

## **General Conditions of Sale of Thermphos ("Seller")**

### **Article 1 Applicability/acceptance**

These General Conditions of Sale ("Conditions") shall be applicable to all offers, order confirmations and deliveries by Seller and shall form an integral part of the sales agreement between Seller and Buyer. No other general conditions shall be applicable or shall set aside these Conditions unless expressly agreed to by Seller in writing.

All offers and quotations from Seller are without prejudice unless explicitly stated otherwise. Seller shall be entitled to withdraw an offer within two working days after receipt of the acceptance by Buyer.

### **Article 2 Price**

Calculations of price shall be made on the basis of the prices which apply on the day of dispatch. For the (price) calculation of products which are invoiced on the basis of weight or volume, the weight or volume upon dispatch shall apply.

In case of an increase in the prices of raw materials, energy or transport necessary for the manufacture, delivery or supply of the products or an increase in duties or taxes after the date of the sales agreement between Seller and Buyer but prior to the date of invoice, Seller shall have the right to adjust the price accordingly. In case of such price adjustment, Buyer shall have the right to cancel the sales agreement within 3 working days after receipt of notice of such price increase.

### **Article 3 Payment**

Payment must be made within 30 days after the invoice date, unless expressly agreed to otherwise by Seller in writing. Costs which incur as a result of the payment, such as bank costs and costs relating to shipping documents, shall be for the account of Buyer.

Buyer may only invoke a claim based on set off if its counterclaim is acknowledged in writing by Seller.

### **Article 4 Late payment**

Buyer shall pay the purchase price to the bank account of Seller in accordance with the payment terms stated in the invoice. If Buyer fails to pay any amount when due then - without prejudice to any other right Seller may have - a default interest of 1.5% per month on the amount outstanding shall become due and all costs (including legal costs) made in order to obtain payment by Buyer shall be for the account of Buyer.

If Buyer is in default or if Seller has reasonable grounds to assume that Buyer will not (timely) comply with its payment obligations, Seller shall have the right - without prejudice to any other right Seller may have - to demand payment in advance or to postpone the performance of the agreement in whole or in part.

#### **Article 5 Lead time**

An agreed lead time shall not be considered as fatal, unless express agreement in writing to the contrary has been made. In the event of non-timely delivery Buyer must therefore give Seller a written notice of default.

#### **Article 6 Force-majeure**

Neither party shall be deemed to be in default or in breach under the agreement and no liability shall result from non-performance of the agreement, if and to the extent that the non-performance is caused by circumstances beyond the reasonable control of the failing party, including - but not limited to - war, terrorist attack, piracy, act of authority, act of God (such as storm, flood, earthquake), explosion, fire, destruction of machines, labour disturbance (including strike), shortage of energy, raw materials and means of transport.

When a force-majeure event regarding one or more of Seller's supply sources results in a shortfall in product, Seller shall at its reasonable discretion apportion any reduced quantity of product amongst Seller (including its group companies) and its customers (including Buyer). Seller shall not be required to acquire product to compensate any shortfall in product arising as a result of a force-majeure event.

#### **Article 7 Claims**

Buyer shall inspect the products upon delivery, by analysis or otherwise, exercising such care as is customary or appropriate under the circumstances. Any claims regarding the quality or quantity of the products delivered shall be submitted by Buyer to Seller in writing immediately upon detection thereof within, but no later than 5 working days from the date of delivery of the relevant products.

Products in respect of which a claim has been made may only be returned with the express written permission of Seller.

In the case of timely and well-founded complaints Seller shall at its reasonable discretion (with the exclusion of articles 49 through 52 of the United Nations Convention on the International Sale of Goods (ISG)):

- deliver missing products;
- give a price reduction;
- repair or replace the products which have been delivered; or

- compensate the purchase price in return for the return of the products which have been delivered.

### **Article 8 (Governmental) regulations**

Buyer shall comply with all applicable laws and governmental rules, regulations and reasonable instructions of Seller regarding storage, processing, use and application of products. Buyer shall disseminate appropriate information regarding such laws, governmental rules, regulations and instructions (including information on health, safety, security and environment) to all persons (including its employees, contractors and customers) Buyer reasonably foresees may be or become applicable to the products. Seller shall not be liable for damages which have arisen as a result of incorrect storage, processing, use or application of the products delivered.

Without prejudice to the above, the following applies regarding the sale and delivery by Buyer of “*intermediates*”, as registered under the REACH Regulations (Registration, Evaluation, Authorization and Restriction of Chemicals): Buyer will store, process, use and apply the relevant products fully in accordance with the relevant REACH Regulations, and confirms that in case such product(s) is/are sold to a third party, it will warrant the same compliance by the relevant third party/parties.

### **Article 9 Liability**

No representation is made by Seller as to the usefulness, merchantability or fitness for any purpose of the products delivered, unless explicitly certified in writing by Seller. Seller's liability, either by virtue of a non-(timely) delivery of- or defects in the products delivered, shall be limited to the net invoice value of the products concerned, up to a maximum of the amount which Seller is able to recover in that respect from third parties or insurers. The same limitation of liability shall apply if Seller is held liable by Buyer by virtue of reasons other than under the sales agreement.

The above limitations of liability shall not apply with regard to gross negligence or willful misconduct of directors and supervising managers of Seller. The provisions in article 6 and article 8 shall apply without restriction. In no event Seller's liability shall include indirect or consequential damages.

### **Article 10 Transfer of title**

The title to the products delivered shall remain vested in Seller until Buyer has complied with all its obligations vis-à-vis Seller by virtue of the sales agreement and all earlier or later sales agreements with Buyer. Buyer shall provide its reasonable cooperation for all measures required by Seller to protect the products delivered. If a third party invokes or wishes to vest any right in the products, Buyer shall immediately notify Seller thereof in writing.

As long as the retention of title applies, Buyer shall only be entitled to process or re-sell the products delivered within the normal operation of its business.

After processing the products, Seller shall become (co-)owner of the products which have been formed or partly formed therefrom and Buyer shall automatically hold these on behalf of Seller.

If, notwithstanding the provisions in the preceding paragraph, Seller does not acquire the title to the products which have been formed, Buyer shall, upon the first request of Seller, provide all necessary cooperation which is required to vest a lien in the products concerned for the benefit of Seller.

If Buyer does not (timely) comply with its payment obligations vis-à-vis Seller - or if Seller has a reasonable concern that timely payment will occur - Seller shall be entitled to repossess the products delivered (including the processed products as described hereinabove) without any prior notice being required.

### **Article 11 Markings**

If the delivered products have been equipped with a (trade)mark Buyer shall only be permitted to use this mark in connection with the product filled therewith or manufactured therefrom with the express written permission of the party which has the rights to this mark.

### **Article 12 Transport equipment and packaging**

Borrowed packaging must be returned by Buyer in proper condition and without product remnants and/or other substances at the latest 3 months after delivery, carriage paid. If the packaging is not returned within such term or is damaged and/or has product remnants, the costs of replacement or repair and/or cleaning and removal respectively shall be charged to Buyer.

Packaging which has passed over to the ownership of Buyer may only be reintroduced onto the market if the company name and the logo of Seller, its (trade)marks and other indications have been made unrecognizable. Tanker vehicles or containers, which are the property of or which have been made available by Seller, must be emptied and returned immediately after arrival unless expressly agreed otherwise.

In the event of delivery in a tanker vehicle or container of Buyer such vehicle or tanker must be made available in a ready-to-fill condition. Buyer is responsible for compliance of the transport material and packaging which it has provided with the statutory requirements and standards for safe and proper transport. Seller is entitled to refuse to load or fill material and packaging which has been made available by Buyer if this material or this packaging does not comply with the said requirements and standards. In the event of such a refusal Seller shall not be liable for the consequences which arise from the delay.

### **Article 13 Hardship**

If prior to the date of delivery of the products, the circumstances that existed at the date of conclusion of the sales agreement should change to such an extent as to make it reasonably impossible for either party to fulfil one or more of its material obligations under the sales agreement, and if such change could not have been reasonably foreseen by such party, then Seller and Buyer shall jointly investigate, at the request of the injured party, whether such hardship can be removed in a manner acceptable to the non-injured party. If no agreement is reached within a reasonable time, the injured party shall be entitled to terminate the sales agreement.

### **Article 14 Incoterms**

Delivery terms shall be interpreted in accordance with the most recent Incoterms latest published by the International Chamber of Commerce, as at the date of the sales agreement. Title to the products shall pass to Buyer in accordance with article 10 hereabove.

### **Article 15 Applicable law and competent court**

Dutch law shall be applicable to all sale agreements. In the event of disputes the only competent court shall be the District Court of Amsterdam; for claims of Seller, however, the Court of the place of establishment of Buyer shall also be competent.

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