth in the Agreement or to such other address that may be designated by the receiving party in writing. All Notices must be delivered by personal delivery, recognized overnight courier (with all fees prepaid), or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in the Agreement, a Notice is effective only: (i) upon receipt by the receiving party; and (ii) if the party giving the Notice has complied with the requirements of this Section.

24. Survival. The following Sections of these Terms survive the expiration or termination of the Agreement: 7 (Security Interest), 9 (Warranty), 10 (Disclaimer of Damages and Limitation of Liability), 12 (Intellectual Property), 14 (Confidentiality), 15 (Setoff), 18 (Governing Law and Venue), and 25 (Export Compliance).

25. Export Compliance. The Goods, including any software, documentation, and technical data related thereto (collectively, “Controlled Goods”), may be subject to US or Canadian export laws, rules, and regulations (“Export Laws”). Buyer shall not export, re-export, or release any Controlled Goods, directly or indirectly, to any jurisdiction to which, or person to whom, such export, re-export, or release is prohibited by any applicable Export Laws. Buyer shall indemnify, defend, and hold Umicore, including its members, managers, officers, employees, affiliates, successors, permitted assigns, customers, agents, distributors, resellers, or vendors, harmless from and against any breach of this Section by Buyer or any of its shareholders, directors, officers, employees, affiliates, successors, permitted assigns, customers, agents, distributors, resellers, or vendors. It is Buyer’s responsibility to obtain any export license or other approvals, and Buyer will complete any documents requested by Umicore prior to exporting, re-exporting, or releasing any Controlled Goods.