

**1. GENERAL**

1.1 The following general conditions of purchase shall apply to all contracts with entrepreneurs, bodies corporate organised under public law special funds under public law which concern the order of goods or services by KLK EMMERICH GmbH (hereinafter "KLK") from the contractual partner (hereinafter "Supplier") for the plants in Emmerich and Dusseldorf.

1.2 Conflicting, differing or supplementing conditions of the Supplier shall not apply unless KLK has expressly acknowledged in writing in individual cases that such conditions shall take the place of these General Conditions of Purchase. This shall also apply if KLK is aware of the Supplier's conflicting or differing terms of delivery and accepts the Supplier's delivery without reservation. By submitting an offer corresponding to the KLK's request for a quote (clause. 2.1) the Supplier acknowledges the Conditions of Purchase of KLK an.

1.3 The Conditions of Purchase of KLK shall also apply without express agreement to all future business with the Supplier.

1.4 Amendments to these General Conditions of Purchase or to the contract, side letters, declarations and other agreements must be made in writing unless the law provides for a more stringent form. The same shall apply to any amendment of this written form clause. The written form shall be granted by sending a fax or by electronic transfer.

**2. OFFER**

2.1 Requests for quotes by KLK are subject to change and should only be perceived as a request to the Supplier to submit an offer.

2.2 Unless otherwise expressly provided in the Supplier's offer, offers from the Supplier shall be binding for a period of 10 working days from receipt of the offer by KLK.

2.3 The Supplier's offer must strictly adhere to the request for a quote from KLK and express reference must be made to any changes.

2.4 The offer is made free of charge and does not create any obligations for KLK.

**3. ORDER, CONCLUSION OF CONTRACT**

3.1 Acceptance of the Supplier's offer is effected by an order being made by KLK within the acceptance period set out in clause 2.2. Unless otherwise agreed by the parties in writing, the order by KLK shall be decisive for the extent of the obligation to perform. Oral orders by KLK are only binding pursuant to clause 1.3 if they are confirmed by KLK in writing, unless otherwise determined by the nature of the business (e.g. immediate delivery).

3.2 If the order is not made within the acceptance period set out in clause 2.2 or if the order differs in terms of contents from the Supplier's offer, the order is deemed to be a new offer which the Supplier may accept in writing within 10 working days of receipt.

3.3 Every order must be confirmed by the Supplier in writing, in including the order number, and must be dealt with separately from general correspondence. In cases of the conclusion of a contract pursuant to clauses 3.1 above the confirmation of the Supplier has a purely declaratory effect. In cases of the conclusion of a contract pursuant to clause 3.2 above the confirmation of the Supplier constitutes the declaration of acceptance. Confirmations of order which KLK already receives in response to its request for a quote (pursuant to clause 2.1) are deemed to be an offer that requires the written acceptance of KLK. The same applies for confirmations of order which differ from the order.

3.4 The Supplier shall include the order number in all correspondence, invoicing and shipping documents (certificates of analyses, freight bills, delivery notes, express parcel consignment notes, parcel dispatch slips etc.). The same shall apply to the date of order and, if existing, the position number. The Supplier shall be liable for any costs and expenses (such as demurrage, marshalling charges, etc.) incurred as a result of any misrouting due to a non-observance of this information.

**4. PRICES AND CONDITIONS OF PAYMENT**

4.1 The price set out in the order is binding. Statutory value added tax is not included in the price. With regard to the costs and risk of delivery clause 6.1 applies.

4.2 Unless otherwise expressly agreed in writing, the agreed prices shall at the option of KLK be payable within 60 calendar days without deduction or within 14 calendar days with a 2 % discount from complete delivery and performance receipt of invoice by KLK.

4.3 KLK is entitled to statutory rights of set-off and retention.

4.4 Payments made by KLK do not constitute acknowledgement of the contractual compliance of the performance or the accuracy of the amount set out in the invoice.

4.5 Unless otherwise expressly agreed in writing, customs duties and other dues must be borne by the Supplier.

**5. DELIVERY PERIOD**

5.1 The delivery dates or deadlines set out in the order are binding. If deadlines are indicated, they begin to run from the date of the order.

5.2 As soon as the Supplier becomes aware of circumstances that he cannot fulfil his contractual obligations in whole or in part or cannot fulfil them on time, KLK must be immediately notified giving the reasons and – in cases of an anticipated delay – the anticipated duration of the delay, without prejudice to KLK's rights arising from the delay. If the Supplier fails to give this notification, he can also not rely upon a hindrance for which he is not responsible; in such cases, KLK shall be entitled, even if the delivery or performance is delayed for reasons beyond Supplier's control, to rescind the contract or any part thereof without the grant of any grace period.

5.3 If the Supplier does not carry out the delivery or fails to do so within the agreed delivery period, he shall be liable pursuant to statutory provisions.

5.4 Partial deliveries or partial performance may only be executed by Supplier, if KLK has consented thereto upfront in writing.

5.5 In the event of force majeure such as war, disruptions to transport or operations, industrial action, unforeseen currency constraints or other hindrances outside the control of KLK, KLK is entitled to withdraw from the contract in whole or in part or demand performance at a later date without the Supplier being entitled to any claims for compensation. KLK shall inform the Supplier within a reasonable period once it becomes aware of the occurrence of any of the events in question.

**6. DELIVERY, TRANSFER OF RISK, PLACE OF PERFORMANCE**

6.1 Unless otherwise agreed in writing (e.g. Incoterms clause), the delivery shall be at the cost and risk of the Supplier. The delivery shall include the usual trade packaging. Other costs or charges arising must be borne by the Supplier. The place of performance for the Supplier to provide his services is the delivery point specified by KLK in the order.

6.2 For every delivery KLK and where applicable the recipient must be sent directly after despatch a separate and specific notice of despatch with details of the order number, packaging, order number and weight.

6.3 The Supplier shall be liable to KLK for the due and proper labelling/marketing of all deliveries, in particular with regard to hazardous materials, which are subject to statutory labelling requirements.

**7. CLAIMS FOR DEFECTS, NOTICE OF DEFECTS AND LIABILITY OF THE SUPPLIER**

7.1 The Supplier warrants that the deliveries and services correspond with all relevant statutory provisions, the provisions and directives of public authorities, government safety organisations and trade associations, the current state-of-the-art including the then applicable Chemicals Law as well as the packaging ordinance in its then current version as well as the specifications and quality requirements specified in the order. The Supplier is obliged to point out to KLK in writing any possible limitations on use and declaration obligations for the goods delivered.

The Supplier warrants, that its deliveries comply with the requirements of the EU regulations regarding REACH (Regulation (EG) No 1907/2006 dated 30 December 2006) and EU regulations regarding the classification, labelling and packaging of substances and mixtures for the delivered goods (Regulation (EG) No 1272/2008 as of 20 January 2009), if applicable.

The Supplier warrants, that all substances contained in its deliveries have been registered or pre-registered, if such registration is required by the regulations of REACH.

The Supplier shall provide to KLK a safety data sheet which complies with the requirements of Article 31 of the REACH-Regulation, for products to be classified as hazardous as well as for products not to be classified as hazardous but which contain ingredients in a concentration above 1% of a substance posing human health or environmental hazards or above 0.1% (SVHC- Substances of Very High Concern) according to the latest list of the European Chemicals Agency.

7.2 The use of sub-contractors as well as any change in production or any change of the source of supply for the goods delivered requires the express written consent of KLK.

- 7.3 For deliveries of goods which are designed for or suitable for the manufacture of foodstuffs as well as packaging or other items to be used in connection with such goods, the Supplier guarantees in particular the provisions of food and hygiene law and standard weights and measures law are complied with. If certain goods are admitted within certain prescriptive limits under food law these limits shall in no event be exceeded, they may only be included amongst the goods with the prior written consent of KLK.
- 7.4 For the delivery and installation of machines and other technical means of work of any kind, the Supplier also warrants compliance with all equipment safety laws and provisions for the prevention of accident in the chemical industry in the then current form. Upon request the Supplier must confirm in writing compliance with the provision in individual cases.
- 7.5 Following prior notice, KLK is entitled between confirmation of the order and the delivery date to inspect the goods for defects at the Supplier's premises during usual operational and business hours. This does not lead to any limitation of KLK's rights to claim under the warranties.
- 7.6 After receipt and within a reasonable period commensurate with the delivered goods in question, KLK shall inspect the goods for possible discrepancies in quality and quantity. A notice of defect shall be made on time if it is submitted immediately after the discovery of the defect. Defects which are not recognisable at this point in time and which come to light later shall be notified by KLK to the Supplier immediately following discovery.
- 7.7 KLK is entitled to check for any quality or quantity discrepancies by making significant random tests, provided these correspond with the conditions of the regular course of business as well as the nature and extent of the delivery. If the result of the random test indicates a defect with the quality or quantity, KLK is entitled to its rights under the warranty for defects in relation to the entire delivery.
- 7.8 In cases of a substantiated notice of defects being made on time KLK is still entitled to its full statutory claims for defects.
- 7.9 In the case of a warranty claim the Supplier is obliged to bear all the necessary costs for the purposes of remedying the defect or providing a replacement delivery. This shall also be the case if the costs increase as a result of KLK subsequently requesting that the subject of the delivery be delivered to a location other than the KLK place of business.
- 7.10 KLK has an unlimited right to claim damages including in the case of breaches of secondary obligations.
- 7.11 If the Supplier cannot fulfil his obligations in whole or in part or cannot fulfil them on time, KLK must be informed of this immediately. If partial services are agreed and the partial service leads to the disruptions of the performance, KLK may choose to also assert its rights in relation to entire contract to the extent that KLK has no interest in the remaining service.
- 7.12 The claims in relation to defects are subject to a KLK limitation period of three years from delivery to KLK. For construction works and other services falling within the German Construction Contract Procedures, claims for defects are limited to five years from hand-over. To the extent that a longer limitation period is provided by statute, this shall apply.
- 7.13 If the Supplier delivers a new item for the purposes of supplementary performance, the objectionable defective item shall remain at KLK's disposal until replacement and shall be handed back by KLK to the Supplier in return for the new item.
- 7.14 In cases of urgency, where supplementary performance by the Supplier is unreasonable or where supplementary performance has failed, KLK can remedy the defects itself at the cost of the Supplier. The same shall apply in cases where the Supplier denies supplementary performance or he reasonable deadline for supplementary performance has expired without success, unless the denial of the Supplier is correct.
- 7.15 Furthermore, the Supplier is liable pursuant to statutory provisions.
- 7.16 In particular, on the first demand, the Supplier indemnifies KLK from all third party claims, which are made against KLK by reason of breaches of obligations by the Supplier, insofar and to the extent that the Supplier is liable as against KLK in its internal relationship. The Supplier shall reimburse KLK with all necessary costs incurred by KLK by reason of the Supplier's breaches of obligations.
- 7.17 On first demand the Supplier indemnifies KLK for claims made under the product liability law to the extent that the cause lies within the Supplier's control and area of organisation and he is liable externally. Further claims for damages by KLK shall remain unaffected.
- 7.18 In the context of his liability for damages within the meaning of clauses 7.15, 7.16 and 7.17 the Supplier is also obliged to reimburse any costs arising out of or in connection with any recall procedure carried out by KLK. To the extent that this is possible and reasonable, KLK shall inform the Supplier of the content and extent of the recall procedure to be carried out and shall give the Supplier an opportunity to comment.
- 8. THIRD PARTY RIGHTS**
- 8.1 The Supplier warrants that all services provided by him are free from third party rights and that KLK through the use of the services shall not breach any patents, copyright, trademarks, licences or other protective rights or know-how of third parties.
- 8.2 The Supplier indemnifies KLK on first demand and holds KLK completely harmless for all third party claims arising out of or in connection with the breach of protective rights of third parties as a result of the use of the contractual services.
- 9. INSURANCE**
- 9.1 Unless otherwise expressly agreed in writing the Supplier shall take out at his own cost a sufficient insurance, including sufficient coverage for environmental liability, for damages caused by him, his statutory representatives, managing employees or other vicarious agents in connection with the execution of the contract.
- 9.2 Unless otherwise expressly agreed in writing, the Supplier shall take out at his own cost a sufficient product liability insurance for claims made against him on the basis of product defects for which he or his supplier is responsible.
- 9.3 The Supplier shall produce the corresponding insurance policies to KLK on request.
- 10. DOCUMENTS, CONFIDENTIALITY**
- 10.1 Sample deliveries, drafts, plans and calculation prior to the placement of the order are free of charge for KLK and are otherwise included in the price of the good or services. Drawings, models, films and other submission that have been prepared for the fulfilment of the order shall become the property of KLK upon payment by KLK. They may not be used for other purposes or disclosed to third parties.
- 10.2 The request for a quote, the order, the related services and specifications as well as all information received in connection with the carrying out of the contract shall all be treated by the supplier as a business secret and handled as confidential. The obligation of confidentiality shall continue without limitation after the termination of the contract. The Supplier is liable for all damages accruing to KLK as a result of a breach of these obligations.
- 11. LIABILITY OF KLK**
- 11.1 Subject to the provision in the following clauses 11.1 to 11.5, KLK shall only be liable regardless of the legal ground, for damages caused by the deliberate or grossly negligent conduct of KLK, its statutory representatives, managing employees or other vicarious agents.
- 11.2 For damages caused by the grossly negligent conduct of other vicarious agents the liability for such damages shall be limited to those typically arising in the context of the contract.
- 11.3 For damages caused neither deliberately nor through the gross negligence of KLK, its statutory representatives, managing employees or other vicarious agents, KLK shall only be liable if an obligation is breached where compliance with such an obligation is of considerable significance to the achievement of the purposes of the contract (cardinal obligation). In the case of a breach of a cardinal obligation the limitation on liability pursuant to clause 11.2 shall apply.
- 11.4 A possible liability of KLK for damages from injury to life, body or health through the provision of a guarantee or pursuant to the product liability shall remain unaffected.
- 11.5 To the extent that pursuant to clauses 11.1 to 11.4 the liability of KLK is excluded or limited, this shall also apply for the benefit of employee of KLK in the event that there is a direct internal relationship between employees of KLK by the Supplier.
- 12. BUILDING AND OTHER WORK SERVICES AT THE OPERATIONAL PLANT**
- 12.1 The Supplier is liable for all damages arising from the provision of building and other services at the KLK operational plant through non-compliance with valid provisions for the prevention of accidents and KLK's valid operational safety provisions.
- 12.2 The Supplier is responsible for the safe-keeping of any kind of material and work equipment
- 12.3 The use by KLK's working equipment by the Supplier shall be at the Supplier's risk.

### **13. MINIMUM WAGE**

- 13.1 If the Supplier is required by statutory law to pay a minimum wage, e.g. as to the regulations of the German Minimum Wage Act (MiLoG), the Supplier will comply with the provisions and monitor compliance with the same provisions by its subcontractors.
- 13.2 Upon request of KLK, the Supplier shall be obliged to submit evidence of its payment of a minimum wage by appropriate documentation.
- 13.3 The Supplier indemnifies KLK on first demand and holds KLK completely harmless for all third party claims arising out of or in connection with the breach of the statutory provisions to pay the minimum wage or any other statutory regulation thereto.
- 13.4 If the Supplier infringes one of its obligations stated in clauses 13.1 to 13.3, KLK shall be entitled to terminate the contract without further notice.

### **14. MISCELLANEOUS**

- 14.1 In the event of the occurrence (including impending occurrence) of a considerable deterioration of the Supplier's assets (in particular suspension of payment or application for insolvency, bankruptcy, general enforcement) and the risk thereby arising of claims being made by KLK, KLK may withdraw from the part of the contract not yet performed.
- 14.2 The assignment of claims of the Supplier out of this contract with KLK requires the prior written consent of KLK.
- 14.3 Rights of retention or other rights to refuse performance can only be asserted against KLK if and to the extent that they result from claims from the Supplier based on the respective individual contract, and if they are undisputed or established as final and absolute.
- 14.4 The assignment and / or transfer of rights and / or obligations under the Contract with KLK by the Supplier require the prior written consent of KLK.
- 14.5 The law of the Federal republic of Germany shall exclusively apply as between the parties. The conflict of law rules and the provisions of the UN Convention on Contracts for the International Sale of Goods dated 11 April 1980 shall be excluded.
- 14.6 Exclusive jurisdiction for all disputes out of and in connection with this contract as well as all kinds of proceedings is Düsseldorf. KLK is also entitled however to bring a claim against the Supplier at its registered office.