

## GENERAL TERMS AND CONDITIONS OF SALE AND DELIVERY KH Chemicals ME DWC-LLC

### **Definitions:**

Seller: KH Chemicals ME DWC-LLC of Dubai (hereafter also called 'we', 'us' etc.).

Purchaser: The party purchasing goods from KH Chemicals ME DWC-LLC.

### **Article 1**      **Applicability**

- a. We explicitly dismiss the applicability of any terms and conditions others than following conditions.
- b. Unless otherwise agreed in writing, all quotations by, orders to and agreements with the seller are subject to the following conditions.
- c. The purchaser may invoke any stipulations that differ from these conditions or his own conditions/stipulations only if seller has explicitly agreed to them in writing.
- d. These general terms and conditions are also applicable to all quotations by, orders to and agreements with subsidiary companies of the seller.

### **Article 2**      **Offers, agreement and amendments**

- a. All offers made by the seller are without obligation, unless otherwise agreed in writing.
- b. Any offers, or parts thereof, made by the seller are valid for a maximum of seven days after the date of issue, although the seller has the right to alter, postpone or retract the offer.
- c. Any assignment by the purchaser or alterations therein shall be binding on the seller only after he has accepted the assignment in writing.

### **Article 3**      **Warranties**

Concerning the goods the seller makes no warranties, express or implied, for fitness for a particular purpose.

### **Article 4**      **Hazardous Goods**

The purchaser acknowledges that any or all products supplied under this contract may be or become or considered a hazardous material under various governmental laws and regulations and that purchaser or its agents are familiar with any hazards of the product and its applications and handling of the various modes that the product may be transported in.

### **Article 5**      **Weight and quantity**

- a. The measurements and weights as stated on the seller's weights or measures bill, define the quantity supplied. In the case of non-bulk deliveries, no weights and measures bill is required. With regard to item c of this article, the delivery quantity shall be deemed to have been accepted.
- b. Purchaser may be present at all times or be represented to supervise the weighing and measuring of the goods.
- c. Purchaser is obliged to accept 5 percent overweight or underweight.

## **Article 6**      **Incoterms / Delivery**

- a. Unless otherwise agreed in writing, deliveries shall be made in accordance with the Incoterm 'Ex works', without prejudice to the seller's conditions of ownership.
- b. Where not in conflict with the other conditions in these Terms and Conditions, INCOTERMS 2020 shall apply including subsequent amendments as applicable on the date of the contract of sale.
- c. The agreed delivery date is only approximate and thus does not constitute a final or fatal delivery date. Exceeding a delivery date shall in no circumstances lead to liability on the part of the seller.
- d. The seller shall advise the purchaser of the availability of the purchased goods. If the purchaser fails to provide transport or to accept the goods at the point of destination within seven working days, the seller may, at his discretion, deem the agreement or part thereof to be cancelled, without prejudice to his right to demand damages from the purchaser, or he may store the goods or part thereof, or have them stored for the account and risk of the purchaser, and charge any extra costs to the purchaser.

## **Article 7**      **Inspection**

Purchaser is obliged to inspect the goods before using them. In the case of bulk deliveries, purchaser shall inspect the goods before they are transferred to a tank (ship, rail or lorry). The inspection shall be particularly concerned with the quality and identity of the goods delivered as compared to the goods which were sold. If the purchaser has no proof that an inspection has taken place, he shall lose all rights to make a claim.

## **Article 8**      **Empty equipment**

- a. Tank trucks belonging to or made available by the seller shall be emptied on arrival without delay. If delivery is to be made in the purchaser's tanker, it shall be made available to the factory or installation supplying the goods. Tank trucks belonging to or made available by the seller shall be returned within 24 hours after arrival at the destination, free of charge and cleaned to the installation of origin. If tankers are returned late, a hire charge may be levied (the amount depending on the type of vehicle and/or capacity).
- b. In general if transport equipment (tank trucks, iso-tanks, dry box containers etc.) from third parties is handed over to the purchaser, the purchaser shall comply with all the contract conditions valid between seller and the respective companies exploiting the transport equipment.

#### **Article 9**      **Loading / Filling**

The loading or filling of vehicles and/or containers made available by the seller – except in cases of deliberate or gross negligence on the part of the seller – shall be the sole responsibility of the purchaser, even if carried out by the seller and/or if he has issued instructions regarding the vehicle or container or has performed any work on them. The seller may refuse to load a vehicle or fill a container, if in his opinion it falls short of reasonable safety requirements. The seller shall not be liable for any delay resulting from such refusal.

#### **Article 10**      **Conditions of ownership**

- a. All goods supplied by the seller remain the property of the seller until all charges on the purchaser have been settled.
- b. As long as the goods remain the property of the seller, the purchaser may use, process or pass on the goods only in the normal course of this business. If, however, he uses the goods supplied by the seller to acquire other goods, the ownership of such goods is automatically transferred to the seller if the purchaser fails in his obligation toward the seller for whatever reason.
- c. If the purchaser fails to pay for the goods in time, the seller may re-possess the goods 'without further notice, proof of default or legal intervention, without prejudice to the seller's other rights regarding overdue payment.

#### **Article 11**      **Payments**

- a. Unless a different term of payment has been specifically agreed, payment must be made within 14 days from the date of invoice.
- b. If a Letter of Credit is required, this Letter of Credit will always be subject to the final and continuing approval of the seller.
- c. If the purchaser fails to fulfil any of the clauses of these conditions or other agreement, he shall be in default without further notification.
- d. If the purchaser fails to pay the invoice amount on time, he shall be liable to pay interest on that amount to the seller from the date when payment was due as stated in the above paragraph, until he ceases to be in default.
- e. If the purchaser is in default regarding an amount he owes the seller, all other claims the seller has on the purchaser shall immediately become due without further proof of default.
- f. The purchaser relinquishes the right to set off one debt against another and to any discount.
- g. If the purchaser is a group of more than one legal entities, they are each responsible for the whole order and for the obligations attached to the contract(s) with seller.
- h. All legal and extra-judicial costs resulting from claims on the purchaser shall be charged to the purchaser. In the case of collection charges, any extra-judicial costs will be deemed to constitute at least 15% of the claim.

**Article 12**      **Liability Seller**

- a. Claims will only be taken into account if they are presented in writing and fully specified within eight days after delivery. All claims towards seller shall be extinguished after 1 year.
- b. Purchaser is obliged to inspect the goods before using them. If the purchaser has no proof that an independent inspection approved by seller has taken place, he shall lose all rights to make a claim.
- c. Once the goods have been used or re-sold they are deemed to have been accepted and no subsequent claims are possible. In the case of bulk deliveries transfer into a reservoir counts as acceptance.
- d. The seller is in no way liable for damages or loss, in any form, if it is the result of improper and/or inexpert use of the goods supplied. The other party must be able to prove that the goods were used in a proper manner.
- e. The seller shall not be liable for damages sustained during loading or filling of the transport medium by the other party or by the other party's personnel.
- f. The seller is never liable for damage other than direct damage to goods, with due regard to the limitations set out in these conditions. Supplier will not be held responsible for loss of profit, consequential loss and smart money.
- g. The seller cannot be held responsible for mistakes made by other persons engaged by the seller.
- h. Seller does not guarantee the accuracy of the specifications supplied to him by his suppliers of goods sold or bought, and is never liable with regard to any inaccuracies in the specifications.
- i. The seller is never obliged to refund more than the invoice value of the goods.
- j. The purchaser shall indemnify seller against all claims by third parties, whoever they may be, regarding damage and/or loss which might befall the third party in connection with the goods supplied or to be supplied by the seller.
- k. Goods may be returned only with written permission from the seller.
- l. The amount of liability of the seller will never exceed the amount of liability as covered by the insurance company of the seller.

**Article 13**      **Force Majeure**

- a. If the seller cannot reasonably be expected to fulfil one or any of his obligations because of one or any of the listed circumstances, he may without legal intervention terminate the agreement altogether or in part by means of written declaration, or delay its execution altogether or in part without incurring any liability whatsoever.
- b. The aforementioned circumstances include: government restrictions of any kind, epidemics, mobilisation, war, revolution, strikes, confiscation, production stoppages, shortage of raw materials, semi-manufactures, ancillary products and/or power, natural disasters, part of total failure by third parties to supply goods or services and any other circumstance which the seller could not reasonably have foreseen or influence, and because of which, had he been aware of it at the time the contract was concluded, he would not have agreed to it, or in any case not on the same conditions.
- c. If the contract is fulfilled despite any or several of the circumstances described in the second paragraph, this does not affect the right to postpone or terminate the contract if these circumstances will occur again.

**Article 14**      **Liability Purchaser**

- a. If the purchaser fails to discharge any of his obligations or fails to do so in time or in a proper manner, or if he applies for bankruptcy, goes bankrupt, or if his company is liquidated or applies for suspension of payment, the seller may unilaterally terminate the contract by written declaration altogether or in part, without further notice of default and without legal intervention, or postpone execution of the contract altogether or in part without incurring any liability for damages and without prejudice to any of his other rights.
- b. If any of the abovementioned circumstances occur in respect of the purchaser, all claims by the seller upon the purchaser will fall due immediately.
- c. Should any of the above circumstances happen to the purchaser, the seller has the right to demand pre-payment or sureties from the purchaser.
- d. If the purchaser cancels an earlier order altogether or in part, he is obliged to reimburse the seller for all reasonable expenditure incurred in carrying out the order, without prejudice to the seller's right to damages for loss of any other earnings resulting from the cancellation.

**Article 15**      **Transfer of rights and obligations and transfer of control**

- a. The purchaser may not, without prior written permission by the seller, transfer his rights and obligations or part thereof to another party or to have the agreement carried out, in full or in part, by another party.
- b. If, after the agreement has been concluded, control over all or sizeable part of the activities of the purchaser is transferred directly or indirectly to someone else, the seller may unilaterally terminate the contract by written declaration without legal intervention, provided he gives at least 10 days' notice, and without relieving purchaser of his obligations while he, the seller, shall not be liable for any damages whatsoever. Seller loses the right, however, if he has not exercised it within 10 days after the transfer has come to his notice.

**Article 16**      **Hardship clause**

- a. If the circumstances which obtained at the time when both parties signed the agreement have changed so substantially during the course of the agreement that either of the parties cannot reasonably be expected to carry out one or several of the clauses, a possible interim change in the contract may be discussed.
- b. All prices are based on purchase prices current at the time when the agreement was concluded, as well as current exchange rates, import duties and other taxes and charges which have a bearing upon the cost price. If one more of these factors changes before the goods have been delivered on the agreed date, prices will be adjusted so that any changes are discounted fairly.

**Article 17**      **Applicable law and arbitration**

- a. All contracts between purchaser and seller are subject to Dutch law only.
- b. Any disputes which may arise in connection to the contract between Seller and Purchaser, will be settled by arbitration in accordance with the Dutch Arbitration Institute.
- c. Without prejudice to the provisions of article 17b, the seller shall be at liberty to bring before the competent Dutch court in the seller's place of business, claims for sums of money due and payable the indebtedness of which has not been disputed in writing by the opposing party within four weeks after the invoice date.

Dubai, 03-12-2019