



TCS Terminal Chemicals Services GmbH & Co.KG
Wanheimerstr. 408 – 47055 Duisburg – Germany
Tel.: +49 203 73804-123
Fax: +49 203 73804-6123
e-mail: info@tcs-duisburg.com

General Terms and Conditions - Sale -

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 "Buyer".
- 1.2 The following terms and conditions shall apply to any future business relations or dealings 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 our customer or third parties shall not apply, even if TCS Terminal Chemicals Services GmbH & Co. KG does not contradict such General Terms and Conditions either separately or expressly. Even if TCS Terminal Chemicals Services GmbH & Co. KG makes reference to a writing, which obtains the General Terms and Conditions of the Buyer or a third party or if it refers to those conditions, there will be no consent to the legitimacy of those conditions not given.
- 1.4 The General German Freight Forwarding Terms and Conditions (ADSp) in their latest version shall be constituent to the following General Terms and Conditions. **In accordance of § 431 HGB, § 23 ADSp of these terms limit the legal liability for the damage of goods for damages in the safe keeping of forwarders 5,00 €/kg. The liability for multimodal transports including transports by ship to 2 Special Drawing Rights (SDR)/kg as well as over and above per loss or lossevent is stated to 1 Mio. EUR or 2 Mio EUR respectively or 2 SDR/kg, depending on which amount is higher. In addition it shall be agreed upon, that paragraph 27 ADSp shall be held as an agreement for higher amounts of limitation as stated in Art. 25 Montreal Convention.** In case of contradictions between single paragraphed of the following terms and conditions with business dealings, the ADSp shall maintain the priority.

2. Initiation and Formation of Contract, Offers, Placing of Orders

- 2.1 The Buyer's offers are non-binding and non-committal.
- 2.2 Upon placing an order for goods or services the Buyer bindingly declares his intention to purchase the ordered goods or services. We are entitled to accept the contractual offer represented by the order within two weeks following receipt. Such acceptance can only be declared in writing.
- 2.3 The Buyer is obliged to immediately verify the TCS Terminal Chemicals Services GmbH & Co. KG's declaration of acceptance/confirmation of order. Possible differences to Buyer's order must be immediately reprimanded. If this is not done, the contents of the contract comply with the contents of TCS Terminal Chemicals Services GmbH & Co. KG's declaration of acceptance/confirmation of order. If a formal declaration of acceptance/confirmation of order is not issued, the above applies correspondingly to the invoice for down payment, or final invoice.
- 2.4 Clauses supplementing the description of the goods, such as "circa", "as previously supplied", "as before" or similar additions mentioned in TCS Terminal Chemicals Services GmbH & Co. KG's offers refer exclusively to the quality or quantity of the goods, but not to the price.
- 2.5 In other respects the promises regarding a specific feature or suitability of the goods for a specific purpose as well as the assumption of a warranty is only binding if confirmed in writing by TCS Terminal Chemicals Services GmbH & Co. KG.
- 2.6 Deviation in quantity due to safety-related or technical reasons are fully taken into account of the invoice total. For packed material a deviation in quantity of plus or minus 0,3 % and for bulk material / unpacked material a deviation in quantity of plus or minus 3% are deemed to be in conformity with contractual stipulations.

3. Purchase Price, Payment, Default, Offsetting, Retention, Assignment

- 3.1 All prices apply to the scope of performance and items delivered as quoted in the contract note.



- Supererogation or special service shall be quoted separately. All prices are quoted ex works.
- 3.2 (a) As a rule, the purchase price is subject to the statutory rate of value added tax applicable at the moment of the formation of the contract if and to the extent that turnover tax liability or turnover tax itemisation is relevant in the individual case, same goes for Customs, fees, as well as other public charges regarding export deliveries. To the extent that in the above case the statutory value added tax increases during the period between the formation of the contract and invoicing, the Buyer shall pay the increased turnover tax if the agreed delivery period exceeds four months.
 - 3.2 (b) We are entitled to demand down payments Equal to the value of the partial performance rendered on behalf of TCS Terminal Chemicals Services GmbH & Co. KG
 - 3.3 If the agreed delivery period exceeds four months, TCS Terminal Chemicals Services GmbH & Co. KG reserves the right to adequately adjust the price based on the changes to its original cost including cost of material and labour, as well as, if necessary, the cost of transport; the same applies if the cost for customs or duties which apply to the delivery and which are for the account of TCS Terminal Chemicals Services GmbH & Co. KG, increase. If the price increases disproportionately in comparison with the cost of living index, the increase in price is limited to the price reached by the market.
 - 3.4 In the absence of express divergent agreements the purchase price is due and payable immediately and without deduction, rated as from the moment of the arrival of the goods at and delivery of invoice to the Buyer, depending on which event occurs later. The same applies to partial performances. A possibly agreed discount can only be deducted if the respective payment is credited to TCS Terminal Chemicals Services GmbH & Co. KG before the end of the discount period and the Buyer is not in default of paying other receivables of the Seller at the moment of payment. A discount is only granted for the net amount, i.e. in particular not for costs, freight, etc. This does not affect Item 3.8.
 - 3.5 In case of a mutual commercial transaction, the Seller is entitled to demand due interest as of the due date in the amount of 8 % above the base rate. It is for the Buyer to prove that the actual damage which in incurred is in fact lower or does not apply. In the event of mutual commercial transactions, the seller may demand at least the statutory rate of due interest. The enforcement of default interest is not affected.
 - 3.6 If payment has been agreed in a currency other than EURO (foreign currency) with the contractor, the payable purchase price in foreign currency increases at the moment of drafting the invoice so that the shown invoice total corresponds to the counter value in EURO as calculated on the grounds of the owed foreign currency at the decisive moment on which the price was agreed.
 - 3.7 Bills and cheques are only accepted following an express agreement and only on account of performance. They are only considered payment if redeemed. Discounts, bill charges, stamp duty on bills of exchange and other dues are for the account of the Buyer upon expiration of the agreed term of payment.
 - 3.8 (a) The Buyer may only offset against TCS Terminal Chemicals Services GmbH & Co. KG's claims with undisputed or final and absolute claims.
 - 3.8 (b) Letter (a) applies accordingly to the exercise of rights of retention by the Buyer if the Buyer is a contractor.
 - 3.9 The Buyer is not entitled to exercise a right of retention against TCS Terminal Chemicals Services GmbH & Co. KG's claims from a contract for a claim originating from another claim that does not originate from this contract.
 - 3.10 The trader's right of retention of TCS Terminal Chemicals Services GmbH & Co. KG pursuant to Section 369 of the German Commercial Code [HGB Handelsgesetzbuch] does not apply to the Buyer.
 - 3.11 If there are valid doubts as to the Buyer's solvency or creditworthiness after completing the contract and if the Buyer, in spite of the respective request, is not willing to effect an advance payment or provide a suitable collateral, TCS Terminal Chemicals Services GmbH & Co. KG, is entitled to demand cash payment prior to any possible further delivery, if not performed as such so far. This applies in particular to agreed but not yet performed follow up business.
 - 3.12 TCS Terminal Chemicals Services GmbH & Co. KG reserves the right to use payments to settle the oldest due invoice item plus the accrued default interest and costs, in the following order: costs, interest, principal claim.
 - 3.13 The Buyer may not assign its claims against TCS Terminal Chemicals Services GmbH & Co. KG to third parties regardless of the stipulations of Section 354a of the German Commercial Code.
 - 3.14 TCS Terminal Chemicals Services GmbH & Co. KG is entitled to assign claims resulting from the terms of business.
 - 3.15 The decisive weight determined for the calculation is performed at TCS Terminal Chemicals Services GmbH & Co. KG's point of dispatch.



3.16 In cases of default TCS Terminal Chemicals Services GmbH & Co. KG's is entitled to demand default interest in the amount of 8 % above the base rate. The enforcement of further claims for damages caused by default is not affected, neither are the statutory rights to claim compensation for non-performance as well as rescission of contract.

3.17 Upon default, all claims from all contractual relationships between the parties are due with immediate effect, unless the default refers to immaterial parts of the claims only.

4. Delivery, Passing of Risk

4.1 Unless a delivery period has been expressly confirmed by TCS Terminal Chemicals Services GmbH & Co. KG, the delivery cannot be demanded until eight weeks after the formation of the contract. Any possibly agreed delivery period commences after the receipt of all necessary documents as well as the Buyer's agreed advance payment being received by TCS Terminal Chemicals Services GmbH & Co. KG (permits, approvals, etc.).

4.2 If the Buyer was given a fixed delivery period, then such period is deemed observed if the contractual item pursuant to Item 3.1 has been supplied to the Buyer until the expiration of such period.

4.3 The delivery is performed through the provision of the goods at TCS Terminal Chemicals Services GmbH & Co. KG's head office, exclusive of packaging, transport, insurance. Upon collection from the point of delivery, it is for the Buyer or the Buyer's authorized representatives to load the vehicle and observe the statutory regulations regarding the transportation of hazardous goods.

4.4 If a dispatch of the goods has been agreed in the individual case, TCS Terminal Chemicals Services GmbH & Co. KG shall always ship the goods at the request of the Buyer pursuant to Section 447 of the German Civil Code [BGB – Bürgerliches Gesetzbuch] at the Buyer's risk and cost. The same applies to packaging and to any increases in freight rates, possible additional costs due to diversions, storage, etc. that arise after the formation of the contract, unless carriagepaid delivery was expressly agreed in writing.

4.5 To the degree that employees of TCS Terminal Chemicals Services GmbH & Co. KG, in cases of Items 3.1 and 4.3, 4.4 assist in the loading and unloading outside of the contractually agreed scope of performance, such employees act on the sole order of the Buyer. Any damage inflicted

on the goods or other damage caused during this is therefore at the expense of the Buyer.

4.6 (a) The risk passes no later than upon delivery of the supplied parts to the carrier at the point stated in Item 4.3 even if partial deliveries are performed or the Seller assumed other additional services, such as dispatch, delivery and installation. Upon the Buyer's request TCS Terminal Chemicals Services GmbH & Co. KG may insure the consignment against theft, breakage and damage caused during transport and by fire and water as well as other insurable risks, whereby TCS Terminal Chemicals Services GmbH & Co. KG acts insofar only as the agent.

4.6 (b) In the event of default of acceptance the goods will be stored at the expense and at the risk of the Buyer without further notification/reminder.

4.6 (c) Upon default of acceptance of the Buyer the purchase price is due immediately.

4.7 TCS Terminal Chemicals Services GmbH & Co. KG shall not be held liable for impossibility of delivery or for delivery delay, as far as it is period is attributable to force majeure or other none predictable events at the time of conclusion of the contract for which TCS Terminal Chemicals Services GmbH & Co. KG is not to be held responsible (such as business disruption of all kind, delay in transit, strikes, lack of manpower, energy or resources, difficulties within gaining concessions, regulatory actions or the correct and timely availability of supplies). In case such events render delivery or service difficulties or impose the fulfilment impossible and the obstruction is not only of temporary nature, TCS Terminal Chemicals Services GmbH & Co. KG shall be entitled to withdraw from the contract. In the event of impediments that are of temporary duration, the periods of delivery or performance shall be extended by the period of the impediment plus an appropriate startup period.

4.8 Partial deliveries are permissible if,

- the partial delivery can be used by the buyer within the framework of the contractually intended use
- the delivery of the remaining goods as ordered is guaranteed, and
- the buyer does not incur any significant extra or additional costs.

4.9 (a) Packaging, unless disposable, remains the property of TCS Terminal Chemicals Services GmbH & Co. KG. The Buyer is obliged to immediately return the packaging. If the Buyer is in default of its obligation to return the packaging, TCS Terminal Chemicals Services GmbH & Co. KG is entitled to demand compensation for loss of use in the amount of 1% of the cost price per day. This applies in particular to mul-



- tiuse containers. The Buyer has the option to prove that damage in the enforced amount was not incurred, or only to a lower degree. In cases of damage or lost parts (especially supporting rods) the Buyer is obliged to supply replacements. Disposable packaging becomes the property of the Buyer and is not accepted if returned. Packaging is not issued by item, but exclusively with regard to transport and production. The larger dimension of the unit always determines the length of packaging.
- 4.9 (b) If in the individual case transport has been agreed by the Seller at TCS Terminal Chemicals Services GmbH & Co. KG's risk and cost, the Buyer shall ensure in cases of delivery by tank lorry and detachable tanks the perfect technical condition of the Buyer's tanks or other storage containers and shall arrange the connection between the filling points to its uptake system at its own responsibility. The Seller is merely obliged to accurately operate the vehicle's inherent facilities. (b) In addition to (a) the transport by tank lorry requires that the Buyer, at its own responsibility, ensures the fastest discharge and return to TCS Terminal Chemicals Services GmbH & Co. KG or to the stated address. In the event of a prolonged standing time at the Buyer's factory for which the Buyer is responsible, the arising rental charge for the tank lorry is at the expense of the Buyer.
- 4.10 The unobjected acceptance of the consignment by the carrier is deemed proof of the flawless quality of the packaging and proper loading, unless the Buyer provides proof that the packaging was defective upon handing of the consignment to the carrier, or that loading was not carried out properly. The contractor shall inspect the packaging for visual damage and indicate any damage on the delivery note. The contractor shall inform TCS Terminal Chemicals Services GmbH & Co. KG of damage caused during transport even in the event of non-damaged packaging within six days in writing.
- 4.11 (a) If deliveries of TCS Terminal Chemicals Services GmbH & Co. KG are carried out in returnable containers which TCS Terminal Chemicals Services GmbH & Co. KG procured, they must be returned to TCS Terminal Chemicals Services GmbH & Co. KG emptied and in an impeccable condition at the expense and risk of the Buyer no later than within 30 days following arrival at the Buyer. If the Buyer does not comply with this obligation, TCS Terminal Chemicals Services GmbH & Co. KG may charge the Buyer an appropriate rental fee for the period beyond 30 days and following the unsuccessful passing of the additional period
- may demand their return, offsetting the above fees against the replacement price. The attached marks must not be removed. Returnable packaging must not be swapped or filled with other material.
- 4.11 (b) The Buyer is responsible for depreciation, substitution and loss irrespective of fault. The use as storage container or forwarding to third parties is not permissible.
- 4.12 If and to the degree that the parties apply trade terms to the respective individual agreement, their interpretation is subject to such version of the INCOTERMS which applies at the moment of signing the individual agreement even to the extent they contradict the contents of Item 4.
- 4.13 The Buyer is responsible for compliance with statutory and official regulations pertaining to the import, delivery, storage and use of goods supplied by TCS Terminal Chemicals Services GmbH & Co. KG in the destination country or the destination as well as the transit countries of the delivery; the Buyer is equally responsible for the procurement of the necessary import and transit documents (customs, etc.) unless these must be obtained exclusively for statutory reasons by TCS Terminal Chemicals Services GmbH & Co. KG.
- 4.14 Reservation subject to TCS Terminal Chemicals Services GmbH & Co. KG obtaining correct and timely supplies remains.
- 4.15 If in the exceptional case it is agreed that TCS Terminal Chemicals Services GmbH & Co. KG bears customs and import duties of the destination country or of transit countries, any increases of such duties arising between the acceptance of the order and the delivery of the goods are for the account of the Buyer.
- 5. Reservation of Ownership**
- 5.1 Reservation of ownership
The delivered goods (reserved goods) shall remain property of TCS Terminal Chemicals Services GmbH & Co. KG until any and all claims have been satisfied.
- 5.2 All-monies clause
The reservation of title is upheld even if individual TCS Terminal Chemicals Services GmbH & Co. KG's claims are included in a current invoice and a new balance is struck and accepted.
- 5.3 Manipulation clause
By processing or transformation of the reserved goods for TCS Terminal Chemicals Services GmbH & Co. KG by the Buyer, TCS Terminal Chemicals Services GmbH & Co. KG becomes legal manufacturer and gains direct ownership upon the new processed goods. If



the reserved goods are inseparably intermixed or mingled with other things that do not belong to TCS Terminal Chemicals Services GmbH & Co. KG, TCS Terminal Chemicals Services GmbH & Co. KG shall acquire co-ownership of the new product in the proportion of the value of the reserved goods to the other intermixed or mingled things at the time of combination or intermixture.

5.4 Mingling clause

If the reserved goods are intermixed or mingled in such a way that the customer's item is to be seen as the main thing, the customer and TCS Terminal Chemicals Services GmbH & Co. KG herewith agree that the customer shall assign proportionate co-ownership of this thing to TCS Terminal Chemicals Services GmbH & Co. KG in the proportion of the invoice value or if there is a lack of an invoice value in proportion of the market value of the main good. The customer shall hold in custody of the sole ownership or co-ownership of an item thus created on behalf of TCS Terminal Chemicals Services GmbH & Co. KG.

5.5 Extended reservation of ownership clause

The buyer is entitled to resell the goods in the ordinary course of business, as long as the buyer fulfills his obligation to TCS Terminal Chemicals Services GmbH & Co. KG on time. The buyer already assigns all claims to TCS Terminal Chemicals Services GmbH & Co. KG in the amount of the invoice total which the contractor acquires against a third party from the resale; If TCS Terminal Chemicals Services GmbH & Co. KG gained coownership through processing, connection or mingling all claims are assigned in the proportion of the invoice value to the value of goods remaining in the reserved ownership of third parties. The goods are blended with items that do not belong to us, we acquire coownership in such new item in proportion of the value of the goods which we supplied with the other processed items. TCS Terminal Chemicals Services GmbH & Co. KG assumes such assignment. Following the assignment the contractor is entitled to collect the claim. TCS Terminal Chemicals Services GmbH & Co. KG reserves the right to collect the claim ourselves as soon as the contractor does not correctly meet with its payment obligations and is in default of payment and especially if the buyer does not applies for bankruptcy proceedings. The same applies with regard to a claim of the buyer resulting from the processing of the goods subject to reservation of ownership. The contractor is not entitled to any other disposals than those named; the contractor may in particular not pledge the

goods subject to reservation of ownership or transfer them by way of security.

5.5 (a) As long as the Buyer properly meets its obligations towards TCS Terminal Chemicals Services GmbH & Co. KG the Buyer is entitled to reuse the goods subject to reservation of ownership in the ordinary course of business. However, this does not apply if and to the extent that the Buyer agreed with its buyers to prohibit to assign the purchase price. The Buyer is not entitled to pledge, transfer by way of security or otherwise encumber the goods subject to reservation of ownership.

5.5 (b) Subsequent reservation of title

The Buyer, in the event of a resale, is obliged to agree to a reservation of title with its customers without disclosing the agreed reservation of title with us.

5.6 Upon demand of the Buyer, TCS Terminal Chemicals Services GmbH & Co. KG is obliged to set securities free, as far as its value does not exceed the secured claims.

6. Warranty, Guarantee

6.1 The warranty period shall be one year from delivery. Unless differently agreed by individual contract TCS Terminal Chemicals Services GmbH & Co. KG shall deliver the object of sale in accordance with the regular product description (catalogue, etc.), if available otherwise of average quality. Any qualities of the object of sale beyond this are then not owed by TCS Terminal Chemicals Services GmbH & Co. KG. The Buyer may not derive such obligation in particular from other descriptions of the object of sale made in public statements or in advertising of TCS Terminal Chemicals Services GmbH & Co. KG or its pre-suppliers/manufacturers, unless TCS Terminal Chemicals Services GmbH & Co. KG expressly confirmed such further quality by individual agreement. Guarantees must be expressly confirmed in writing by TCS Terminal Chemicals Services GmbH & Co. KG's management.

6.2 If the Buyer is a contractor, we will warrant, at our discretion, for defects of the goods either a rectification of defects or substitute delivery. If the rectification fails, the customer, at its discretion, may demand a reduction of remuneration or rescission of the contract. This does not affect the Buyer's right to demand compensation in addition to the statutory rescission, with the exception of limitations for compensation of the Buyer pursuant to Item 7. If the defect consists in the customer having received faulty assembly instructions, TCS Terminal Chemicals Services GmbH & Co. KG is merely obliged to



- deliver accurate assembly instructions; this also applies if only the defect of the assembly instructions opposes the proper assembly.
- 6.3 The notification of defects demanded by the statutory obligation of a notification of defects according to Section 377 of the German Commercial Code can only be effectively declared by the contractor if issued in writing. The further statutory requirements of Section 377 of the German Commercial Code are not affected. Irrespective of this, the Buyer's warranty claims are excluded if the Buyer does not report obvious defects in writing within a period of seven business days as from the moment of receipt of goods until posting of notification. With regard to transport damages Item 4.9 is not affected.
- 6.4 The delivery of a defect-free item to fulfil the rectification as a rule is performed concurrently against handing over of the defective item. TCS Terminal Chemicals Services GmbH & Co. KG is entitled to refuse the substitute delivery if the Buyer has used the defective item for an extensive period. If the Buyer may nevertheless demand a substitute delivery, TCS Terminal Chemicals Services GmbH & Co. KG is entitled to enforce a compensation for the lost value for the benefit drawn by the Buyer and refuse rectification until payment of the respective amount.
- 6.5 If TCS Terminal Chemicals Services GmbH & Co. KG performs services in the search for, inspection of and remedy of defects without being obliged to do so, such as e.g. in case an unjustified notification of defect was pronounced, the Buyer shall reimburse such costs to TCS Terminal Chemicals Services GmbH & Co. KG that arise as a result of this.
- 6.6 Any additional expenses in remedying the defects must also be reimbursed which TCS Terminal Chemicals Services GmbH & Co. KG incurred as a result of the Buyer not properly complying with its duties to cooperate. The performance of a search for, inspection of and remedy of defects does not constitute the recognition of the defect by TCS Terminal Chemicals Services GmbH & Co. KG.
- 6.7 Expenses in relation to the defects which the Buyer incurs because the Buyer transported the goods to a place other than the location stipulated in the contract of sale are for the Buyer's account.
- 6.8 The statute of limitations for warranty claims of the Buyer is one year; in cases in which the warranty is based on the sale of an item to be used according to its intended application for a building and which caused its defectiveness, is

five years. The statute of limitations always commences upon delivery of the sold item.

- 6.9 This does not affect Section 479 of the German Civil Code.

7. Liability, Limitation

In cases of contractual and non-contractual liability TCS Terminal Chemicals Services GmbH & Co. KG is liable for compensation or reimbursement of futile expenses only in accordance with the following regulations:

- 7.1 TCS Terminal Chemicals Services GmbH & Co. KG is liable for compensation in the full amount in cases of intent and gross negligence.
- 7.2 If a quality is missing for whose existence TCS Terminal Chemicals Services GmbH & Co. KG assumed a warranty or which the Buyer assumed, TCS Terminal Chemicals Services GmbH & Co. KG shall only be liable in the amount of the typically foreseeable damage which was to be prevented by the warranty or the assurance, provided that the missing guaranteed/assured quality in itself is not due to intent/gross negligence.
- 7.3 TCS Terminal Chemicals Services GmbH & Co. KG shall not be liable in the event of slight negligence by organs, legal representatives, employees and any other legal agents unless essential contractual obligations have been violated. Essential contractual obligations shall in particular include the duty to deliver and install goods free from material defects as well as the duties of consultation, protection and care which shall allow the buyer to use the delivery item in accordance with the contract or which serve the purpose of protecting the life, body and health of the buyer's personnel or the buyer's property from considerable damage.
- 7.4 The above limitations of liability do not apply to claims of the Buyer from the product liability act and to personal injury of and damage to health or death of the Buyer attributable to us.
- 7.5 The limitations of liability mentioned above shall apply to the same extent in the event of slightly negligent violations of duties by organs, legal representatives, employees and any other legal agents of TCS Terminal Chemicals Services GmbH & Co. KG.
- 7.6 The above mentioned limitations of liability shall not apply to the liability of TCS Terminal Chemicals Services GmbH & Co. KG for intentional behaviour, to possibly guaranteed characteristics, to any damage to life, body and health or according to the German Product Liability Act.



8. Technical Advice, Use and Processing

The written and spoken application-specific advice of TCS Terminal Chemicals Services GmbH & Co. KG as well as advice through attempts is provided to the best knowledge, however is only to be viewed as non-binding information, even in relation to possible protective rights of third parties, and does not release the Buyer of its own inspection of products supplied by TCS Terminal Chemicals Services GmbH & Co. KG for suitability for the intended processes and purposes. Application, use and processing of the products are performed outside of the TCS Terminal Chemicals Services GmbH & Co. KG's control options and therefore remain exclusively within the scope of the Buyer's responsibility.

9. Secrecy, Data Protection, Protective Rights, Copyrights

- 9.1 The parties undertake to treat all information and confidential details as well business secrets of the respective other contracting partner acquired within the framework of performing the contract confidentially for an unlimited period of time and shall use such information and details only within the framework of performing the contract.
- 9.2 Both contracting parties observe the data protection rules. The business relationship is supported on TCS Terminal Chemicals Services GmbH & Co. KG's side by a data processing unit. Accordingly the Buyer's data are recorded and stored in an automated file. This is to inform the Buyer of such storing accordingly.
- 9.3 If TCS Terminal Chemicals Services GmbH & Co. KG supplies purchase items on the grounds of drawings, models or other details of the Buyer, the Buyer assumes the warranty that the production, delivery and use of the goods do not violate industrial property rights and other third-party rights. TCS Terminal Chemicals Services GmbH & Co. KG is not obliged to perform a respective inspection.
- 9.4 Documents and drawings left to the Buyer as well as structural and other services or design proposals rendered by TCS Terminal Chemicals Services GmbH & Co. KG may only be used by the Buyer for the agreed purpose.
- 9.5 It is not permissible to offer or supply substitute products in lieu of TCS Terminal Chemicals Services GmbH & Co. KG's products while pointing out these products, or to associate product designations of TCS Terminal Chemicals Services GmbH & Co. KG in price lists or

similar business documentations, be they protected or not, with the word "substitute", or compare them with the designations of the substitute products.

- 9.6 Furthermore it is not permissible to use TCS Terminal Chemicals Services GmbH & Co. KG's products for manufacturing purposes or processing, TCS Terminal Chemicals Services GmbH & Co. KG's product designations, especially TCS Terminal Chemicals Services GmbH & Co. KG's trademarks on such products or their packaging or the respective printed matter or advertising material without the prior approval of TCS Terminal Chemicals Services GmbH & Co. KG, particularly to state that they are part of the components. The delivery of products subject to a trademark is not to be deemed as the approval to use this trademark for products manufactured from it.

10. Place of Fulfilment and Jurisdiction, Choice of Law, Severability Clause, Written Form

- 10.1 The place of fulfilment for any and all contractual obligations shall be Duisburg unless otherwise agreed.
- 10.2 In the event, that the Buyer is entrepreneur, legal entity under public law or special fund under public law or in case the Buyer does not have a venue within Germany, venue for any and all disputes arising directly or indirectly from the contractual relationship with TCS Terminal Chemicals Services GmbH & Co. KG shall be Duisburg.
- 10.3 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.
- 10.4 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 contract and the purpose of these General Terms and Conditions of Sale and Delivery if they had been aware of the voidness, unenforceability or loophole
- 10.5 The decisive version is the German version of these Terms and Conditions. The publication in



another language merely serves to facilitate the understanding.

- 10.6 Contractual amendments and supplements must be stipulated in writing to become effective. There are no verbal agreements