

## **GENERAL TERMS AND CONDITIONS OF SALE AND DELIVERY** **KH Chemicals ME FZE**

### Definitions:

Seller: KH Chemicals ME FZE

Purchaser: The party purchasing goods from the Seller.

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

- a.** The Seller explicitly refuses the applicability of any terms and conditions of the Purchaser other than the general terms and conditions set out in this document.
- b.** Unless otherwise agreed in writing, all quotations by, orders to and agreements with the Seller are subject to these general terms and conditions.
- c.** Any deviation from these general terms and conditions requires the explicit written approval of the Seller.
- d.** These general terms and conditions are also applicable to all quotes by, orders to and agreements with affiliated companies of the Seller.
- e.** Any typographical, clerical or other error or omission in any sale literature, quotation, price list, acceptance of offer, invoice or other document or information issued by Seller shall be subject to correction without any liability on the part of Seller.
- f.** The headings in these general terms and conditions are for convenience purposes only and shall not be used for interpretation purposes.
- g.** The non-validity or non-enforceability of one of the clauses of general terms and conditions shall not in any way affect the validity or enforceability of the other clauses of these general terms and conditions.

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

All offers or parts thereof made by the Seller are non-binding and remain valid for 7 days after the date of sending, unless agreed otherwise in writing.

### **Article 3**      **Warranties**

The Seller makes no warranties, express or implied, concerning the goods for fitness for a particular purpose. The Seller undertakes that the goods will meet the sales specifications from the producer of the goods. All recommendations and/or (eventual) technical advice regarding the use or application of the goods, any additional specifications and/or warranties on the goods, given by the Seller and any of its employees or representatives (e.g. by e-mail, phone, ...) outside the standard written sales specifications, do not provide any warranty as to the results the Purchaser is aiming for or is intending to in its own manufacturing process, nor can any liability in this regard be accepted by the Seller.

### **Article 4**      **Safety obligations**

The Purchaser acknowledges that any or all goods supplied under this contract may be or become or considered a hazardous material under various governmental laws and regulations.

The Purchaser is responsible for complying with all regulatory provisions in connection with the storage, handling and use of substances purchased from the Seller and shall inform its customers (if any) of such obligation. In this regard, the Purchaser will acquaint itself with any information on the goods provided by the Seller, including but not limited to: (i) safe handling and use and (ii) storage, transportation, and disposal practices. The Purchaser will instruct its employees, and any of its contractors, in these practices and will draw suitable attention to dangers to persons, property and the environment. Purchaser will indemnify Seller for all claims and costs, including reasonable attorney fees, arising out of Purchaser's non-compliance with the above-mentioned obligations. Purchaser understands and agrees that the Seller is entitled to cancel any order with 15 days' notice period in case of non-compliance with the above-mentioned obligations from the Purchaser.

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

- a. The measurements and weights as stated on the Seller's packing list, define the quantity supplied. In case of non-bulk deliveries, no packing list is required.
- b. Purchaser may always be present or be represented to supervise the weighing and measuring of the goods.
- c. Minor deviations in quantity up to 5 percent, are not qualified as defects and must be accepted by the Purchaser.

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

- a. Unless otherwise agreed in writing, deliveries shall be made in accordance with the Incoterm 2020 'Ex works'.
- b. The agreed delivery date in the order confirmation is only indicative and does not constitute a final or fatal delivery date. The parties acknowledge that certain circumstances may hinder or postpone the term of delivery. In that case the Seller will notify the Buyer hereof within a reasonable period of time and suggest a new delivery term. Exceeding a delivery date shall in no circumstances lead to liability on the part of the Seller.
- c. The Seller shall advise the Purchaser on the availability of the ordered goods. If the Purchaser fails to provide transport or to accept the goods at the point of destination within 7 days, the Seller may, at his discretion, deem the agreement or part thereof to be cancelled, without prejudice to its right to demand damages from the Purchaser, or the Seller 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 immediately and to take a sample of the delivered goods. The Purchaser must keep this sample as long as required in case the goods would be found to be non-compliant. In case of bulk deliveries, Purchaser shall inspect the goods before they are transferred to a tank (ship, rail or lorry). In the event that the goods would be found to be non-compliant, the Purchaser is obliged to provide the Seller with a sample of the alleged non-compliant good within the shortest possible delay. If the parties do not reach an agreement whether the goods are compliant, any party is entitled to appoint an independent auditor to review the delivered goods at the cost of the Purchaser. The independent auditor will compare the results of its test with the specifications as ordered by the Purchaser and the Seller's own sample of the goods. In case the Purchaser does not comply with the set-out inspection procedure, the Purchaser shall lose all rights to make a claim.

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

Tank trucks, containers or any other tank of transporting the goods owned by or made available by Seller shall be emptied on arrival without delay and shall be returned within 24 hours after arrival at the destination, free of charge and cleaned to the installation of origin. If tank trucks, containers or any other tank of transporting the goods are returned late, a hire charge may be levied (the amount depending on the type of tank, vehicle, ... and/or capacity) determined by the Seller. The Purchaser shall be liable to the Seller for damages or destruction of such equipment attributable to the Purchaser.

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

The loading or filling of vehicles and/or containers by the Purchaser shall be the sole responsibility of the Purchaser, even if carried out by the Seller and/or if the Seller 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 according to Seller's 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 the price has been paid in full.

- b.** If the Purchaser fails to pay for the goods in time, the Seller may re-possess the goods without prejudice to the Seller's other rights regarding overdue payment.
- c.** If the Purchaser would have used or processed the goods supplied by the Seller without having paid the full price, the Seller becomes owner of these newly produced goods without further notice, proof of default or legal intervention and 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 general terms and conditions or any other agreement(s) with the Seller, the Purchaser shall be in default without further notification.
- d.** In the event of non-payment the Seller shall be entitled to suspend without notice all further deliveries to the Purchaser and/or declare all current contracts void by operation of law and/or demand payment of all invoices outstanding but not yet due, irrespective of the right of the Seller to demand compliance and/or compensation from the Purchaser. In the event of non-payment the Purchaser shall lose all rights to discounts granted and will repay any granted discounts.
- e.** If the Purchaser fails to pay the invoice amount on time, the Purchaser shall be liable to pay an interest of 10% per annum on the outstanding amount from the date payment was due as stated in the above paragraph, until the Purchaser ceases to be in default.
- f.** If the Purchaser is in default regarding any payment, all other undue invoices to be paid by the Seller has shall immediately become due without further proof of default.
- g.** The Purchaser waives the right to set off one debt against another and to any discount.
- h.** If the Purchaser is more than one legal entity, each separate legal entity is solely responsible for the entire order and corresponding obligations.
- i.** All legal and extra-judicial costs resulting from claims on the Purchaser shall be charged to the Purchaser. In case of collection of charges, any extra-judicial costs will be deemed to constitute at least 15% of the claim.
- j.** Invoices shall be sent by the Seller to the Purchaser by e- mail or fax and any invoice which is not disputed within 3 days in writing following the date of its receipt shall be considered accepted by the Purchaser who shall no longer have the right to object its value after the expiry of the said period.

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

- a.** Claims will only be considered if they are presented in writing and fully specified and containing objective evidence within 8 days after delivery. All claims towards Seller shall be extinguished after 1 year.
- b.** Once the goods have been used or re-sold they are deemed to have been accepted and no related claims can be made towards the Seller. In the case of bulk deliveries, transfer into a reservoir counts as acceptance.
- c.** 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 Purchaser must prove that the goods were used in a proper manner.
- d.** The Seller shall not be liable for damages suffered during loading or filling.
- e.** The Seller is never liable for damages other than direct damages to goods. Seller cannot be held responsible for loss of profit and other indirect damages or consequential loss.
- f.** The Seller can never be held liable for a higher amount than the value of the invoice.
- g.** 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.
- h.** Goods may be returned only with written permission from the Seller.

**Article 13**      **Liability Purchaser**

- a.** If the Purchaser fails to discharge any of its 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 agreement(s) by written declaration altogether or in part, without further notice of default and without legal intervention, or postpone execution of the agreement(s) altogether or in part without incurring any liability for damages and without prejudice to any of its other rights. Furthermore, the Seller has in any of these circumstances the right to demand pre-payment or sureties from the Purchaser.
- 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.** If the Purchaser cancels an earlier order altogether or in part, the Purchaser 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 14**      **Force Majeure**

- a.** The Seller cannot reasonably be expected to fulfil its obligations in the following circumstances, but not limited to: government restrictions of any kind, pandemics, mobilisation, war, revolution, strikes, confiscation, production stoppages, shortage of raw materials, power failure or shortages, natural disasters, part of total failure by third parties to supply goods or services. In this case the Seller shall retain at all times the right to either suspend its obligations as long as the situation of force majeure persists, or, should it persist for more than six months, rescind the purchase by operation of law, with no liability on the part of the Seller to compensate in either case.
- b.** If the agreement is fulfilled despite any or several of the circumstances described in the first paragraph, this does not affect the right to postpone or terminate the agreement if these circumstances will occur again.

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

- a.** The Purchaser may not, without prior written permission of the Seller, transfer its rights and obligations or part thereof to another party. The Seller can assign any contract obligation to any of its affiliates. Any deliveries made under this condition may be invoiced by the involved affiliate and shall constitute performance under this agreement by the Seller.
- 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 agreement by written declaration without legal intervention, and the Seller shall not be liable for any damages whatsoever.

**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 or 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 agreement was concluded, the Seller would not have agreed to it, or in any case not on the same conditions the Seller cannot reasonably be expected to carry out one or several of the clauses, a possible change in the agreement 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 the UAE Laws.
- b.** Any disputes which may arise between Seller and Purchaser, will be settled exclusively by the UAE competent courts, non DIFC nor ADGM courts.