



**TCS Terminal Chemicals Services
GmbH & Co. KG**
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General Terms and Conditions – Purchase –

1. General

- 1.1 The following General Terms and Conditions apply to all supplies, services and offerings between TCS Terminal Chemicals Services GmbH & Co. KG, Duisburg, Germany, hereinafter "TCS Terminal Chemicals Services GmbH & Co. KG" and contractors, corporate bodies under public law and special funds under public law as well as consumers, as stated under § 13 German Civil Code, hereinafter "SELLER".
- 1.2 The following terms and conditions shall apply to any future business relations and business transactions or offers of TCS Terminal Chemicals Services GmbH & Co. KG, even if they have not been explicitly agreed upon
- 1.3 The General Terms and Conditions of SELLERS or third parties shall not apply, even if TCS Terminal Chemicals Services GmbH & Co. KG makes reference to a writing, which obtains the General Terms and Conditions of the SELLER or a third party or if it refers to those conditions, there will be no consent to the legitimacy of those conditions not given.

2. Offer

- 2.1 SELLER's offers are free of charge, yet nonbinding for TCS Terminal Chemicals Services GmbH & Co. KG. SELLER must adhere to the enquiry of TCS Terminal Chemicals Services GmbH & Co. KG when submitting an offer. If SELLER can offer a technically or economically more favorable solution for the TCS Terminal Chemicals Services enquiry, SELLER shall submit such solution additionally

- 2.2 and at the same time to TCS Terminal Chemicals Services GmbH & Co. KG. If SELLER invoices another customer either during or after TCS Terminal Chemicals Services GmbH & Co. KG placed its order, but before the delivery of the goods or the final partial, delivery of goods, better prices or different, more favorable terms of payment (e.g. discount, bonuses, payment deadlines) for the same or reduced volume of ordered goods, TCS Terminal Chemicals Services GmbH & Co. KG may demand the same prices.
- 2.3 Unless differently regulated, the prices offered by SELLER are quoted inclusive of taxes, packaging, transport, returnable containers and storage.
- 2.4 Only orders or amended orders placed by the purchase department of TCS Terminal Chemicals Services GmbH & Co. KG in writing are binding. Verbal agreements must be mutually confirmed in writing in order to be effective.
- 2.5 If SELLER is aware upon acceptance of contract TCS Terminal Chemicals Services GmbH & Co. KG merely acts as the mediator for the delivery to a third party, TCS Terminal Chemicals Services GmbH & Co. KG is not liable, not even for claims of SELLER against such third party, unless TCS Terminal Chemicals Services GmbH & Co. KG acts with intent or gross negligence.

3. Delivery Time, Delivery, Quality Assurance

- 3.1 The Seller is bound to the delivery deadline, stated in the order by TCS Terminal Chemicals Services GmbH & Co. KG. Goods shall be delivered during usual business hours of TCS Terminal Chemicals Services GmbH & Co. KG.



- 3.2 As soon as SELLER realizes that SELLER will not be able to meet its contractual obligations either in full or partly, or not in time, SELLER shall instantly inform TCS Terminal Chemicals Services GmbH & Co. KG in writing, stating the reasons for this and the presumed duration of the delay.
- 3.3 If SELLER is in default, TCS Terminal Chemicals Services GmbH & Co. KG, following a reminder, is entitled to demand a penalty for breach of contract in the amount of 0.5% of the gross price for every new week of default, however no more than 5% of the gross order total of the delivery. Further rights are not affected. TCS Terminal Chemicals Services GmbH & Co. KG will offset the penalty paid against claims for damages.
- 3.4 Partial deliveries are not permissible, unless otherwise agreed upon in writing.
- 3.5 The SELLER is not entitled to perform his service through a third person without a written approval of TCS Terminal Chemicals Services GmbH & Co. KG
- 3.6 The SELLER will perform and maintain an effective Quality Assurance and will provide proof of such measures to TCS Terminal Chemicals Services GmbH & Co. KG upon request. SELLER, upon request of TCS Terminal Chemicals Services GmbH & Co. KG, will apply the Quality Assurance system prescribed by DIN ISO 9000 et seq. (or subsequent certifications). TCS Terminal Chemicals GmbH & Co. KG is entitled to inspect this QA system itself or have it inspected by third parties which it commissions to do so.
- 3.7 The contractual item shall comply with the terms of origin of the EU preferential agreements, if relevant and unless expressly stipulated to the contrary in the confirmation of order.

4. Warranty

- 4.1 The limitation period for claims for defects shall be 36 months from passing of the risk.

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- 4.2 Within the framework of its Quality Assurance system SELLER shall maintain an outgoing goods inspection, so that the incoming goods inspection at TCS Terminal Chemicals Services GmbH & Co. KG is reduced to flaws, which only become manifest through an external examination including the shipping documents (such as shipping damage, misdelivery and short delivery). Apart from that, it depends on how far an examination in a given case is suited under a duly business routine. TCS Terminal Chemicals Services GmbH & Co. KG's obligation to give notice of defects shall remain unaffected.
- 4.3 SELLER's warranty also extends to parts and services which SELLER purchased from suppliers and to all damage or loss resulting from defect or deficiency in SELLER's supplies and/or services, irrespective of whether such supplies and/or services were manufactured, produced or furnished by SELLER or by a third party.
- 4.4 TCS Terminal Chemicals Services GmbH & Co. KG is entitled to remedy the defect itself at the expense of SELLER in cases of imminent danger or particular urgency.

5. Insurance

SELLER shall take out sufficient insurance policies at SELLER's expense for damage that may be caused by SELLER and SELLER's vicarious agents. The taking out and proof of insurance does not reduce the scope of SELLER's liability/warranty though.

6. Documents, Secrecy, Reservation of ownership

- 6.1 All SELLER details and documents, specifications, samples, notes, drawings, instructions, technical directions, data and equipment provided to SELLER by TCS Terminal Chemicals Services for the generation of offers, designs, productions, deliveries, invoices, etc., as well as documents created



- specifically by SELLER on the basis of details provided by TCS Terminal Chemicals Services GmbH & Co. KG, such as calculations ("Information") are the property of TCS Terminal Chemicals Services GmbH & Co. KG and must not be used, compiled or reproduced by SELLER for other purposes, or made accessible to third parties in any other way. If requested by TCS Terminal Chemicals Services GmbH & Co. KG they must be returned with all copies/reproductions. The release of SELLER calculations by TCS Terminal Chemicals Services GmbH & Co. KG does not affect the responsibility of SELLER.
- 6.2 SELLER shall treat the information as well as existing business relationship between the parties confidentially.
- 6.3 The enforcement of retention rights to information is excluded. Items 9.2 and 9.3 are not affected.
- 6.4 Further processing of the delivered goods by TCS Terminal Chemicals Services GmbH & Co. KG shall always take place on behalf of TCS Terminal Chemicals Services GmbH & Co. KG, so that TCS Terminal Chemicals Services GmbH & Co. KG becomes legal manufacturer and gains direct ownership in accordance to the legal regulations no later than with further processing.

7. Forwarding Instructions, Passing of Risk

- 7.1 The delivery must contain the delivery note and packing slip. All dispatch documents and the visible packaging must feature the order number, details regarding the offloading point and the precise recipient of consignment. Is the delivery note missing or incomplete, TCS Terminal Chemicals Services GmbH & Co. KG shall be not responsible for any delays regarding the process und payment.
- 7.2 SELLER, unless agreed otherwise, shall ensure the dispatch free point of destination and shall procure the necessary freight and customs documents unless these can be supplied exclusively by

TCS Terminal Chemicals Services GmbH & Co. KG. SELLER shall select the most suitable mode of transport and bear all expenses related to such transport and take out transport insurance which covers the value of the contractual item.

- 7.3 SELLER shall package, identify and dispatch the ordered goods properly and in accordance with the relevant national and international regulations.
- 7.4 Customary clauses apply in accordance with the most recent INCOTERMS, currently INCOTERMS 2010, unless otherwise agreed.
- 7.5 The risk passes upon the delivery of the goods at the respectively agreed destination; when in doubt, such destination is TCS Terminal Chemicals Services GmbH & Co. KG, Duisburg /Germany

8. Invoice and Payment

- 8.1 Invoices must be drawn up properly, especially – if relevant – itemizing turnover tax ID, and must be verifiable and comply with the order in terms of sequence of items, listing the item numbers.
- 8.2 Payments are effected subject to the delivery being deemed correct. Payment does not constitute the recognition of conditions and prices and does not influence SELLER's warranty and liability. It does not constitute a waiver of claims of TCS Terminal Chemicals Services GmbH & Co. KG for defects discovered at a later point in time.
- 8.3 TCS Terminal Chemicals Services GmbH & Co. KG shall not owe interest upon acceleration. Legal regulations shall apply to a delay in payment
- 8.4 If TCS Terminal Chemicals Services GmbH & Co. KG operates as a buying agent, TCS Terminal Chemicals Services GmbH & Co. KG is only obligated to effect payment for the delivery when and to the extent that the principal pays TCS Terminal Chemicals Services GmbH & Co. KG for the delivery. The principal's refusal to pay, for which TCS Terminal Chemicals



- Services GmbH & Co. KG is liable, will not be taken into account.
- 8.5 If TCS Terminal Chemicals Services GmbH & Co. KG operates as a buying agent, then the principal alone is obligated to issue complaints in terms of Section 377 of the German Commercial Code.

9. Offsetting, Retention

- 9.1 SELLER may only offset with undisputed or final and absolute claims against TCS Terminal Chemicals Services GmbH & Co. KG.
- 9.2 Item 9.1 applies accordingly for the enforcement of retention rights by SELLER.
- 9.3 SELLER is not entitled to exercise retention rights against claims of TCS Terminal Chemicals Services GmbH & Co. KG from an order for another claim not related to this order.
- 9.4 Section 369 of the German Commercial Code does not apply.

10. Protective Rights, Product Liability

- 10.1 SELLER is liable within the statutory scope for the delivery and proper use of the contractual item not infringing upon the property rights of third parties, especially patent rights.
- 10.2 In the event of an actual or alleged infringement SELLER shall release TCS Terminal Chemicals Services GmbH & Co. KG, its customers and their customers within the statutory scope of all liability, damage and losses as well as expenses.
- 10.3 SELLER shall release TCS Terminal Chemicals Services GmbH & Co. KG of all third-party claims resulting from the product liability law or product liability if and to the extent that deliveries or services of SELLER substantiate a claim.
- 10.4 If products bear a particular design of TCS Terminal Chemicals Services GmbH & Co. KG, either as an assembled end product, or as part of an assembled end product, or bear the TCS Terminal Chemicals Services brand or any other feature

that identifies TCS Terminal Chemicals Services GmbH & Co. KG, such products must not simultaneously bear SELLER's brand or other design of SELLER, and similar material shall not be sold or left to any other person than TCS Terminal Chemicals Services GmbH & Co. KG.

11. Advertising, Assignment

- 11.1 SELLER may only refer to the existing business relationship with TCS Terminal Chemicals Services GmbH & Co. KG following the prior written approval of TCS Terminal Chemicals Services GmbH & Co. KG.
- 11.2 SELLER may only assign its contractual rights and duties with the prior written approval of TCS Terminal Chemicals Services GmbH & Co. KG. Section 354a of the German Commercial Code is not affected.

12. Applicable Law, Jurisdiction, Severability Clause

- 12.1 The legal relationships between the parties to the contract shall exclusively be governed by the law of the Federal Republic of Germany. The United Nations Convention on Contracts for the International Sale of Goods dated 11 April 1980 (CISG) as well as the regulations of the German International Private Law shall not apply.
- 12.2 If the SELLER is businessman as stated under § 14 German Civil Code, merchant, corporate bodies under public law or law and special funds under public law the exclusive – including international – venue for any and all disputes arising directly or indirectly from the contractual relationship shall be Duisburg.
- 12.3 Should any individual provision of these General Terms and Conditions of Sale and Delivery – for whatever reason – be or become void, unenforceable or incomplete in whole or in part, the void or incomplete provision shall be replaced by a legally effective provision the parties to the contract would have agreed with respect to the economic goals of the con-



tract and the purpose of these General Terms and Conditions of Sale and Delivery if they had been aware of the voidness, unenforceability or loophole.

- 12.4 The German version of the Terms and Conditions of Purchase shall prevail. All other language versions serve the purpose of easier understanding only.