

## KEMIN EUROPA NV GENERAL TERMS AND CONDITIONS OF SALE AND DELIVERY

### ARTICLE 1 DEFINITIONS

- 1.1 **Accepted Order:** the specific sale order placed by the Customer, which has been accepted in writing by Kemin.
- 1.2 **Agreement:** the Accepted Order and the T&C together.
- 1.3 **Customer:** the customer submitting the sale order.
- 1.4 **Documentation:** the documentation with respect to the Goods and/or Services as provided by Kemin to the Customer stating the intended use of the Goods and/or Services.
- 1.5 **Goods:** products or instruments supplied by Kemin.
- 1.6 **Kemin:** Kemin Europa NV, a company incorporated under the laws of Belgium, with registered office at 2200 Herentals, Toekomstlaan 42 (Belgium), registered with the Crossroad Bank for Enterprises under number 0411.987.209.
- 1.7 **Parties:** Kemin and the Customer.
- 1.8 **Party:** each of Kemin and the Customer.
- 1.9 **Services:** laboratory analysis or consulting services and any data, results and reports and any related thereto, performed or supplied by Kemin.
- 1.10 **T&C:** these General Terms and Conditions of Sale and Delivery.

### ARTICLE 2 SCOPE OF APPLICATION

- 2.1 Kemin reserves the right to amend the T&C unilaterally at any time upon notification of any amendments or changes in writing at least fifteen (15) days prior to the coming into force of the amendments or changes. In this event, the Customer may terminate this Agreement within fifteen (15) days of such notice by notifying Kemin of the termination in writing. If the Customer does not notify Kemin of such termination, the new terms shall become effective as of the date specified in the notification by Kemin.
- 2.2 The T&C have been notified in advance to the Customer, who has accepted them. The Customer's general terms and conditions are not applicable and expressly excluded, irrespective of the time at which they are communicated or their subject title.
- 2.3 The English wording of these T&C shall prevail.
- 2.4 Any special or general requirements of the Customer stated in offers, orders, purchase conditions etc. shall not constitute an exemption from the T&C, unless expressly accepted by Kemin in writing.
- 2.5 The T&C apply to all requests, offers and agreements relating to the sale of Goods and/or the performance of Services - irrespective of their nature - by Kemin to the Customer.
- 2.6 If there is a discrepancy or ambiguity between the provisions in the Accepted Order and the T&C, the provisions in the Accepted Order will prevail.

### ARTICLE 3 OFFERS – ORDERS – CONCLUSION OF AN AGREEMENT

- 3.1 All offers, indications of prices, or other type of proposal from Kemin are non-binding without Kemin's written acceptance of the order placed by the Customer.
- 3.2 The Customer must indicate or confirm specific Goods and/or Services, quantity, price, total purchase price, shipping instructions, requested delivery dates, sold-to and ship-to addresses and any other special instructions during the ordering process.
- 3.3 The Customer acknowledges that it is aware of and approves the specifications of the Goods and Services, being the composition of the type of product, instrument or service ordered.
- 3.4 Delivery dates will be established by Kemin upon conclusion of the Agreement and are purely indicative and without obligation. Although the delivery terms will be respected as much as possible, Kemin is not financially responsible for the consequences of a possible late delivery, and such circumstances do not allow the Customer to refuse receipt or payment of the Goods or to terminate the Agreement; neither will Kemin be held to pay damages. Kemin undertakes to inform the Customer about a delay in delivery with respect to the indicative delivery date. In the event such delay exceeds three months as from the indicative delivery date, the Customer is allowed to terminate the Agreement by giving Kemin prior written notice.



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**ARTICLE 4 PRICES - GUARANTEES**

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[www.kemin.com](http://www.kemin.com)

- 4.1 All prices are net prices, expressed in EUR (excluding applicable taxes and duties). Any taxes and duties shall be borne by the Customer.
- 4.2 The prices shall be based on FCA delivery from Kemin's warehouse (Incoterms 2020), unless otherwise specified in the Accepted Order.
- 4.3 Kemin reserves the right to adjust its price lists without prior notice; such new prices shall become effective immediately. Prices of Accepted Orders are not subject to change.

**ARTICLE 5 TERMS OF PAYMENT**

- 5.1 Unless otherwise agreed in writing, Kemin shall issue an invoice to the Customer, payable within thirty (30) days from the issuance date. Any claim with respect to the invoice, the sold Goods or Services rendered does not suspend Customer's payment obligations.
- 5.2 Payment shall be made by bank transfer from the Customer's bank account to Kemin's bank account specified on the invoice. Each Party will cover the bank expenses at their side of the transaction.
- 5.3 If payment is not received by Kemin by the due date, Kemin reserves the right to suspend further deliveries of any Accepted Order or future orders until full payment has taken place. In such circumstances, Kemin shall be entitled to change, in its discretion, these terms of payment and any outstanding invoices will automatically become immediately due and payable.
- 5.4 Any complaint regarding an invoice must be notified to Kemin by registered letter within eight (8) working days from the date of the invoice concerned.
- 5.5 In case of late payment, late payment interests will be due automatically from due date until full payment of the invoice amount at the rate of ten percent (10%) per annum plus an administration cost of ten percent (10%) of the invoiced amount (with a minimum amount of 125 EUR per overdue invoice). Kemin is entitled to claim any costs and expenses incurred when collecting any unpaid and overdue amounts, including reasonable attorneys' fees and expenses.
- 5.6 Delivery of the Goods and Services is conditioned upon the Customer maintaining sufficient creditworthiness towards Kemin and Kemin may, without liability to the Customer, suspend or delay performance or delivery at any time pending receipt of assurances, including full or partial payment of the amounts owed or prepayment on future orders, adequate to Kemin in its discretion.

**ARTICLE 6 DELIVERY OF GOODS**

- 6.1 The Customer shall be responsible to provide Kemin with all appropriate information, sufficiently in advance in order to permit Kemin to make the necessary shipping arrangements. If any such instructions, documents or confirmations are not timely received or would (in Kemin's sole judgment) require unreasonable expense or delay on its part, then Kemin may, at its sole discretion and without prejudice as to any other remedies, delay the time of delivery.
- 6.2 Unless otherwise agreed in writing, delivery of the Goods is made FCA from Kemin's warehouse (Incoterms 2020). In the absence of specific instructions, Kemin will load the Goods onto the selected carrier. Kemin may deliver the Goods in one or more shipments and invoice each shipment separately.
- 6.3 Risk of loss with respect to the Goods shall pass to the Customer in accordance with the agreed Incoterm (FCA – Incoterms 2020).
- 6.4 Each delivery should be treated as a separate and independent delivery and contract.
- 6.5 All Goods purchased will remain the property of Kemin until the full purchase price has been paid by Customer. If the Customer fails to comply with the agreed payment obligations, Kemin will have the right to reclaim and repossess the unpaid but delivered Goods, regardless of where the Goods are located.

**ARTICLE 7 ACCEPTANCE OF GOODS**

- 7.1 The Customer shall immediately after the receipt of a delivery carry out an inspection of the Goods to identify any visual defects or whether any portion fails to comply with the Accepted Order or the specifications of the Goods. In case of defects or non-conformity to the Accepted Order and/or the specifications of the Goods, the Customer may reject the defect or non-conforming portion of the delivery by written notice to Kemin. Such written notice is only valid if:

- i) The Customer has notified Kemin promptly upon discovery of the alleged defect or non-conformity and in any case
- For visual defects:
    - upon receiving the Goods by making written mention on the transport document (CMR);
    - by notifying Kemin directly in writing no later than seven (7) calendar days from the date of delivery; or
    - in any event before the Goods undergo any processing.
  - For hidden defects:
    - no later than the earliest of (i) the expiration date of the Goods as mentioned on the product label, or (ii) one (1) calendar year from the date of delivery;
- ii) The Customer specifies and supports how the delivery fails to comply with the Accepted Order and/or the specifications of the Goods ;
- iii) The Customer has to include all supporting evidence and documentation; and
- iv) The notice is sent in accordance with Article 19.
- 7.2 The Customer will keep the alleged defect or non-conforming Goods available until Kemin has had the opportunity to inspect them.
- 7.3 In the absence of a timely and valid notice in accordance with Article 7.1, or in the event the Customer has not kept the Goods available for inspection by Kemin in accordance with Article 7.2, the Customer shall be deemed to have irrevocably accepted the delivered Goods.
- 7.4 If, after inspection, Kemin agrees that any of the Goods are defective or non-conforming with the Accepted Order and/or the specifications of the Goods, Kemin will use its commercially reasonable efforts to replace such Goods at no additional cost to the Customer. This shall be the Customer's sole remedy for any defective or non-conforming Goods. Replacement cannot be considered as a delay of the non-conforming Accepted Order.

#### **ARTICLE 8 DELIVERY OF SERVICES**

- 8.1 Kemin shall provide the Customer with the Services as set forth in the Accepted Order in a diligent and professional manner.
- 8.2 Any data, results and reports in relation to the Services shall be provided "as is". The express warranties set forth in Article 10 are the only warranties made by Kemin with respect to the Services. Kemin shall never be held liable towards the Customer with respect to any data, results and reports in relation to the Services.

#### **ARTICLE 9 USE**

- 9.1 Kemin is not liable for damage caused to persons, goods and/or animals, which results from the use of the Goods and/or Services beyond the intended use as set forth in the Documentation. Neither can Kemin be held responsible for the results of improper or negligent processing or handling of Goods and/or Services purchased under the Agreement by the Customer and the final product sold by the Customer.
- 9.2 The Customer acknowledges that:
- i) the Customer holds the full responsibility for the specific use of the Goods and/or Services, including, but not limited to requirements regarding product handling, working environment regulations, product documentation as well as public authority requirements (including but not limited to safety and working environment requirements), relevant laws and all other types of rules and regulations;
  - ii) the use of Kemin's Goods and/or Services in certain applications requires specific (governmental) approval in some countries; the Customer is solely responsible for obtaining such approval; and
  - iii) the Customer holds the full responsibility that its use of the Goods and/or Services does not infringe any third-party rights, including intellectual property rights. Kemin shall not bear any liability in connection herewith.

#### **ARTICLE 10 LIMITED WARRANTY**

- 10.1 Kemin warrants and represents that:
- i) it has title to the Goods and/or Services;
  - ii) the Goods and/or Services are free of any third-party liens or encumbrances; and
  - iii) at the time of transfer of the Goods and/or Services from Kemin to the Customer, the Goods and/or Services comply with the Documentation, which the Customer has acknowledged and approved, in effect at the time of the conclusion of the Agreement (product data sheets and technical description may be subject to change).

- 10.2 **Compelled by Curiosity™** This warranty shall apply only to the Goods and/or Services received by the Customer in the same unbroken package or format as actually shipped/delivered by Kemin. Whether intentional or accidental, any breakage, leakage, or subdivision that will have a direct bearing on the quality and characteristics of the Goods and/or Services, as well as any storage or handling inconsistent with Kemin's storage and handling instructions in the Documentation concerning the Goods and/or Services, shall render this warranty null and void with respect to the Goods and/or Services so affected.
- 10.3 The foregoing warranty is the Customer's exclusive warranty and is made expressly in lieu of all other warranties of any kind, express, implied or otherwise, including, without limitation, warranties of merchantability, fitness for a particular purpose or use, non-infringement of any third-party intellectual property rights resulting from any use of the Goods and/or Services and any warranty arising by law, out of any course of dealing or performance, custom or industry standard.
- 10.4 Kemin does not authorize the Customer or any other person to make any warranties on behalf of Kemin regarding Kemin's Goods and/or Services. No warranties of any kind by the Customer or any other person shall be binding upon Kemin.
- 10.5 The period of validity of the warranty will commence on the date of delivery by Kemin and will lapse on the expiration date of the Goods as mentioned on its product label.
- 10.6 A warranty claim is only valid if:
- The Customer has notified Kemin promptly upon discovery of the alleged warranty claim in writing, without delay and within the validity period of the warranty, of the alleged circumstances leading to the warranty claim to be proven by the Customer;
  - The Customer specifies and supports its warranty claim;
  - The Customer has to include all supporting evidence and documentation; and
  - The notice is sent in accordance with Article 19.
- 10.7 The Customer will keep the alleged non-complying Goods available until Kemin has had the opportunity to inspect them;
- 10.8 In the absence of such timely and valid warranty claim in accordance with Article 10.6, or in the event the Customer has not kept the Goods for inspection by Kemin in accordance with Article 10.7, the Customer shall be deemed to have irrevocably accepted the delivery.

#### **ARTICLE 11 LIABILITY AND INDEMNIFICATION**

- 11.1 Except for indemnification obligations, to the maximum extent permitted by applicable laws, in no event Kemin shall be liable under any circumstances, whether based in contract, tort (including negligence and strict liability) or otherwise, for following actions which may arise from the Agreement:
- damages or losses relating to the Customer's professional activities (including but not limited to loss of time, loss due to delay in delivery, loss of production, lower results or loss of animals);
  - any commercial or economic losses of any kind (including but not limited to loss of turnover or profits, loss of use and/or capital costs);
  - any claim against the Customer by a third party; and
  - more generally, any special, indirect, punitive, incidental or consequential damages, losses or costs.
- 11.2 Notwithstanding any provisions to the contrary in applicable laws, Kemin's maximum aggregate liability, if any, under or in connection with the performance of the Agreement shall not exceed the amount of the purchase price of the Goods and/or Services ordered via Accepted Orders in the preceding twelve (12) months.
- 11.3 Kemin shall indemnify, defend and hold the Customer harmless from all costs related to breach of the limited warranties in Article 10.1 and product liability claims under applicable mandatory statutory provisions where it is established that such liability arises directly from defects in Goods when used in accordance with its intended use as set forth in the Documentation and relevant safety documentation.
- 11.4 The Customer shall hold harmless and indemnify Kemin from and against any liability, obligation, loss, damage, fees, fine, penalty, action, claim, judgment, settlement, proceeding, cost, expense and disbursement of any kind or nature whatsoever, including all reasonable attorneys' fees, costs and expenses of defense, appeal, and settlement of any suits, actions or proceedings instituted against Kemin and all costs of investigation in connection therewith that may be imposed on, incurred by, or asserted against Kemin by a third party arising out of any Accepted Order, except if specifically covered by the limited warranties in Article 10.1.

#### **ARTICLE 12 FORCE MAJEURE**

- 12.1 Kemin shall not be liable for any delay in or impairment of the performance of the Agreement due to (for example but not limited to) war (declared or not), epidemics, pandemics, acts of God, fire, flood, strike, labour conflict, cyberattacks, power failure, equipment breakdowns, inability to obtain or shortage of raw materials, total or partial mobilization, import and export prohibitions, regulations of any governmental authority, or any cause or condition beyond the reasonable control of Kemin, which could not have been reasonably foreseen on the date of the Agreement, nor can reasonably be avoided and which renders the performance of the Agreement by Kemin reasonably impossible (hereinafter "**Force Majeure Event**").
- 12.2 In any Force Majeure Event, Kemin shall be entitled to such additional time to perform the Agreement as may be reasonably necessary and, in any case, not less than the period of delay caused by such circumstances.
- 12.3 In any Force Majeure Event, Kemin shall have the right to apportion its production and deliveries among its customers as it sees fit in its sole discretion.
- 12.4 In any Force Majeure Event, Kemin has the right to suspend or terminate totally or partially the Agreement without (i) being held liable, nor (ii) owing any indemnification to the Customer, nor (iii) having to refund amounts already paid by the Customer.
- 12.5 A Party claiming a Force Majeure Event must provide a notice to the other Party, evidencing the Force Majeure Event within ten (10) calendar days of its occurrence and that Party must use all commercially reasonable efforts to mitigate the effects of the Force Majeure Event.

### **ARTICLE 13     HARDSHIP**

- 13.1 If at any time during the performance of the Agreement, Kemin is of the view that there have been substantial changes of an economic, financial, technical, political or legal nature, beyond the reasonable control of the Parties after the conclusion of the Agreement and which, at the time of the conclusion of the Agreement, could not reasonably have expected to take place, which make the implementation of the Agreement problematic and/or costlier than was the case when the Agreement was concluded, as a result of which Kemin suffers material hardship in complying with the Agreement, Kemin may notify the Customer in writing that it wishes to review, suspend or terminate the Agreement in the light of the changed conditions. In case the Agreement would be reviewed, Parties shall renegotiate the terms in good faith.

### **ARTICLE 14     TERMINATION OF THE AGREEMENT**

- 14.1 **Termination for breach.** Kemin may terminate the Agreement in case of material breach of the Agreement by the Customer, if such material breach has not been cured within thirty (30) days after written notice of default by Kemin to the Customer.
- 14.2 **Termination in case of insolvency.** Kemin shall be entitled to unilaterally terminate the Agreement if the Customer is subject to bankruptcy or insolvency proceedings, or any similar situation.
- 14.3 **Anticipatory breach.** The Agreement may also be terminated by Kemin if it is clear that the Customer will not comply with its contractual obligations arising out of the Agreement in due time and the consequences of such breach are substantial for Kemin, provided that Kemin has issued a notice of default identifying the substantial breach or default via registered letter and the Customer has not provided sufficient guarantees that it will comply with its obligations within a delay of ten (10) business days after such notice of default
- 14.4 In case of early termination as stipulated in articles 14.1 to 14.3, Kemin will not be required to pay any further fees, damages, nor to refund the amounts already paid by the Customer or pay compensation in any form to the Customer.
- 14.5 The termination of the Agreement does not discharge the Customer from the obligation to pay all outstanding amounts under the Agreement.

### **ARTICLE 15     CONFIDENTIALITY**

- 15.1 The Customer shall treat all information and documents provided by or on behalf of Kemin under the Agreement as confidential. All such information shall be used by the Customer only for the purposes of the Agreement. The Customer shall protect Kemin's information using not less than the same degree of care with which it treats its own. The Customer shall, upon Kemin's demand, and at the latest upon the termination of the Agreement, promptly, at Kemin's sole discretion, destroy or return to Kemin all such information. The Customer shall not retain any copy thereof.
- 15.2 The existence and the content of the Agreement shall be treated as confidential by the Customer.

### **ARTICLE 16     INTELLECTUAL PROPERTY RIGHTS**



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2200 Herentals, Belgium  
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- 16.1 The Customer acknowledges that all trade names, trademarks, domain names, copyrights, logos, design rights, database rights, trade secrets, patents, patent applications, inventions, works, models, designs, processes/methods, technologies, systems, know-how rights, research plans and priorities, research results and related reports, data, statistical models and computer programs and related reports, market interests and product ideas and all other industrial and intellectual property rights of Kemin or its affiliates (hereinafter "**Intellectual Property Rights**") in and related to any Goods and Services are and shall always remain the exclusive property of Kemin.
- 16.2 The supply of the Goods and/or Services under the Agreement does not convey to the Customer or any other person any right, title, license or other interest of any kind with respect to any Intellectual Property Rights relating to the Goods and/or Services, except that the Customer shall have a non-exclusive, non-sublicensable, non-transferable license to the Intellectual Property Rights to use Goods and/or Services supplied by Kemin for the purpose stated in the Goods and/or Services Documentation or related agreement unless otherwise agreed by Kemin in writing.
- 16.3 The Customer shall not obtain any Intellectual Property Rights, unless with prior written approval of Kemin and in accordance with Kemin's instructions.
- 16.4 The Customer agrees not to decompile, disassemble or reverse-engineer the Goods and/or Services. The Customer agrees not to modify, hide, cover, remove or make unreadable any proprietary markings present on or in the Goods, Services or Documentation, including any copyright notice.

#### **ARTICLE 17 ASSIGNMENT - SUBCONTRACTING**

Kemin shall be entitled to (i) assign its rights under the Agreement (in whole or in part) or (ii) to subcontract any part of work or services to be provided under the Agreement to third parties as it deems necessary or desirable, without the prior written consent of the Customer.

#### **ARTICLE 18 INVALIDITY**

If one or more provisions of the T&C are entirely or partially null, invalid or unenforceable, this shall not affect the validity or enforceability of other provisions of the Agreement, and Parties shall enter into good faith negotiations on substitute provisions or solutions which approach the null, invalid or unenforceable provision as to its content and substance as closely as possible, taking into account the intent of the Parties.

#### **ARTICLE 19 NOTIFICATION**

- 19.1 All notifications to Kemin referred to in this Agreement must be made in writing to Kemin Europa NV, to the attention of Customer Service Kemin Europa, Toekomstlaan 42, 2200 Herentals, Belgium, by registered mail with receipt acknowledgment or through a courier service. An e-mail message to the following e-mail address: kae.customer.service.in.belgium@Kemin.com is permissible on condition that an explicit read acknowledgment has been requested and received. Any such notice shall be deemed received and effective upon acknowledgment of receipt.
- 19.2 All notifications to the Customer referred to in this Agreement must be made in writing to the e-mail address mentioned on the Accepted Order.

#### **ARTICLE 20 SURVIVING PROVISIONS**

The provisions of the Agreement which by their nature and scope are meant to survive the performance by (one of) the Parties also survive the termination, expiration, fulfilment or cancellation of the Agreement.

#### **ARTICLE 21 JURISDICTION – APPLICABLE LAW**

- 21.1 Data protection laws and GDPR: Kemin and Customer agree to comply with all relevant data protection laws, including the General Data Protection Regulation (EU) 2016/679 ("GDPR").
- 21.2 The Agreement shall be governed by and construed in accordance with Belgian law, with exclusion of the UN Convention on Contracts for the International Sale of Goods 1980.
- 21.3 Any dispute between the Parties arising out of or related to the Agreement or the interpretation thereof which they have been unable to resolve by good faith negotiations shall be exclusively and finally settled by the competent courts of Antwerp, section Antwerp (Belgium).

#### **ARTICLE 22 COUNTERPART SIGNATURE**



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22. In the event that a signature is needed to complete an Agreement, the Agreement might be executed in counterparts, each of which shall be deemed an original, but both of which taken together shall constitute one and the same instrument. In the event that advanced electronic signature conform with the eIDAS Regulation (Regulation (EU) N°910/2014) is provided, such signature shall create a valid and binding obligation of the Party executing (or on whose behalf such signature is executed) with the same force and effect as if such electronic signature page were an original thereof). Each Party shall sign such Agreement through its authorized representative.