

# 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.

General Terms and Conditions of the Buyer shall be deemed agreed upon effectively only if these 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, did 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 other channels, shall be subject to acceptance by KAO by way of written (including Email) 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. 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 named 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 or raw materials 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 payments and the rendering of an agreed 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 KAO, shortage of energy, shutdowns resulting from pandemics), 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.
3. Except otherwise stipulated, partial deliveries to a reasonable extent shall be permitted.

### 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 workday 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. Except otherwise clearly indicated or expressly agreed upon, all indications related to a “best use” of products shall be considered as an estimate based on Kao’s experience in handling the specific products under normal conditions. Nevertheless, unfavorable storage conditions (e. g. heat, frost or open storage) at the client’s premises may have negative impact on the products. Kao shall not be liable for any deficiencies resulting from improper storage conditions. 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.

7. Notwithstanding any stipulations expressly agreed upon, Kao does not warrant any fitness for purpose and shall only be obliged to deliver material according to Kao’s sales specification.

#### **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, the Buyer shall have the right to rescind from the agreement and/or to demand compensation for damages.

2. 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.

3. 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**

1. All KAO invoices shall be due net cash. For any cash discounts to apply a prior written agreement shall be required.
2. 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.
3. 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.
4. 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.
5. 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.
6. 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.
7. 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.
8. 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. If it should be determined that the Buyer has made false statements regarding Buyer's creditworthiness and that the information provided is of significant relevance.

3. If 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.

## 11. Sanctions and Trade Controls

1. For the purposes of this Clause: (1) **“Sanctions”** means any trade, financial and economic sanctions laws, embargoes and export/import control laws, policies, orders, regulations or similar restrictive measures approved, adopted or implemented by the United Nations, the European Union, or its member states and, as the case may be, any other legislation or requirements regarding applicable sanctions to each Party; (2) **“Sanctioned Country”** means any country or territory, or whose government, is the subject of comprehensive Sanctions; (3) **“Sanctions List”** means: the United Nations Security Council Consolidated Sanction List; the Consolidated List of Persons, Groups and Entities subject to European Union Financial Sanctions; and/or any other similar list of the same nature maintained by a relevant authority, each as amended, supplemented or substituted from time to time; and (4) **“Sanctioned Person”** means any person or entity: (a) located within, incorporated or organized under the laws of, or national or resident of, a Sanctioned Country; or (b) designated on a Sanctions List.

2. Customer represents and warrants that, during the term of this Agreement, itself and its shareholders, affiliated companies, subsidiaries, directors, officers, employees, agents, distributors, resellers, KAOs, subcontractors and final customers/end-users of KAO’s Product (the **“Related Persons”**): i) currently comply with and shall continue to comply with the Sanctions; ii) are not a Sanctioned Person and are not directly or indirectly owned or controlled by or acting on behalf or for the benefit of a Sanctioned Person; and iii) will not do any act or thing, including dealing with any Sanctioned Person, that would contravene or be reasonably likely to cause the KAO to contravene any applicable Sanctions.

3. Customer also represents and warrants that itself and its Related Persons, unless authorized by all necessary government licenses or regulations, shall not directly or indirectly transfer, sell, resell, deliver, import, export or re-export, at any time, any Product provided by KAO under this Agreement, or any other agreement between the Parties, to any Sanctioned Country, any Sanctioned Person or that otherwise could imply a breach of the Sanctions.

4. KAO shall not be obligated to comply with any commitment, to act in any manner or fail to take any action under this Agreement which in its reasonable judgment would be inconsistent with or prohibited by the applicable Sanctions.

5. In the event that Customer or any of its Related Persons breach or anticipate breaching the Sanctions, it shall notify KAO within 24 hours, specifying the nature, purpose and extent of such breach and the measures adopted or planned, as the case may be, to correct, remedy or minimize its effects

6. KAO shall have the right, without incurring any liability to Customer, to terminate this Agreement at any time with immediate effect by written notice to the Customer in the event Customer or any of its Related Persons are, or in reasonable judgment, may be, subject to Sanctions.

7. Customer shall indemnify and hold KAO harmless from any and all costs, expenses, losses, damages, demands, claims, fines and liabilities including reasonable legal expenses and attorney’s fees of whatever nature that may arise either from Customer or its Related Persons’ non-fulfilment, of any representation, warranty or undertaking regarding the Sanctions.

8. Customer declares that the funds to be used to satisfy its obligations under this Agreement do not and will not derive from any activity prohibited by the Sanctions, nor is it derived from or related in any way to a Sanctioned Person and/or Sanctioned Country.

## **12. Miscellaneous**

### **1. Corporate Social Responsibility:**

The Customer shall be committed to embrace, support and enact within its sphere of influence the Ten Principles of the Global Compact. In connection thereto, the Customer shall also endeavor to comply with the Ten Principles of the UN Global Compact. The Customer shall endeavor to reduce the environmental impact of its activities, including the provision of Products hereunder. The Customer shall respect the human rights of its employees and shall provide employees with a safe and healthy work environment. Furthermore, the Customer agrees not to engage in child labor or any form of forced or compulsory labor.

### **2. Anti-Bribery:**

The Customer shall not give or cause to be given any bribes or unlawful or inappropriate kickbacks to government officials, KAO's purchasing and sale staff or any other person or entity with payments received from Customer or any other funds. The Customer further agrees not to accept any bribes or unlawful or inappropriate kickbacks directly or indirectly.

### **3. Environmental Conservation:**

Both Parties agree to comply with all applicable laws and regulations regarding environmental conservation in their business activities and shall strive to reduce the environmental impact of such activities.

### **4. Respect for Human Rights:**

Each Party agrees to respect the human rights of its employees, take measures to provide employees with a safe and healthy work environment, not to discriminate based on culture, nationality, religion, creed, race, gender, age, physical handicap or other protected category, and to pursue equal opportunity in employment.

Each Party agrees that it will not engage in forced or compulsory labor, child labor, illegal employment of foreign workers, or other illegal or inappropriate forms of employment. In addition, each Party agrees that the conditions of employment, including salaries and working hours, of its employees conform with the laws and regulations in place in the relevant territory and/or country.

Customer shall strive to enforce the principles in this Clause within its sphere of influence, including, without limitation, to its contractors or KAOs engaged by KAO.

If Customer becomes aware of a violation of any stipulation under Clause under 12, Customer shall inform KAO immediately. In addition, Customer shall promptly take measures to remedy the violation and shall report to KAO on the outcome of such measures.

### **13. FORCE MAJEURE**

Neither Party will be liable in any respect for failure from any delay in performance or from non-performance caused by circumstances beyond the reasonable control of the Party affected, to its obligations under this Contract (other than Customer's failure to make any payment under this Contract when due) if hindered or prevented, directly or indirectly, including but not limited to, by war (declared or undeclared); national emergency; unforeseen machinery or equipment breakdown; lack of raw material, fuel or power; earthquake, explosion, fire, flood, windstorm or other act of God; epidemic or pandemic; national or regional emergency; strike, lockout or other labor dispute; order or act of governmental authority, whether foreign, national or local, whether valid or invalid; or any other cause of like or different kind beyond the reasonable control of the affected Party (each a "Force Majeure"). In the event the duration of a Force Majeure exceeds two (2) months or is reasonably expected to exceed six (6) months, either Party may terminate this Contract, without liability on the part of either Party, by giving not less than seven (7) days prior written notice of termination to the other Party, provided, however, that no such termination will be effective if the Force Majeure has abated prior to the termination date stated in such notice.

Kao shall not be liable for any breach, nonperformance, or delay in performance of a Contract caused by Force Majeure. In such circumstances the time for performance shall be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed or Kao shall be entitled to a reasonable extension of the time for performing such obligations. If the period of delay or non-performance continues for thirty (30) days, Supplier may terminate the Contract by giving fifteen (15) days' written notice to the Customer.

In the event of any Force Majeure, Kao shall have no obligation to procure Products from any third parties to comply with any obligations under a contract nor shall Kao be required to make up for any quantities not supplied during the period of Force Majeure or to extend the period of any contract to this effect.

### **14. Data protection**

Any data provided by Kao containing personal information of KAO employees (e. g. E-Mail address, telephone number, names, and job title) shall be kept in strict confidence by the Customer and may only be used on a need-to-know-basis and may not be used for any other purpose than performing the individual contract. Any other processing of personal data like (examples): transfer to third parties, profiling, matching or combining shall be prohibited. The Customer shall organize its business in a manner to secure personal data. The Customer is obliged to inform Kao about any breach of its duty of confidentiality immediately (within 24 hours) after the breach has come to the attention of the customer.



**15. 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, but expressly excluding the United Nations Convention on Contracts for the International Sale of Goods (CISG).

**16. Severability**

Should any of these conditions be deemed wholly or partly invalid, the validity of the remaining terms shall not be affected.