

**General Conditions of Sale, Delivery and Payment of KLEMAFOL GmbH, Elbestr.  
31-33, 45478 Mülheim an der Ruhr**

**I. General, Scope**

1. All deliveries and services shall be performed exclusively under the General Terms and Conditions of Sale as set out hereunder. These also apply to all future business between the contract parties, without requiring additional notification thereof. These also apply if we do not explicitly refer to such in future contracts, especially if we carry out deliveries or performances to the Buyer without reservation, albeit being aware of the fact that the Buyer's General Terms and Conditions contradict our General Terms and Conditions of Sale.
2. We shall not recognise any contradictory Terms and Conditions of Sale of the Buyer or those deviating from our terms, even if the contract has been implemented without reservation.
3. The Buyer has been made aware of our General Terms and Conditions in our price lists, invoices, emails and Internet publications.

**II. Offers and Conclusion of Contract, Specification of Services**

1. Our offers are subject to confirmation. Offers shall only become binding when an order is placed. At our option, this offer is accepted by sending a confirmation note or the unconditional execution of the ordered deliveries or performance. Any supplementary agreements made with us or with travelling salesmen and representatives, shall only be effective if they have been confirmed in writing by us.
2. Technical data and descriptions contained in our product information or advertising material and technical data sheets, as well as specifications from manufacturers or their agents in terms of Section 434 Paragraph 1 No. 3 of the German Civil Code (BGB), cannot be construed as a guarantee with regard to the properties or durability of the products we shall deliver, unless stipulated otherwise in individual agreements. Identified uses under the European chemicals regulation REACH that are relevant to the goods shall represent neither an agreement on the corresponding contractual quality of the goods nor any designated use under the terms of this contract.
3. In the event of sales based on samples or specimens, such merely describe general characteristics of the product and do not constitute guarantees of the composition or durability of the goods to be supplied.
4. Advice with regard to technical applications is given to the best of our knowledge. All data or information about the suitability and application of our products is not binding and does not release the Buyer from his duty to carry out his own tests and trials to check if the products are suitable for the intended purpose.

**III. Prices, Terms of Payment and Default of Payment**

1. The prices agreed upon conclusion of the contract shall apply; in particular the prices indicated on the order form or in the order confirmation. If a price is not explicitly stipulated, the prices that are valid at the time of conclusion of contract as per our price

list shall be valid. The weights and quantities that we have calculated shall constitute the criteria for invoicing unless the Buyer objects immediately upon receipt. The following are added to the prices: the value added tax applicable on the day of despatch in the relevant statutory amount, as well as the cost of packaging for appropriate shipping, transportation costs from the factory or from the warehouse, freight costs and – in as far as this is agreed – the cost of transport insurance. In the case of deliveries abroad, additional country specific costs may apply.

2. We reserve the right to adjust our prices accordingly if, after conclusion of the contract, changes in costs arise due to collective wage agreements or price increases from our suppliers or exchange rate fluctuations. These price changes shall be communicated in writing at least four weeks in advance of the new prices becoming valid. If the Buyer does not object within one week of notification of new prices, such shall be deemed accepted. This does not apply if a fixed price has been agreed.

3. Our invoices are due for payment without deductions 30 days after receipt - unless other payment terms have been agreed in writing in individual cases. When the due date has passed, the Buyer is automatically in default of payment in accordance with Section 286 II No. 2 of the German Civil Code (BGB). If payment is effected within 8 days of the invoice date, we grant a discount of 2% on the discountable amount. The discountable amount is the invoice amount less freight costs, logistics costs and the value of pallets. If the deadline for payment is not met, interest will be charged from that first day in accordance with the customary overdraft rate.

4. The Buyer only has a right to set-off or a right of retention for indisputable or legally-acknowledged receivables or claims.

5. If the Buyer does not pay due invoices, misses an acknowledged payment date, if after conclusion of the agreement the financial circumstances of the Buyer worsen, or if after conclusion of the agreement we come to know unfavourable information about the Buyer, which causes us to question the solvency or the creditworthiness of the Buyer, then we are entitled to declare the entire remaining debt payable and, under revision of the relevant agreements, to demand prepayment or security or, after completed delivery, immediate payment of all claims that are based on the same legal relationship. This applies especially if the Buyer stops his payments, a check or debit note of the Buyer is not honoured, a bill of exchange issued by the Buyer is not honoured, insolvency proceedings are initiated or opened concerning the assets of the Buyer or insolvency proceedings have not been initiated due to insufficient assets.

#### **IV. Time of Delivery or Performance, Default of Performance**

1. Delivery times are only approximate unless a fixed time has been expressly agreed upon in writing. In principle, statements of delivery times are subject to contractual participation on the part of the Buyer. The delivery period commences on the date of our confirmation of order or rather on the date on which we gained knowledge of the order. The delivery deadline shall be deemed met if the goods have left our works by the expiry of the delivery date. Deliveries on Saturdays are only possible by special arrangement and carry an extra charge. If we exceed agreed delivery periods for reasons within our control, the Buyer may withdraw from the contract after a reasonable period of grace set by him and covering a minimum of 15 working days has expired to no avail. The withdrawal must be declared in written form.

2. We shall only be deemed to be in default after a reasonable period of grace set by the Buyer and covering a period of at least 15 working days, has expired to no avail. In the event of force majeure and other unforeseen, extraordinary circumstances for which we are not responsible - such as operational interruptions due to fire, water and similar circumstances, production plant and machinery stoppages, late delivery or non-delivery on the part of our suppliers as well as work stoppages due to lack of raw materials, energy or workforce, strikes, lock-outs, difficulties in procuring modes of transport, traffic disruptions, interventions by authorities - we are entitled to postpone the delivery of goods or provision of services for the duration of the disruption plus a reasonable start-up period, provided we are prevented from fulfilling our delivery obligations on time by the circumstances mentioned and are ourselves not at fault. Should the provision of goods or services be delayed by more than one month, both we and the Buyer are entitled to withdraw from the contract in writing to the extent of the quantity affected by the disrupted delivery, without being entitled to any type of claim for damages and under the conditions laid out in Clause VIII No. 1 – 5 of these General Terms and Conditions of Sale.

3. In each case of default, our liability to pay compensation is limited in accordance with the regulations set out in Clause VIII No. 1 to 5.

4. We shall be entitled to deliver part deliveries and to render part services within the agreed periods of delivery and performance, if this is reasonable for the Buyer.

5. Our fulfilment of delivery and service obligations depends upon the timely and proper fulfilment of the Buyer's obligations. We reserve the right to object to non-performance of the contract.

6. In the event that the Buyer is in default of call-off orders, acceptance or collection, or if a delay in shipment or in delivery is his responsibility, we are entitled - irrespective of additional claims - to demand a lump-sum payment in the amount of customary local storage costs, irrespective of whether we store the goods on our premises or those of a third party. The Buyer remains entitled to prove that no loss or lower losses have been incurred.

## **V. Passing of Risk, Cost of Transport and Packaging**

1. Unless otherwise agreed by ourselves and the Buyer, we supply on an ex-works or ex-depot basis, and the goods shall be collected there by the Buyer at his own risk and expense. In this case, the risk of accidental loss or accidental deterioration of the goods supplied shall pass to the Buyer at that point of time when the Buyer receives notification of the availability of the goods for collection. Otherwise, the risk of accidental loss of or accidental damage to the contractual items shall pass to the Buyer when the goods have been transferred to the carrier (even in case of deliveries which are carriage-free and have been insured against transport damage). The Buyer shall be solely responsible for the safe and secure loading and transportation of the goods. If, at the Buyer's request, the delivery is shipped carriage-paid to the Buyer's address or a construction site, the Buyer is under obligation to accept the delivered goods. This shall also apply if the goods exhibit minor defects.

2. If packaging other than the standard packaging is used at the Buyer's request, this shall be charged at cost price.

3. If the goods are shipped on pallets, in grid boxes or with other loading aids, these will be charged to the Buyer. In the event of the carriage-paid return of such to our works in an undamaged state, these will be reimbursed by credit note. If the return is not effected within one month after delivery or if these items are in a damaged or unusable state, we reserve the right to invoice such at the market price for brand-new loading aids of the same type.

6. Contrary to Clause V No. 1, silos and containers are delivered free to the construction site when the minimum delivery quantity is taken. The Buyer alone shall be responsible to ensure conformity by him and his agents with the guidelines of vehicle or container manufacturers, mounting conditions for pressureless construction site containers and in particular current accident prevention regulations, especially the Occupational Health and Safety Regulations (BGV C 12) of the professional association for the building industry in addition to the guidelines for exchangeable tilting skips and airdrop containers (BGR 186 Germany's Federal Institute for Geosciences and Natural Resources).

## **VI. Obligations of the Buyer/ Guaranteeing Reservation of Title**

1. The delivered goods remain our property until full payment of the purchase price as well as of all our other existing or future claims against the Buyer arising from the business connection. Inclusion of the purchase price claim in a current invoice and recognition of a balance shall not affect our reservation of title.

2. The Buyer is obliged to treat the purchased item with care until acquiring full ownership; in particular, the Buyer is obliged to adequately insure the goods at replacement value against loss, damage and destruction, as well as against damage due to fire, water and theft. The Buyer hereby assigns his claims from insurance contracts to us. We accept this assignment.

3. The Buyer shall not be entitled to pledge or transfer by way of security any of the goods that are still our property. However, he is entitled to resell the delivered goods in the ordinary course of business subject to the following regulations. Such an entitlement shall not apply if the Buyer has assigned or pledged the claims against his contract partner arising from any resale of the goods in advance to a third party or has arranged a ban on assignment with such partner.

4. In order to secure the fulfilment of all our claims listed in Clause VI. No. 1, the Buyer hereby assigns to us all claims, including all future and conditional claims, resulting from the resale of the goods supplied by us and all subsidiary rights to the extent of 110 % of the gross value of the goods supplied and with priority over all other claims against him. We hereby accept this assignment.

5. As long and insofar as the Buyer meets his financial obligations towards us he shall be entitled to collect the receivables he has assigned to us from his customers within the ordinary scope of business management. However, he is not entitled to arrange a current account relationship or a ban on assignment with his customers or to assign these to third parties or pledge these as securities. If the Buyer and the

Customer for the goods subject to our reservation of title maintain a current account relationship contrary to the provision in sentence 2, the claim assigned in advance shall also apply to the confirmed balance of such an account and, in case of the Buyer's insolvency, to the balance at that time.

6. At our request, the Buyer shall provide us with itemised proof of the assigned claims and inform his debtors of the transfer together with a request to render the outstanding payments to us until our claims have been satisfied. We are also entitled to notify the Buyer's debtors of the assignment ourselves and to collect the receivables at any time. However, we shall not make use of this entitlement as long as the Buyer meets his financial obligations towards us in due form and without delay, an application is not made to initiate insolvency proceedings against the Buyer and the Buyer does not suspend payments. If one of the aforementioned cases should arise, we can demand that the Buyer notifies us of the assigned claims and the debtors thereof, furnishes all the relevant information and hands over the respective documents.

7. In the event of levies of execution or other interventions by third parties, the Buyer must inform us immediately in writing.

8. If the goods to which we have reserved title are processed, mixed or connected with other materials which are not our property, we shall acquire co-ownership of the resulting goods in proportion to the value of our goods (invoice total including VAT) to the value of the other goods at the time of the goods are processed, mixed or connected. The same provisions apply to the processed item as to the item delivered under reservation of title. If the processing, mixing or connection is carried out in such a way that the Buyer's item is deemed to be the main item, then the proportional transfer of the co-owned property will be deemed as agreed by the contract party. Within the scope of his normal course of business, the Buyer is entitled to dispose of the new products generated by the treatment, processing or alteration or connection or mixture without any pledging or assignment as long as he meets his obligations to us arising from the business connection in a timely manner. The Buyer hereby assigns to us as security his claims from the sale of these new products in which we have co-ownership to the extent of our share of ownership. Should the Buyer connect or mix the delivered goods with a principle object, he hereby assigns to us his claims against the third party proportionate to the value of our goods. We hereby accept these assignments.

9. In order to secure our claims, the Buyer hereby also assigns to us, to the value of the goods supplied by us, his claims against third parties resulting from the integration of our goods in immovable property.

10. At the request of the Buyer and at our discretion, we undertake to release selected securities inasmuch as the realisable value of the securities exceeds our claims against the Buyer by more than 20 %.

11. In case of the Buyer acting in breach of contract, especially in case of default of payment of more than 10 per cent of the invoiced value and over a significant period of time, we shall be entitled to withdraw from the contract and demand the return of the goods supplied, without prejudice to any further claims (for damages) that we may be entitled to. After taking back the goods delivered, we are entitled to dispose of them. The proceeds from such sales - minus the selling costs incurred - shall be offset against the liabilities of the Buyer towards us.

## **VII. Rights of the Buyer in Case of Defects**

1. The Buyer must notify us in writing immediately, however no later than 3 days after receipt of goods, of any obvious defects, wrong deliveries or deviations in quantity. Hidden defects must be reported in writing within eight days of their discovery. The Buyer is obliged to ensure that the goods delivered are free from defects and suitable for the intended purpose, if necessary by carrying out a sample processing. This also applies when components, which have not been acquired from us, are added. If any defects are only detected during processing, all work must be halted immediately and any unopened original bundles that have not yet been processed must be secured. These must be made available to us for inspection at our request. Objections with regard to hidden defects are excluded following expiry of three months after the passing of risk to the Buyer in accordance with Clause V.1 in as far as the defects were reasonably detectable. In case of a late or improperly asserted notification of defects pursuant to Clause VII. Sentence 1 - 7, the Buyer loses his right to claim for defects under the conditions set out in Clause VIII. 1 - 5 of these General Terms of Sale, unless a defect has been fraudulently concealed by us.

2. Should the goods delivered by us be defective, we are obliged at our discretion to remedy the defects or to deliver defect-free goods (supplementary performance). If we are not willing or able to provide supplementary performance, in particular if this is delayed beyond a reasonable period of time for reasons we are responsible for, or if supplementary performance fails in any other way, then the Buyer is entitled at his discretion to withdraw from the contract or demand reduction of the purchase price. Supplementary performance shall be considered failed after the second attempt, unless the type of object or other circumstances indicate otherwise. If the Buyer has suffered damages or incurred futile expenses due to defects in the goods delivered by us, our liability shall be governed by Clause VII. No. 1, Clause VIII. No. 1 - 5 and Clause IX.

## **VIII. Rights and Obligations of our Company**

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Regardless of the legal justification, our company shall only be liable for damages or futile expenses if such damages were caused by us or by one of our vicarious agents by culpable violation of an obligation whose fulfilment is essential to the proper execution of the contract or result from grossly negligent or intentional violation of contractual obligations by us or by one of our vicarious agents.

In accordance with Clause VIII. 1 a) and b), we shall be liable for damages or futile expenses caused by consultancy services and/or information provided by us but not charged separately only in the event of intentional or grossly negligent violation of our obligations, if this violation of obligations does not represent a material defect in the goods supplied by us as defined in Section 434 German Civil Code (BGB).

2. If we are liable under Clause VIII No. 1a) because of violation of an essential contractual obligation, in the absence of gross negligence or intent, our liability shall be limited to the foreseeable and typical damages. In this case, we shall not be held liable for lost profits of the Buyer or for unforeseeable, indirect consequential damages. The liability limitations set forth in Sentences 1 and 2 above shall also apply to damages caused by our employees or agents through gross negligence or intent.

We are not liable for indirect damages to the Buyer that are caused due to the assertion of claims for contractual fines by third parties.

The liability limitations set out in Clause VII No. 1 - 2 shall not apply where as stipulated in the Product Liability Act we cannot legally exclude our liability or where claims are made against us based on the violation of life, limb, or health of individuals. If goods supplied by us lack features we have guaranteed, then we shall only be liable for such damages ensuing from the absence of those features.

4. Any liability beyond the compensation for damages envisaged in Clause VIII No. 1 - 3 shall be excluded regardless of the legal nature of the claim made. This shall apply in particular to claims for damages based on culpa in contrahendo according to Section 311 Paragraph 3 of the German Civil Code (BGB) or positive violation of a contractual obligation according to Section 280 of the German Civil Code, or to claims in tort according to Section 823 of the German Civil Code.

5. We shall not be liable in case of impossible or delayed fulfilment of our supply obligations if the impossibility or the delay is due to our orderly compliance with regulatory and legal obligations in connection with the European Chemicals Regulation REACH as initiated by the Buyer.

6. Where liability is excluded or restricted according to Clause VIII No. 1 - 4, such exclusion or restriction shall also apply to the personal liability of our employees, staff members, representatives and vicarious agents.

#### **IX. Term of Limitation for Claims**

Claims by the Buyer for defective goods not provided according to the terms of the contract, shall fall under the statute of limitations within a maximum period of one year insofar as longer periods are not mandatory by law.

#### **X. Returns**

The return of goods that are supplied by us free of defects is excluded. If, by way of exception, we agree to take back goods that are free of defects, a credit note shall only be issued for such provided we can confirm that these can be used again without any limitations. For the costs of the examination, reconditioning, reworking and new packaging, the actual costs, at least 20 per cent of the invoiced value or at least 30 Euro, shall be deducted. Such a credit note shall not be paid out; it merely serves to offset future deliveries.

#### **XI. Non-Assignment Clause**

Rights or claims against us, especially due to defects in the goods delivered by us or due to a violation of obligation committed by us, shall not - neither entirely nor partly - be assigned or pledged to third parties without our explicit consent; Section 354 of the German Commercial Code (HGB) remains unaffected hereby.

#### **XII. Place of Performance, Jurisdiction, Applicable law, Commercial Terms**

1. The place of performance and sole place of jurisdiction for all claims between us and merchants or legal entities under public law or special funds under public law shall be Mülheim an der Ruhr. However, we shall also have the right to file claims against the Buyer at his place of jurisdiction.
2. Only the laws of the Federal Republic of Germany as applicable between German companies and as could be agreed upon between the respective countries of delivery shall apply to the legal relationship between us and the Buyer (see I of these General Terms and Conditions of Sale). The application of regulations pertaining to the international sale of goods (CISG - UN Convention on the International Sale of Goods) and of German Private International Law are explicitly excluded.
3. Insofar as commercial terms have been agreed in accordance with the International Commercial Terms (INCOTERMS), then the latest version of the INCOTERMS shall apply.

### **XIII. Final Provisions**

1. Should one of the above mentioned provisions be invalid, partially invalid or excluded by special agreement, this shall not affect the validity of the remaining provisions.
2. We store Buyer data acquired in the context of our mutual business relationship in accordance with the provisions of the German Federal Data Protection Act (BDSG).

Status as of 31.10.2013