

## **GENERAL TERMS AND CONDITIONS OF SALE**

### **1. DEFINITIONS**

"**Contract**" means these conditions of sale, **KLKEMM**'s order confirmation and any special terms expressly agreed in writing as forming part of the Contract;

"**Buyer**" means the person whose order for Products is accepted by **KLKEMM**;

"**Containers**" means all containers including without limit bags, drums, pallets, IBCs, tanks, roadtankcars, ISO-tankcontainers, railwaytanks and barges;

"**Conditions**" means the terms and conditions set out in this document;

"**Delivery Point**" means the point of delivery to Buyer in accordance with the agreed INCOTERMS Clause;

"**Products**" means the products to be supplied under the Contract;

"**INCOTERMS**" mean the current trade terms of the International Chamber of Commerce;

"**KLKEMM**" means KLK Emmerich GmbH, Steintor 9, D-46446 Emmerich am Rhein.

### **2. CONTRACT CONCLUSION AND SUBJECT MATTER**

2.1 These Conditions shall exclusively apply to all business transactions of KLKEMM with the Buyer. They apply to business transactions with business entities, legal public entities and trusts governed by public law. General terms and conditions of the Buyer or regulations of other organisations (e.g. FOSFA, NOFOTA, GROFOR, etc.) shall only apply if they are expressly confirmed in writing by KLKEMM.

2.2 These Conditions also apply, without the need for an express agreement, to all future transactions between the Parties as well as when KLKEMM, in the knowledge of the Buyer's opposing or different terms and conditions, carries out the delivery or service without reservation.

2.3 KLKEMM's offers are subject to change without notice unless otherwise agreed in writing. No Contract exists until KLKEMM sends its order confirmation form, or if the delivery has been carried out. KLKEMM's written confirmation of order shall determine the nature and scope of KLKEMM's obligations as well as the agreed specifications, provided the Buyer does not oppose the content of the confirmation of order in writing without delay of receipt of the confirmation of order.

2.4 To the extent that there are no limits on permissible variations stated in the confirmation of order, and that such limits do not result from Buyer specifications which have been acknowledged by KLKEMM in writing, variations which are customary in trade are permitted. A guarantee (§ 443 German Civil Code) shall only be given by KLKEMM if it expressly indicates in writing that these amount to guarantees.

2.5 Descriptions and specifications of the Products contained in brochures or other advertising materials are for general information only and do not constitute agreed specifications for the Products (cf. **Clause 7.3**).

2.6 If, at the request of the Buyer, after the conclusion of contract, KLKEMM agrees to the cancellation of a Contract by way of exception, this shall only take place upon the payment of a lump-sum charge in the amount of 20 % of the net value of the Contract. Amicable cancellation only takes place out of goodwill on KLKEMM's part; the Buyer has no claim for amicable cancellation of a contract.

### **3. DELIVERY, DEFAULT OF ACCEPTANCE**

3.1 Scheduled delivery dates by KLKEMM are always non-binding estimates only, unless delivery periods or delivery dates are expressly marked as binding in the confirmation of order. Absolute fixed dates must be marked with a corresponding suffix. Delivery periods shall commence only after receipt of any agreed pre-payments.

3.2 Two weeks after a non-binding delivery date or delivery period has been exceeded, the Buyer may request in writing delivery by KLKEMM within a reasonable period of time. Upon expiry of this delivery deadline KLKEMM shall be in delay, unless KLKEMM is not responsible for the non-performance.

3.3 Unless otherwise agreed in writing by the Parties, delivery of the Products shall take place at the Delivery Point according to the agreed INCOTERMS Clause, which shall also govern the transfer of risk. Otherwise **Clause 4.2** shall apply for the costs and risk of transport.

3.4 Notwithstanding any other claims, KLKEMM has the right to demand advance payment or provision of security and to delay the fulfilment of its own obligations in the event that, following Contract closure, facts become known which question the Buyer's reliability, in particular with respect to the Buyer's ability to pay. KLKEMM shall be entitled to withdraw from the contract in whole or in part, if the Buyer has provided false information regarding its credit worthiness, or when, based upon reliable information, the Buyer's credit worthiness is objectively found not to exist. Any and all claims for compensation by the Buyer arising from KLKEMM's withdrawal from the Contract are excluded.

3.5 KLKEMM may suspend delivery and withdraw from the contract if in KLKEMM's reasonable opinion, delivery would not comply with relevant laws and regulations; the Buyer is not entitled to any claims for compensation against KLKEMM in this case. The same shall also apply in the event that a Product or its distribution is officially prohibited following conclusion of the contract.

3.6 In the event that the Buyer is in default of acceptance, KLKEMM is entitled to claim compensation for additional expenditure arising as a result (e.g. costs of return transport, demurrage, storage, redelivery or disposal) KLKEMM. Any possible claims for compensation by KLKEMM on account of culpable breaches of (secondary) obligations by the Buyer shall remain unaffected.

3.7 KLKEMM does not automatically accept delays in delivery/collection dates. Especially in cases of delay of delivery/collection dates on short notice - up to 72 hours before loading/collection date we reserve the right to charge any occurring costs to the ordering party.

3.8 KLKEMM shall be entitled to make partial deliveries.

#### **4. PRICE**

- 4.1 The price will be agreed in each individual case. The price is exclusive of value added tax at the applicable rate and any other duties or levies.
- 4.2 Unless agreed by the Parties in writing in relation to the transport of the Products (e.g. according to INCOTERMS Clause), the price shall be the price ex works KLKEMM and any other costs (e.g. loading, freight and customs duties) shall be borne by the Buyer; dispatch and transport shall be at the risk of the Buyer.

#### **5. PAYMENT**

- 5.1 Unless otherwise agreed, payment shall be due without deductions within 30 days of the date of invoice.
- 5.2 If periods for payments are exceeded KLKEMM shall charge interest at 9 percentage points above the respective basic interest rate of the European Central bank per annum, unless KLKEMM can prove higher damages.
- 5.3 The Buyer is not entitled to reduce KLKEMM's claims by counter claims or to exercise a right of retention unless the counter claims or right of retention have been acknowledged by KLKEMM or legally determined.

#### **6. FORCE MAJEURE**

KLKEMM's duty to perform is suspended in case of force majeure (including disruptions in the ordinary course of business or of traffic, disturbances in shipment, business interruptions due to technical reasons, war, strike, lock out, insufficient delivery of operational material, administrative legal measures or other similar events) to the extent that KLKEMM is not responsible for this, as well as incorrect or late supplies being made to KLKEMM for which KLKEMM is not responsible. KLKEMM must inform the Purchaser without delay of the unavailability of the service. In these cases KLKEMM is entitled to postpone their performance, for as long as such events continue, however, up to a maximum of four months. In case of a permanent disturbance of the performance or if the disturbance lasts more than four months, KLKEMM is entitled to withdraw from the contract either in whole or in part. In the event of withdrawal from the contract, the Buyer is not obliged to pay any consideration, and any advance payments shall be paid back to the Buyer without delay; the Buyer is not entitled to claim for compensatory damages.

#### **7. WARRANTIES, OBLIGATIONS TO INSPECT AND IDENTIFY DEFECTS**

- 7.1 The Buyer must carefully inspect the goods without delay after their arrival at the destination point, in particular as to condition and quantity, even if examples or samples have been previously sent. Obvious defects must be notified by the Buyer to KLKEMM without delay at the latest however within 14 calendar days. Concealed defects must be notified by the Buyer in writing to KLKEMM without delay at the latest however within 14 calendar days of discovery of the defect. Any breach of this obligation to identify defects excludes a claim for defects to that extent.
- 7.2 Insofar as a defect exists which has been notified within the correct time limits prescribed in **Clause 7.1**, KLKEMM is entitled at its option to remedy the defect within a reasonable deadline

by undertaking repairs or by delivering a non-defective subject matter. In the event that the remedy is ineffective, the Buyer is entitled at its option to require either a reduction in the purchase price or the cancellation of the contract. The Buyer has no cancellation rights in the case of immaterial defects.

- 7.3 Recommendations or suggestions as to the use, application, storage, handling or disposal of the Products given (whether before or after delivery) in sales or technical literature or in response to an enquiry or in any other form are given in good faith but it is for the Buyer's sole assessment (by trial processing if necessary) and KLKEMM accepts no liability for such recommendations or suggestions. The nature and scope of KLKEMM's obligations as well as the agreed specifications shall be solely determined by KLKEMM's confirmation order (cf. **Clause 2.5**)
- 7.4 KLKEMM shall be liable for possible claims for compensation from the Buyer arising from or in connection with the defects in the Products, exclusively in accordance with the provisions of **Clause 11**.
- 7.5 All warranty claims by the Buyer shall become statute-barred within one year calculated from the beginning of the limitation period prescribed by statute. This shall not apply when KLKEMM has fraudulently concealed the defect nor when strict liability on the part of KLKEMM to pay compensation exists pursuant to **Clause 11**. Agreements between the Buyer and its customers shall not be to the detriment of KLKEMM if they go beyond statutory claims for defects.

## **8. RETENTION OF TITLE, RESCISSION OF CONTRACT**

- 8.1 KLKEMM retains ownership of the Products until receipt of all payments under the Contract as well as all other payments due under the existing business relationship ("**Retained Products**"). Until title passes the Retained Products shall be separately stored and identified as those of KLKEMM and insured for their full reinstatement value.
- 8.2 Any treatment or processing of the Retained Products shall take place for KLKEMM as manufacturer within the meaning of § 950 German Civil Code, without any obligation on KLKEMM's part. Treated and processed goods shall be deemed retained goods. If the Buyer carries out any treatment, processing, combination or mixing of the Retained Products with goods from another source to make a new item or mixed item respectively, KLKEMM is entitled to co-ownership in proportion to the invoice value of the Retained Products at the time of delivery as against the value of the other processed or mixed goods. The part that is co-owned shall be deemed to be Retained Products.
- 8.3 The Buyer may only sell the Retained Products in the normal course of business under his normal conditions and under an agreement as to a retention of title, if it is guaranteed that the Buyer's claims under this further sale are assigned to KLKEMM in accordance with this **Clause 8.4** and **8.5**:
- 8.4 The Buyer hereby assigns to KLKEMM any claims arising out of the further sale of the Retained Products (as well as in the context of contracts for services or contracts for works and materials) together with all ancillary rights. These shall serve to the same extent as KLKEMM's security for the Retained Products.
- 8.5 In the case of the sale of goods in which KLKEMM has co-ownership rights pursuant to **Clause 7.2.1** or **7.2.2** respectively, the assignment of claims shall only be up to this co-owned share.

- 8.6 Until cancellation, the Buyer is entitled to collect any claims arising out of further sales.
- 8.7 If the Buyer fails to fulfil its obligations under this Contract or other contracts with KLKEMM or if KLKEMM become aware of circumstances which reduce his credit worthiness, then:
- (a) after the expiry of a fruitless extension of time, KLKEMM can withdraw (in whole or in part) from the Contract; then the Buyer's right of possession in the Retained Products shall expire and KLKEMM can demand the Retained Products;
  - (b) KLKEMM may prohibit the further sale, treatment, processing as well as mixing or combination of the Retained Products with other goods;
  - (c) the Buyer shall inform KLKEMM on demand of the name of the debtor of the claims that have been assigned to KLKEMM;
  - (d) KLKEMM is entitled to cancel the direct debit authorisation that was granted. Any further claims of KLKEMM, in particular claims for damages, shall remain unaffected.
- 8.8 If the value of the security provided to KLKEMM exceeds the aggregate of KLKEMM's secured claims by more than 20 %, KLKEMM is obliged to release security of KLKEMM's choice to this extent at the request of the Buyer.

## 9. NOTIFICATION OF NON-DELIVERY

Buyer shall advise the carrier and KLKEMM in writing without delay, at the latest within the following time limits:

- 9.1 for loss from a package or from an unpacked consignment or for damage to or non-delivery of any part of a consignment or for short or over delivery within 3 working days of delivery of the consignment or part consignment by stating the varying quantity or damages;
- 9.2 For non-delivery of a whole consignment without delay after expiration of the normal delivery time of the agreed transport.

## 10. SHORTAGES AND OVER DELIVERY

KLKEMM's ex works weights verification shall be final. KLKEMM may deliver to within plus or minus 5 % of weight or volume ordered. Buyer shall pay for actual weight or volume delivered within such tolerances. Subject to compliance with **Clause 9.1** KLKEMM shall as soon as practicable deliver any shortfall or collect any over delivery outside of such tolerances. Failure to give notice of over delivery outside of such tolerances in accordance with **Clause 9.1** or any use or dealing in such Products shall require the Buyer pay for them at the contract rate.

## 11. LIMITATION OF LIABILITY

- 11.1 Subject to the provision in the following **Clauses 11.1. to 11.5**, KLKEMM shall only be liable, regardless of the legal ground (for example, delays, defective delivery, breaches of binding obligations or obligations arising from contract negotiations, tortious act), for damages caused by the deliberate or grossly negligent conduct of KLKEMM, 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 KLKEMM, its statutory representatives, managing employees or other vicarious agents, KLKEMM 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 KLKEMM 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 KLKEMM is excluded or limited, this shall also apply for the benefit of employee of KLKEMM in the event that there is a direct internal relationship between employees of KLKEMM by the Supplier.

## **12. CONTAINERS**

Unless otherwise agreed all returnable Containers must be cleaned, labeled and ready for collection by or on behalf of KLKEMM as soon as possible after delivery. KLKEMM may charge for any additional costs of cleaning. Loss or damage occurring while in Buyer's possession or control shall be for the Buyer's account. Loss or damage must be reported immediately. By agreement such Containers may be returned with residual product and Buyer shall ensure proper labeling. Buyer may be liable for demurrage at KLKEMM's demurrage rate and/or be liable to reimburse KLKEMM for any third party demurrage if returnable Containers are detained or delayed.

## **13. EXPORT SALES**

13.1 Delivery or other arrangements which KLKEMM agrees to or is obliged to undertake beyond the Delivery Point per the agreed INCOTERM's Clause shall be as Buyer's agent and Buyer shall in particular pay all duties, charges or expenses incurred. Products not taken in by Buyer or Buyer's carrier may be warehoused by KLKEMM at the Buyer's risk and cost.

13.2 Buyer shall reimburse KLKEMM any additional costs or expenses incurred as a result of any delay or failure of the Buyer in performing its export obligations.

13.3 Buyer shall advise KLKEMM of any special requirements required for importation of the Products into the country of delivery.

## **14. GENERAL**

14.1 Place of jurisdiction shall be KLKEMM's registered office. KLKEMM is entitled to claim against the Buyer before any other competent court.

14.2 The contractual relationship as well as any other possible tortious claims arising thereunder shall be governed entirely by German law excluding the UN Convention on Contracts for the International Sale of Goods of April 11, 1980 (CISG).

14.3 Any transfers of Buyer rights and obligations arising under the contract shall require the written consent of KLKEMM.

14.4 KLKEMM shall be entitled to use data concerning the exchange of purchased items and payments with the Buyer in compliance with the respective data protection provisions.

14.5 Amendments to these General Conditions of Sale 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 also be granted by sending a fax or by electronic transfer.

#### **15. EXPORT CONTROL AND CONTROLLED USE**

15.1 Buyer shall not supply, import or export the Products contrary to sanctions imposed by (a) Germany, the United Nations, the European Community or other sanctions; or (b) other applicable export or import restrictions.

15.2 Products must not in any way be used or disposed of in connection with any actual or suspected use relating to (a) nuclear, chemical or biological weapons or their delivery systems; or (b) precursors for prohibited or controlled substances.

#### **16. TRADE MARKS**

The Buyer shall not use any KLKEMM trademarks or trade names in the re-sale of the Products.