

## General Terms and Conditions of Kao Chemicals GmbH

### Preamble:

Terms and conditions set forth in individual contracts within the contractual relationship shall prevail over these General Terms and Conditions (GTC), in this case the General Terms and Conditions of Delivery. In the event that individual provisions of these General Terms and Conditions of delivery should be or become ineffective, the remaining terms and conditions shall remain in full effect.

General Terms and Conditions of the Buyer shall be deemed agreed upon effectively only to the extent that same have been communicated to KAO in due time and to the extent that they are not in conflict with the terms set forth in the individual contracts and the following Terms and Conditions or provided they have been expressly accepted in writing by KAO. The following GTC shall also apply if KAO, being aware of different terms or terms and conditions that are in conflict with these GTC does not expressly object to the contradicting provisions of the Buyer.

### 1. Placement and Acceptance of Purchase Orders

1. Any and all orders or purchase orders that KAO receives directly from the Buyer or via field sales staff, shall be subject to acceptance by KAO by way of written order confirmation. The right to implement deviations of the ordered or delivered items from the purchase order, in particular with regard to materials, execution and product quality shall be expressly reserved by KAO in conjunction with technical progress.
2. Ancillary agreements and versions of the contract shall be made in writing and shall be executed in a legally effective manner by a party holding representative power of attorney. Verbal ancillary agreements shall be null and void.

### 2. Delivery Times

1. Deliveries shall be made for the account and at the risk of the Buyer. In the event that a delivery time should be agreed upon or required, the following shall apply:  
Delivery times stipulated by KAO shall be non-binding, unless they are expressly designated as "binding delivery dates" and have been confirmed as such by KAO in writing.
2. Deliveries made by KAO shall be contingent upon timely receipt of the goods at KAO's end. KAO shall notify the Buyer immediately in the event that any such goods are not received. In the event that delivery to KAO should not take place, the purchase contract shall be deemed not to ever have been made. KAO shall not assume any liability for the risk of procurement.
3. Compliance with the delivery time shall be subject to the timely fulfillment of the contractual obligations assumed by the Buyer, in particular the making of the agreed upon payments and the rendering of agreed upon collateral, if any.
4. Incidentally, in the event of a delay KAO is responsible for, the Buyer shall have the right to claim any other rights only if a remedial period to be set by the Buyer of at least three weeks has expired to no avail.
5. In the event that hindrances should arise that are unforeseeable and beyond the control of KAO (e.g. strike, operational interruptions, delays in the production operation of the upstream supplier), the delivery time shall be extended accordingly.

### 3. Shipping

1. If the ordered goods should have to be shipped, shipments shall be arranged ex warehouse KAO or ex warehouse of a third party commissioned by KAO for the account and at the risk of the Buyer. The respective INCOTERMS agreed upon between the respective parties shall apply. In the absence of special agreements, KAO shall select the transportation company and the mode of transportation at its discretion. The risk shall also transfer to the Buyer upon sending of the goods if prepaid delivery has been agreed upon with the Buyer. If shipment should be delayed as a result of circumstances the Buyer is responsible for, the



risk shall transfer to the Buyer as soon as the goods are ready for shipment. The costs incurred as a result of the delay (in particular storage fees) shall be borne by the Buyer.

2. KAO shall not be required to insure or have insured the shipment against transportation damages unless a pertinent obligation has been assumed by KAO in writing.

#### 4. Liability for Deficiencies, Statute of Limitations

1. The Buyer shall be required to examine the delivered goods immediately upon arrival and communicate any defects found to KAO immediately (at the latest on the second work day after delivery of the goods) in writing. Deficiencies that are reported late, i.e. not in compliance with the above stipulated obligation, shall not be considered by KAO and shall be excluded from any warranties. Claims of deficiencies shall be accepted by KAO as such only if they are communicated in writing. Claims that are communicated to field sales staff, transportation agents or any other third parties shall not constitute formally proper and on time claims.
2. Return shipments of goods to KAO, which are necessary in the event of a deficiency, shall be subject to the former's prior consent. Return shipments made in the absence of KAO's prior consent do not have to be accepted by KAO. In all such cases, the Buyer shall be required to absorb the costs of return shipment.
3. In the event that remedial action is taken or a replacement shipment sent because of a justified deficiency claim, the terms and conditions pertaining to delivery times shall apply accordingly.
4. The existence of a deficiency that has been determined as such and communicated by way of an effective deficiency claim shall establish the following rights for the Buyer:
  - a. In the event of a deficiency, the Buyer first and foremost shall have the right to demand remedial fulfillment by KAO. KAO shall make the decision as to whether a new delivery of the goods or an elimination of the deficiency is to take place shall be made by KAO at its discretion.
  - b. Moreover, KAO shall have the right to perform an additional remedial action attempt in the event of failure of one attempt to remedy – again at its own discretion. Only if this repeated remedial attempt should fail as well shall the Buyer have the right to rescind from the agreement or to reduce the purchase price.
5. Only in case of gross neglect or intentional breach of duty to deliver goods that are free of deficiencies shall the Buyer have the right to claim compensation for damages or for expenditures spent in vain. In this case the Buyer shall be required to prove the grounds for such damages and the amount of damages. The same shall apply to expenditures made in vain.
6. The warranty period shall total six months starting with the date of delivery of goods unless a longer period of time is evidenced in the accompanying analysis certificate or other accompanying printed matters of the Seller (e.g. indication of a "date of best use"). Damage compensation entitlements of the Buyer based on deficiencies shall be subject to a statute of limitation of six months after delivery of the goods. This shall not apply if KAO acted in a grossly culpable manner and in the event of loss of life, personal injury or health damages sustained by the Buyer.

#### 5. KAO's Liability for Breaches of Duty in Other Cases

The above cited warranty provisions nor any other special arrangements made within these Terms and Conditions notwithstanding, the following shall apply in the event of a breach of duty by KAO:

1. The Buyer shall be required to extend to KAO a reasonable remedial period for the elimination of the breach of duty, which shall in no case be less than three weeks. Only if the remedial period fails to produce results upon its expiration, shall the Buyer have the right to rescind from the agreement and/or to demand compensation for damages.

- The Buyer shall have the option to claim damage compensation only in the event of gross neglect or intentional breach of duty by KAO. Damage compensation in lieu of fulfillment (in the event of non-fulfillment, § 280 III in combination with § 281 BGB [German Civil Code]) and in the event of damages caused by delay (§ 280 II in combination with § 286 BGB) shall be limited to acts of negative interest; damage compensation for services not rendered or not rendered as required (§ 282 BGB) shall be limited the purchase price amount. Damage compensation in lieu of services in the event of exclusion of the service obligation (impossibility) shall be excluded.
- In the event that the Buyer should be solely or largely responsible for the circumstances that would entitle the Buyer to rescind from the agreement or if the circumstance entitling the Buyer to rescind should have occurred during Buyer's default of acceptance, the right to rescind shall be excluded.

## 6. Exclusion of the Procurement Risk and Guarantees

KAO shall not assume any procurement risks and shall not assume any other types of guarantees unless an express written agreement to that effect has been made with the Buyer.

## 7. Prices

Unless expressly agreed upon otherwise in writing, prices shall be calculated as of the delivery warehouse designated by KAO in Euros plus applicable statutory taxes.

Prices that have been agreed upon for previous orders shall not be binding for subsequent orders.

## 8. Payment Terms

- All KAO invoices shall be due net cash. For any cash discounts to apply a prior written agreement shall be required.
- In the event that the price of a manufacturer should change by the delivery date or any other factor that is relevant for the price calculation (e.g. wages, energy, transportation, packaging or raw materials prices), KAO shall have the right to adjust its prices accordingly. In the event that the Buyer should exceed the agreed upon payment term and upon issuance of a reminder, late payment interest in the amount of 8 % above the respective prime rate of the ECB shall be due on top of the invoice amount. The day of fulfillment for all types of payments shall be the day the payment is credited to the account stipulated in our invoice.
- Payments received shall principally be set off against the calendar based oldest receivable owed to us by the customer. This shall also apply if the Buyer has entered into a different type of pay off arrangement with KAO (in writing), unless an express written stipulation to the contrary has been agreed upon.
- Checks and bank drafts shall be accepted as payment instruments only upon prior written agreement. The discount fees shall be charged by KAO regardless of the date of draft acceptance as of the due date of the receivable owed by the Buyer. KAO shall not assume any warranties for the timely encashment or timely protesting of drafts.
- In the event that bank drafts or checks are not credited by the party they are drawn upon in due time, all other receivables due to KAO from the Buyer shall be rendered due immediately as of said date. Other existing payment terms shall be rendered null and void. The same shall apply in the event that a receivable remains unpaid on its due date.
- Any withholding of payments or setting off against any possibly existing counter claims of the Buyer shall not be possible with the exception of counter claims that are undisputed or that have been found legally final by a court of law.
- Any and all receivables held by KAO due from the customer, regardless of the legal relationship they originate from, shall be due for immediate payment if a situation materializes according to which KAO would be entitled to rescind from the agreement based on pertinent laws or contractual provisions.
- Our entitlements to payment shall be subject to a statute of limitations of five years contrary to the provisions of § 195 BGB. With regard to the start of the statute of limitations period, § 199 BGB shall apply.

## 9. Retention of Title

1. All merchandise delivered by KAO shall remain the former's property until the purchase price has been completely paid and until all receivables accrued during the business relationship have been settled in full (expanded title retention).
2. Any kind of disposition of the goods subject to title retention whatsoever by the Buyer shall be permitted only in conjunction with the regular business transactions of the Buyer. However, under no circumstances shall the Buyer be permitted to assign title to the goods to pledge same as collateral to third parties. In the event of sale of the goods within the scope of regular business transactions, the purchase price paid shall substitute for the goods. The Buyer herewith assigns all receivables due to Buyer from any sales of such goods to KAO. The Buyer shall be awarded power of attorney to collect said receivables as long as Buyer meets Buyer's payment obligations to KAO. Taking into account the extended title retention (advance assignment of the respective purchase price receivables) any assignment to third parties, in particular to a bank, shall be deemed a breach of contract and shall therefore be prohibited. KAO shall at all times have the right to verify the sales documentation of the Buyer and to notify the former's customers of the assignment.
3. In the event that the receivable owed by the Buyer should have been included into a revolving credit line account, the Buyer herewith assigns Buyer's receivables due from Buyer's customer from said revolving credit line account to KAO. The assignment shall be effective for the amount KAO charged the Buyer for the title retention goods resold by the Buyer.
4. In the event that the goods should be attached at the Buyer's end, KAO shall be notified immediately and a copy of the court collection enforcement certificate and an affidavit shall be sent to KAO, stating that the attached goods are goods that have been delivered by KAO that are subject to title retention.
5. In the event that the value of the collateral pursuant to the above sections of this Article should exceed the total amount of the still pending receivables due that are being securitized by same by more than 20 % for a foreseeable period of time, the Buyer shall have the option to demand the release of collateral in the amount that exceeds said value of the receivables.
6. The claiming of KAO's rights from the title retention clause shall not release the Buyer from Buyer's contractual obligations. The price of the goods at the time of their seizure shall solely be set off against the existing receivable of KAO owed by the Buyer.

## 10. Rescission by KAO Chemicals GmbH

KAO shall have the right to rescind from the agreement for the following reasons:

1. In the event that contrary to the presumption made at the time the agreement was executed it is determined that the Buyer is not creditworthy. Credit unworthiness may be immediately presumed in the event of a returned unpaid draft of check, in the event of cessation of payments by the Buyer or in the event of a failed court mandated collection attempt at the Buyer's end. It shall not be a requirement that these incidents happen in conjunction with the relationship between KAO and the Buyer.
2. In the event that it should be determined that the Buyer has made false statements with regard to Buyer's creditworthiness and that the information provided is of significant relevance.
3. In the event that any goods subject to title retention by KAO are sold by ways other than through the regular business transactions of the Buyer, in particular by way of assignment as collateral or by way of attachment. Exceptions to this rule shall be in effect only if KAO has declared its agreement to the disposition in writing.
4. In the event that sales to the Buyer would violate existing export control provisions of the country, in which KAO is having the product produced or from which KAO is required to deliver the goods to the Buyer.

# Kao Chemicals GmbH

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Enriching lives, in harmony with nature

## 11. Data Privacy

1. KAO points out that personal customer data generated in conjunction with standard business transactions will be stored and processed pursuant to the pertinent data privacy law provisions.
2. A payment delay may be reported to the respective KAO credit insurance provider after the expiration of a period of 30 days after the due date.

## 12. Place of Fulfillment and Jurisdiction

1. In the event that the Buyer is an entrepreneur or legal entity of public-legal special assets, the domicile of KAO shall be the sole place of jurisdiction for any and all litigation arising directly or indirectly from the contractual relationship. All obligations arising from the contractual relationship shall be fulfilled in Emmerich, Germany, which is the domicile of KAO.
2. In any event, including border crossing deliveries, the governing law shall be the law of the Federal Republic of Germany.

Status: January 2011



Member of Kao Chemicals Europe, S.L.

Handelsregister / Commercial register: Klevé Nr. HRB 3478 - Geschäftsführer / Managing director: Masao Yano, Herbert Tripp

EN ISO 9001  
EN ISO 14001  
OHSAS 18001



**DNV**  
Certified  
Company