

# KLK Kolb Specialties B.V.

## General Terms and Conditions of Purchase

Version 31 August 2018

### 1 GENERALITIES

In these general terms and conditions KKS BV must be understood to mean: the private limited liability company under Netherlands law KLK Kolb Specialties B.V.

### 2 APPLICABILITY

- 2.1 These general terms and conditions replace and prevail over all preceding general terms and conditions applied by KKS BV. Applicability of the general terms and conditions used by the supplier is expressly dismissed.
- 2.2 The present general terms and conditions apply to all legal relationships, in which KKS BV acts as (prospective) buyer of goods and/or services, and the other party, to be referred to hereinafter as "the supplier", also after termination of the legal relationship.
- 2.3 KKS BV is not bound by any proposal or offer originating from the supplier but after written acceptance of such proposal or offer by KKS BV. Amendments of these general terms and conditions and the agreement(s) made between KKS BV and the supplier are only valid if they have been agreed upon in writing. If in a specific case KKS BV and the suppliers deviate from these general terms and conditions, the supplier cannot derive any rights from it in respect of other legal relationships, entered into at a later date or not.
- 2.4 That provided in these general terms and conditions in respect of (the delivery of) products applies accordingly to (the delivery of) goods and (the rendering of) services.

### 3 TAKING EFFECT OF THE AGREEMENT

- 3.1 An agreement takes effect upon written acceptance by KKS BV of the offer of the supplier, or upon written acceptance by KKS BV of the order confirmation by the supplier in the event that KKS BV placed an order with the supplier. An offer, made with or without any obligation, cannot be revoked after acceptance by KKS BV.

- 3.2 Verbal promises by subordinates of KKS BV do not bind it as far as they are not confirmed in writing by KKS BV.

### 4 RIDER

- 4.1 If KKS BV places an order with the supplier on the basis of an agreement made between KKS BV and the supplier, the supplier shall carry out said order if by five (5) days following the placement of the order he has not informed to be unable to carry out the order, or to carry it out under the applicable conditions.
- 4.2 At the request of KKS BV the supplier shall carry out changes in the order indicated by the former, on the condition that they can be made in all reasonableness.
- 4.3 If the requested changes result into changes of price, term of delivery or other conditions, then the supplier shall inform KKS BV thereof by return of mail, in any case by seven (7) days after such changes became known, if not, the changed order will be carried out in conformity with the originally agreed price, term of delivery and other conditions.
- 4.4 If KKS BV cannot agree to the changes referred to in paragraph 2, the original order will remain intact, provided that KKS BV has timely communicated its objections.
- 4.5 If the supplier finds apparent errors or ambiguities in the (description of the) order of KKS BV, he is obliged to demand an explanation from KKS BV before proceeding to carry out the order, if not the performance will be at the risk and expense of the supplier.

### 5 PRICES

- 5.1 The agreed price is fixed and excludes turnover tax and other charges levied by the authorities and the supplier is not allowed to raise it without prior written permission of KKS BV.
- 5.2 The agreed price includes legal additional charges and all services rendered and expense made by the supplier in

respect of the delivery, including but not restricted to costs of delivery, mounting, service, packaging, transport, shipment and unloading, save expressly agreed otherwise in writing.

## 6 PAYMENT AND SECURITY

- 6.1 Invoicing by the supplier takes place after timely and proper performance of his duties with due observance of the agreed terms of payment. The supplier shall state the order number of KKS BV in the invoice and the other documents relating to the agreement and the delivery. Payment of the invoice will only serve to settle the invoice which KKS BV mentions upon payment, save stated otherwise.
- 6.2 KKS BV is entitled to settle against a counterclaim against the supplier, regardless of the currency in which they have been stated and also if they are not enforceable.
- 6.3 If the supplier does not meet any obligation resulting from a legal relationship between him and KKS BV, KKS BV is entitled to suspend the performance of its duties and to withdraw the credits which it might have provided to the supplier.
- 6.4 Also if the supplier declares himself willing to meet his obligations, KKS BV is entitled to demand the supplier to provide sound security, in the manner desired by KKS BV, for the performance of his duties resulting from any agreement made or to be made with KKS BV and to supplement this at the first request of KKS BV.
- 6.5 If the supplier does not comply with a request as referred to in paragraph 5 within fourteen (14) days following a written reminder to that end, all his obligations will immediately become due and KKS BV will be entitled to suspend performance of the agreement or to cancel the agreement without any proof of default or court intervention being required, without any obligation to pay damages and without prejudice to any other rights to which it is entitled.
- 6.6 All claims of the supplier against KKS BV, regardless of their reason or occurrence, become statute-barred by the mere passing of twelve (12) months following the date on which the claim concerned of the supplier against KKS BV became effective.

## 7 DELIVERY

- 7.1 Delivery shall be made free of charge at the warehouse of KKS BV, or at a place to be defined by KKS BV.
- 7.2 Delivery and/or partial delivery earlier than has been agreed between KKS BV and the supplier may only take place after prior written permission of KKS BV. Premature delivery and/or partial delivery does not result into changes of the agreed date of payment.
- 7.3 KKS BV is entitled to return all products delivered by the supplier but not ordered by it to the supplier without prior notice and at the expense and risk of the supplier.
- 7.4 The supplier shall ensure that all instructions of use and mounting, certificates, manuals, and other documents relating to the products to be delivered by him, will be in the possession of KKS BV by the moment of delivery.
- 7.5 The products are the property of KKS BV from the moment of the delivery or, should acceptance of the products take place at a later moment, from the moment of acceptance. Applicability of any reservation of title made by the supplier is expressly dismissed.
- 7.6 The products supplied by the supplier shall be at the risk of KKS BV after acceptance of the products by KKS BV.
- 7.7 Agreed delivery dates shall be considered deadlines. If the supplier is unable to perform the agreement made with KKS BV immediately or by the term agreed, the supplier will inform KKS BV thereof at once, while stating the term by which the supplier expects to be able to perform the agreement. If as a result of non-timely performance of the agreement by the supplier KKS BV incurs damage, the supplier is held to compensate such damage to KKS BV, regardless of whether it concerns direct or indirect damage.
- 7.8 Notions commonly used in trade such as FOB, CIF, CIB etc. shall be interpreted in conformity with the Incoterms 1990 as registered with the International Chamber of Commerce in Paris.

## 8 TRANSPORT AND PACKAGING

- 8.1 KKS BV is entitled to designate the means of transport and the carrier, as well as to decide the (method of) packaging of the products.

- 8.2 All transport and packaging resulting from an agreement shall be at the expense and risk of the supplier, also if KKS BV sees to the transport and/or packaging, designated the means of transport and the carrier and/or decided the packaging, and/or gave advice or carried out other work in respect of the transport or the packaging.
- 8.3 The transport and packaging of the products shall be carried out in an adequate and careful manner with due observance of all regulations relating to transport and packaging of any nature and in such manner that the products will go through the transport in a safe and undamaged condition until the final destination is reached and unloading can safely be carried out there.
- 8.4 The supplier shall inform the carrier of the regulations referred to in paragraph 3, the delivery dates, delivery places and all other conditions relating to the transport of the products as agreed between him and KKS BV. As far as required KKS BV will give the supplier instructions for the transport and packaging of the products without any further obligations.
- 8.5 The means of transport used by the supplier have to be in a clean, safe state and fit for transport at all times. KKS BV is not obliged to clean the means of transport, check them for safety and/or any other suitability for (further) transport and/or prepare them for (further) transport.
- 8.6 The packaging material used by the supplier in respect of the delivery will be, at the discretion of KKS BV:
- the property of KKS BV from the moment of delivery on, or
  - returned to the supplier at the expense and risk of the supplier.

## 9 INSPECTION, TESTING AND ACCEPTANCE

- 9.1 KKS BV is entitled to (have somebody) inspect and test the products during production, processing, storage, (preparation for) transport and delivery. The supplier shall collaborate in such inspection and testing, and guarantee that any third parties hired by him for the performance of the agreement will collaborate in such an inspection and/or testing. The supplier already gives KKS BV irrevocable permission to (have somebody) enter the premises used to that end by or on behalf of the supplier for such occasion.

## 10 PROPERTY

- 10.1 If KKS BV makes products available to the supplier under the performance of the legal relationship between KKS BV and the supplier, they remain the property of KKS BV.
- 10.2 Products in the sense of paragraph 1 are:
- A) all raw materials, semi-finished products, materials and parts;
  - B) machines, installations, models, stamps, packaging material, matrixes, moulds, calibres, drawings and other information carriers;
  - C) all other goods.
- 10.3 The supplier commits himself to store products, which are the property of KKS BV under paragraph 1, apart from the rest and to mark them as the property of KKS BV.
- 10.4 The supplier commits himself not to (have somebody) use products which are the property of KKS BV under paragraph 1, nor to allow third parties to do so for any purpose other than the performance of his duties vis-à-vis KKS BV. Should a third party claim any right in said products and/or have them attached, then the supplier will point out the property of KKS BV to said third party and immediately inform KKS BV of such claim and/or attachment.
- 10.5 At all times KKS BV will be entitled to (have somebody) take the products which belong to it from the place where they are on that moment. The supplier already grants KKS BV irrevocable permission to (have somebody) enter the premises used to that end by or on behalf of the supplier for such occasion.
- 10.6 The supplier commits himself to insure the products which are the property of KKS BV under paragraph 1, 2 and/or 3, against the risk of perishing and damage in any manner and to keep them insured with an insurer of established good name and reputation until the moment of delivery as defined in Article 7.1.

## 11 INTELLECTUAL PROPERTY AND KNOW-HOW

- 11.1 All products as well as material such as documents, sales brochures, reproductions, drawings etc. provided by KKS BV to the supplier will remain the property of KKS BV. The supplier is not entitled to use them in any manner other than for the sake of the use of the products which they relate to.

11.2 The supplier fully warrants KKS BV from third-party claims in respect of any infringement or alleged infringement of industrial or intellectual property rights, including know-how in respect of products delivered or still to be delivered by the supplier.

## 12 GUARANTEE

12.1 The supplier shall guarantee that the products delivered under the agreement meet and comply in all respects with the specifications stated by KKS BV. The products supplied do not infringe any industrial or intellectual property right and meet the applicable safety and government rules in all respects. Applicable safety and government rules are also understood to mean foreign safety and government rules, if the supplier may reasonably know that the products to be delivered will (also) be used abroad.

12.2 That provided in paragraph 1 applies accordingly to national and international standards of generally recognized standardization bodies.

12.3 The supplier guarantees the import, export and transit of the products to be delivered to the place of (final) destination known to him.

12.4 Upon examination of the question of whether a product supplied under an agreement meets said agreement, any announcements publicized in respect of the product by or for the sake of a former supplier of said product, acting in pursuance of a profession or business, will be considered announcements by the supplier save to the extent that the latter did not know, nor should know of a specific announcement, or clearly denied this.

12.5 If during a period of twelve (12) months following delivery it appears that the supplied products do not meet the provisions of paragraph 1, 2 and/or 3, then at the discretion of KKS BV and within a reasonable period after discovery thereof the products will be:

- replaced and/or repaired immediately, fully and for free by the supplier at the first request of KKS BV, or
- replaced and/or repaired by KKS BV itself or third parties hired by it, if in the view of KKS BV this is required by its business and the necessary urgency, or
- returned by KKS BV to the supplier at his expense and risk, all this without prejudice to the right of KKS BV to claim (further) compliance with the agreement and

compensation of the damage incurred by KKS BV in that respect.

12.6 If the products supplied do not meet the provisions of paragraph 1, 2 and/or 3, that provided in Article 7.6 will not apply and the products will be at the risk of the supplier from the moment of discovery thereof by KKS BV.

12.7 Inspection by KKS BV of the products during production, processing, storage, (preparation for) transport and delivery does not release the supplier from any of his warranties.

12.8 The supplier guarantees that he will be able to supply KKS BV with parts of the products supplied during a period of at least ten (10) years after delivery.

## 13 FORCE MAJEURE, NON-COMPLIANCE, RELEASE

13.1 KKS BV cannot be held liable in the event of force majeure. Force majeure is also understood to mean in all reasonableness any circumstances independent of the will of KKS BV which prevent performance of the agreement in full or in part.

13.2 Terms of delivery agreed will be suspended for the period during which KKS BV is prevented from meeting its obligations by reason of force majeure, on the understanding that if the delivery is delayed by more than three (3) months, both KKS BV and the supplier are allowed to cancel the agreement. In that event KKS BV is entitled to compensation of the expense made by it until the date of cancellation.

13.3 If the supplier does not, not duly or not timely, meet any obligation which results for him from a legal relationship existing between him and KKS BV, as well as in the event of:

- bankruptcy of the supplier;
- temporary suspension of payment of the supplier;
- the supplier being under guardianship;
- coming into effect of the debt rescheduling plan as laid down in the Netherlands Act on Bankruptcy (Faillissementswet) in respect of the supplier;
- closing down or winding up of (part of) the company of the supplier;
- attachment of (part of) the assets of the supplier;
- transfer of the company or an important part of the claims due by the supplier, in full or in part;

- direct or indirect alienation to third parties of the control or part thereof of (the activities and/or the assets of) the supplier, and
- reasonable fear that the supplier is or will be unable to meet his obligations vis-à-vis KKS BV; and
- loss or restriction in any other way of the supplier's power of disposing of his assets or his power to perform legal acts

KKS BV is entitled, at its discretion, without any proof of default or court intervention being required and without any obligation of damages and without prejudice to any other rights vested in it:

- to suspend (further) performance of the agreement as well as any other agreements made with the supplier;
- to cancel the agreement as well as any other agreements made with the supplier in full or in part; - to reclaim the credits which it may have given to the supplier, taking effect immediately; - to claim immediate payment of all to which it is entitled for whatever reason.

13.4 Should the supplier not collaborate in delivery, once KKS BV has allowed him a term of fourteen (14) days to do so, then KKS BV will be released from its obligations without the supplier being released from any of his obligations.

#### 14 LIABILITY AND DAMAGES

14.1 The supplier is liable for all damage, including but not restricted to indirect and consequential damage and loss of profit, which KKS BV and/or third parties incur, because the supplier and/or third party hired by him for the performance of a legal relationship existing between him and KKS BV, does not, not duly or not timely meet any obligation of the supplier which results from a legal relationship existing between him and KKS BV.

14.2 The supplier shall insure himself and keep himself insured with an insurer of established good name and reputation for all damage which KKS BV and/or third parties may incur if the supplier and/or a third party hired by him for the performance of a legal relationship existing between him and KKS BV, does not, not duly or not timely meet any obligation of his which results from a legal relationship existing between him and KKS BV.

14.3 KKS BV is only liable for damage which can be attributed to its intention or conscious recklessness.

14.4 KKS BV is never held to compensate any damage other than damage inflicted on persons and products.

14.5 The total liability of KKS BV will never amount to more than the net sum invoiced in respect of a delivery and the net sums not yet invoiced in respect of products already delivered, which the supplier could already have invoiced under such agreement.

14.6 The sums referred to in paragraph 5 are reduced by the credits stipulated by the supplier and granted by KKS BV.

14.7 KKS BV stipulates all legal and contractual remedies which it may invoke to deny its own liability in respect of the supplier, also for the sake of its subordinates and non-subordinates for whose acts it would be liable by law.

14.8 KKS BV will only be in default if, once a reasonable term for compliance has been given by the supplier to KKS BV by means of a written proof of default, said term has passed without compliance by KKS BV. KKS BV will never be in default, if the supplier is in default.

14.9 Condition to the occurrence of any entitlement to damages is always that once the entitlement came about the supplier has immediately reported the damage in writing to KKS BV. The occurrence of a claim (if any) of the supplier against KKS BV does not release the supplier from compliance with his obligations which result from the legal relationships between him and KKS BV.

14.10 The provisions of this article do not alter the legal liability of KKS BV under imperative legal rules.

14.11 The supplier indemnifies KKS BV and all its subordinates and agents against all third-party claims in respect of KKS BV, its subordinates and/or agents as a result of the non-compliance of the supplier with any obligation which results from a legal relationship between him and KKS BV, save in the event of intention or conscious recklessness on the part of KKS BV. The indemnification also includes any liability resting with KKS BV for the debts concerning turnover, wage tax and premium of the supplier or of third parties which came as a result of work carried out by staff of the supplier or third parties.

#### 15 CANCELLATION OF AGREEMENT FOR A SPECIFIC TERM

If and to the extent that an agreement concerns an agreement for a specific term, cancellation of such agreement by the supplier can only take place by informing KKS BV thereof in writing at least three (3) months before

the end of the agreed term of the agreement or, if tacit renewal of the agreement has been agreed, of the term of such renewal.

## 16 SECRECY

16.1 Orders placed by KKS BV are confidential and shall not be publicized by the supplier for purposes of publicity or sales promotion.

16.2 Save to the extent that the law thus requires, the supplier shall not publicize any data or information concerning KKS BV received from KKS BV or become known to him in another manner, directly or indirectly, nor make them accessible to third parties in another manner, not even after termination of the agreement for whatever reason, save express written permission of KKS BV, and he shall only use said data and information to carry out the order placed with him. The above does not apply, if the data and/or information have or will become public other than by the agency of the supplier.

16.3 The supplier is held to impose the prohibition stated in paragraph 1 and the obligations stated in paragraph 2 on all his subordinates, collaborators and third parties who gain knowledge thereof, and the supplier warrants that said subordinates, collaborators and third parties will meet said obligations.

## 17 TRANSFER OF RIGHTS AND OBLIGATIONS

17.1 KKS BV is entitled to transfer its rights and obligations resulting from the agreement fully or partly to third parties.

17.2 The supplier is not allowed to transfer his rights and obligations resulting from an agreement with KKS BV, fully or partly to third parties or to contract them out, save prior written permission of KKS BV. KKS BV may include conditions in its permission.

## 18 ALTERATIONS

18.1 KKS BV is entitled to alter the – specifications of the – products to be supplied to it or to adjust or alter the terms (of delivery). KKS BV will inform the supplier of an alteration in writing as soon as possible. The supplier shall fully collaborate in the establishment of an alteration as far as necessary.

18.2 The supplier is entitled to terminate the agreement by the date on which the alteration will become effective, on the condition that notice is given within seven (7) days following the signing of the announcement of the alteration. If the supplier does not exercise this right, the alteration will become effective and established.

## 19 COMMUNICATION

KKS BV will send all communication to the address of the supplier stated in the agreement or invoice of the supplier. The supplier will send all communication to the address of KKS BV stated in the agreement or the order of KKS BV. The supplier will immediately inform KKS BV of a change of address.

## 20 APPLICABLE LAW/JURISDICTION

20.1 Netherlands law applies to all legal relationships between KKS BV and the supplier. Applicability of the provisions of the LUVI – Uniform Act on International Sale (The Hague, July 1, 1964) and the CISG – United Nations Convention on International Sale Agreements (Vienna, April 11, 1980) is expressly excluded.

20.2 Disputes between KKS BV and the supplier which fall within the jurisdiction of the District Court, also including disputes concerning claims which are presented in preliminary proceedings to the court of the place of registration of KKS BV, will exclusively be judged by the court of the place of registration of KKS BV, save when being the plaintiff or the petitioner KKS BV chooses the competent court of the abode or place of registration of the supplier.

## 21 OTHER CONDITIONS

21.1 If and to the extent that any provision of these general terms and conditions cannot be invoked because of reasonableness and fairness, or its unreasonable onerous nature, said provision will have such meaning, which comes closest as to substance and purport, that it can be invoked.

21.2 If notwithstanding that provided in paragraph 1 any provision of this agreement cannot be invoked, the other provisions of these general terms and conditions will remain in force.

## 22 DEPOSIT

These general terms and conditions of purchase have been deposited with the Chamber of Commerce for Veluwe en Twente in Enschede under number 06005765.

## 23 CHEMICAL PRODUCTS

Articles 25, 26 and 27 exclusively apply, in addition to Articles 1 to 22 above, to the chemical products supplied by the supplier.

## 24 DELIVERY OF CHEMICAL PRODUCTS

A delivery of products ordered by KKS BV has to be accompanied by a certificate of analysis and a consignment note and/or packer's note which states the order number of KKS BV, as well as the nature and the quantity of the product and the destination agreed.

## 25 TRANSPORT AND PACKAGING OF CHEMICAL PRODUCTS

25.1 The packaging of the products must state the order number and the product code of KKS BV, the gross and net weight must be mentioned as well as the content and the destination agreed.

25.2 The transport means and the packaging of the products have to bear the class of risk of the product and warnings for the danger of the products and safety in a clear and conspicuous manner. The means of transport and the packaging of the products also have to bear the name, address and phone-number of the person or body that can be contacted if the products are involved in an accident or incident, where there may be a threat to safety.

## 26 GUARANTEE ON CHEMICAL PRODUCTS

26.1 The supplier guarantees the correctness of all data in respect of the properties of the products supplied by him, such as quality, composition, handling in the broadest sense, uses, (biological) properties, toxicity and safety, save express written agreement otherwise.

26.2 The supplier guarantees that he will be able to supply KKS BV with products having identical properties during a period of at least five (5) years following the delivery of products.

## 27 NON-CHEMICAL PRODUCTS

Articles 29 and 30 exclusively apply, in addition to Articles 1 to 22 above, to all products supplied by the supplier of non-chemical nature.

## 28 DELIVERY OF NON-CHEMICAL PRODUCTS

A delivery of products ordered by KKS BV has to be accompanied by a certificate of analysis and a consignment note and/or packer's note which states the order number as well as the code number of the article of KKS BV, as well as the nature and the quantity of the products and the destination agreed. On the packaging of the products there must be a mention of the order number and the code number of the article of KKS BV, as well as a description of the content and the agreed destination of the products.

## 29 DURATION OF AGREEMENT UPON DELIVERY OF NON-CHEMICAL PRODUCTS

The maximum duration of any agreement made between KKS BV and the supplier amounts to three (3) years, also if tacit renewal of the agreement has been agreed.