

GENERAL TERMS AND CONDITIONS

1. General

1.1 These General Terms and Conditions ("Terms and Conditions") shall apply to all offers, quotations, sales and deliveries of Arkem Chemicals B.V. to customers acting in the course of their business or profession ("Customer").

1.2 These Terms and Conditions shall form an integral part of all contracts between Arkem Chemicals B.V. and the Customer. They shall also apply to all future transactions with the Customer, even if not explicitly referred to in each individual case.

1.3 The applicability of any general terms and conditions of the Customer is hereby expressly and unequivocally rejected. If and to the extent that any such terms would nevertheless apply, the provisions of these Terms and Conditions shall prevail, unless expressly agreed otherwise in writing.

1.4 Any reference by the Customer to its own general terms and conditions, whether in purchase orders, confirmations, correspondence or otherwise, shall not be deemed accepted by Arkem Chemicals B.V.

1.5 Performance by Arkem Chemicals B.V., including delivery of goods or provision of services, shall not constitute acceptance of any general terms and conditions of the Customer.

1.6 If and to the extent that any general terms and conditions of the Customer would nevertheless apply, for whatever reason, the provisions of these Terms and Conditions shall prevail, unless expressly agreed otherwise in writing by Arkem Chemicals B.V. The Customer shall be deemed to have accepted these Terms and Conditions if it does not expressly object to their applicability in writing within a reasonable period after receipt thereof and in any event prior to the conclusion of the contract or delivery.

1.7 Any deviation from these Terms and Conditions shall only be valid if expressly agreed in writing by Arkem Chemicals B.V.

1.8 In the event of any conflict between these Terms and Conditions and any specific written agreement between the parties, the specific written agreement shall prevail.

2. Entry into contract

2.1 Customer orders are not binding for Arkem Chemicals B.V. until an order confirmation is issued to the Customer. Any approach made by Arkem Chemicals B.V. to the Customer prior to order confirmation can only be regarded as an invitation to the Customer to place an order.

2.2 The items sold are the products shown in Arkem Chemicals B.V. order confirmation. Arkem Chemicals B.V. is only obliged to deliver the products shown in the order confirmation. This also applies in the event of any discrepancy between the Customer's order and the order confirmation.

2.3 A contract shall be deemed concluded if transport documents relating to the order are provided to Customer without issuing a formal order confirmation, and the Customer does not complain or reject these documents within two business days.

2.4 Arkem Chemicals B.V. reserves the right to make minor modifications to the products or specifications, provided such modifications do not materially affect the agreed functionality.

3. Payment, interest, set-off and suspension

3.1 The full invoice amount (including VAT) must be paid in all cases. Payment shall be made on the date specified in the relevant invoice, unless otherwise agreed in writing by the parties.

3.2 If the Customer does not pay on time, statutory commercial interest is due accordance with the Dutch Law from the due date and at the interest rate current on that date.

3.3 All payment terms agreed between Arkem Chemicals B.V. and the Customer shall be deemed to be strict and final deadlines (fatale termijnen). The Customer shall be in default by operation of law (ipso iure), without any notice of default or further reminder being required, immediately upon expiry of the applicable payment term.

3.4 The Customer shall bear all reasonable costs, fees and expenses incurred by Arkem Chemicals B.V., or any third party to whom a claim has been assigned, in connection with the collection of any outstanding amounts, including costs relating to any collection procedures, whether incurred in or out of court, provided that such costs have been actually incurred and are proportionate to the amount due.

The foregoing compensation may be charged by Arkem Chemicals B.V. without further proof, subject to evidence to the contrary by the Customer. Aforementioned costs shall become due and payable immediately upon the Customer being in default.

3.5 Unless the Customer expressly designates otherwise at the time of payment, Arkem Chemicals B.V. shall be entitled to allocate any payment received from the Customer to any outstanding claim at its discretion, and in particular to the oldest outstanding invoice. Any payments received shall be applied in the following order: first to accrued interest, secondly to all judicial and extrajudicial costs, and finally to the principal amounts outstanding

3.6 If the Customer is in default with respect to any payment obligation, all outstanding amounts owed by the Customer to Arkem Chemicals B.V. shall become immediately due and payable in full, without any notice of default or further demand being required.

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3.7 In the event of the Customer's bankruptcy, suspension of payments, or any application for either, all amounts owed to Arkem Chemicals B.V. and all obligations of the Customer towards Arkem Chemicals B.V. shall become immediately due and payable in full.

3.8 The Customer shall not be entitled to set off or deduct any amounts, whether under the agreement or otherwise, against any amounts owed to Arkem Chemicals B.V., to the fullest extent permitted by applicable law.

3.9 Arkem Chemicals B.V. shall be entitled to set off any amounts owed by the Customer against any amounts owed by Arkem Chemicals B.V. to the Customer.

3.10 The Customer shall not be entitled to suspend any of its obligations. For the avoidance of doubt, any objections to the amount of an invoice shall not suspend the Customer's payment obligation.

4. Retention of title

4.1 The ownership of the goods delivered shall remain with Arkem Chemicals B.V. as security for all claims which Arkem Chemicals B.V. has or may have against the Customer arising from the current and future business relationship, until all outstanding balances have been settled in full.

4.2 Arkem Chemicals B.V.'s ownership shall extend to any new goods resulting from processing of the goods subject to retention of title. The Customer shall manufacture such new goods for Arkem Chemicals B.V. without acquiring ownership for itself and shall store them for Arkem Chemicals B.V. No obligations shall arise for Arkem Chemicals B.V. from such processing.

4.3 If the goods subject to retention of title are processed, mixed or commingled with goods of other suppliers, whose ownership rights also continue in the new product, Arkem Chemicals B.V. shall acquire co-ownership of the new product together with those suppliers, excluding acquisition of ownership by the Customer. Arkem Chemicals B.V.'s share of co-ownership shall be proportional to the invoice value of the goods delivered by Arkem Chemicals B.V. in relation to the total invoice value of all goods used in the processing, mixing or commingling.

4.4 The Customer shall keep the goods subject to retention of title separately identifiable at all times.

4.5 The Customer hereby pledges and, to the extent permitted under applicable law, assigns to Arkem Chemicals B.V., to the extent necessary in advance, all present and future claims of the Customer against third parties arising from the resale of goods subject to retention of title delivered by Arkem Chemicals B.V., including all ancillary rights (such as interest and securities), in the amount corresponding to Arkem Chemicals B.V.'s ownership share. To the extent that such claims cannot be effectively pledged or assigned in advance, the Customer hereby undertakes to pledge or assign such claims to Arkem Chemicals B.V. immediately upon their coming into existence and grants an irrevocable power of attorney to Arkem Chemicals B.V. to establish such pledge or assignment on behalf of the Customer. Where processing takes place within the framework of a contract for work and services, the corresponding claims for remuneration shall likewise be deemed pledged and, to the extent permitted under applicable law, assigned to Arkem Chemicals B.V. in accordance with the foregoing, in proportion to the value of the goods subject to retention of title used in such processing.

4.6 Arkem Chemicals B.V. hereby accepts the pledge and assignment of claims by the Customer.

4.7 As long as the Customer duly fulfils its obligations arising from the business relationship, the Customer shall be entitled to dispose of the goods subject to retention of title in the ordinary course of business and to collect the assigned receivables.

4.8 In the event of default in payment or justified doubts as to the Customer's solvency or creditworthiness, Arkem Chemicals B.V. shall be entitled to collect the assigned receivables and to reclaim the goods subject to retention of title without prior notice. The Customer shall grant Arkem Chemicals B.V. access to its premises and any location where the goods are stored, in order to enable Arkem Chemicals B.V. to repossess the goods.

4.9 Payments by check/bill of exchange are only considered fulfilled after the bills of exchange have been honoured by the Customer.

4.10 The provisions of this retention of title clause shall apply to the fullest extent permitted under the applicable law of the place where the goods are located

5. Delivery and transfer of risk

5.1 Delivery will take place as specifically agreed with the Customer, and the risk for the products is transferred to the Customer in accordance with the latest edition of INCOTERM's delivery clauses, as specified in the order confirmation.

5.2 When delivering goods produced to the Customer's specification or purchased under a special order, or delivered in bulk (tanker etc.), Arkem Chemicals B.V. has the right to deliver +/- 10% of the agreed amount.

5.3 If no Incoterm has been specified in the order confirmation, delivery shall be deemed to take place ex works.

5.4 Arkem Chemicals B.V. shall be entitled to deliver in instalments. Each instalment shall be treated as a separate delivery.

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6. Delay and deficiencies

6.1 Unless otherwise agreed, delivery postponed by up to two weeks from the agreed delivery date is regarded as delivery on time. If delivery is further delayed, Arkem Chemicals B.V. liability is limited to 10% of the invoice value of the delayed products up to a maximum of Euro 50.000.

6.2 If the products delivered are deficient, Arkem Chemicals B.V. can choose to rectify or give a proportional discount. Only if Arkem Chemicals B.V. neither takes remedial action nor gives a proportional discount the Customer will be entitled to claim compensation in respect of deficiencies.

6.3 Arkem Chemicals B.V. is not responsible for losses or costs, including loss of production, profits or any other indirect losses, incurred by the customer due to late or deficient delivery or wrong use.

6.4 Arkem Chemicals B.V. is not responsible for losses or costs due to differences in the color, hue or lustre of finished products that consist in part of, or are mixed with the products delivered by Arkem Chemicals B.V.

6.5 Delay in delivery and deficiencies in the products shall not entitle the Customer to terminate or rescind the agreement. In such cases, the Customer shall only be entitled to the remedies expressly provided for in this Article 6.

6.6 The Customer shall not be entitled to terminate or rescind the agreement in respect of any other failure by Arkem Chemicals B.V., unless Arkem Chemicals B.V. has first been given a written notice of default specifying the failure and granting a reasonable period to remedy such failure, and Arkem Chemicals B.V. has failed to cure such failure within such period. Any right to claim damages shall be subject to the limitations set out in Article 8.

7. Duty of inspection and claim deadlines

7.1 The Customer shall properly inspect the goods upon delivery. Visible or readily ascertainable defects or deficiencies incurred during transport must be notified to the carrier on delivery and in written to Arkem Chemicals B.V., the buyer must ensure that the carrier acknowledges these as well. The Customer can make no later claim for defects and deficiencies that the Customer could have ascertained by examining the delivered goods or that are not reported to the carrier.

7.2 The Customer forfeits all remedies in respect of delay or deficiency if a written claim is not received by Arkem Chemicals B.V. within 5 days of receipt. In case of a visible defect or in the case of a latent deficiency or delay, within 5 days of the date when the customer discovered, or should have discovered, the deficiency or delay.

7.3 The Customer forfeits in any case all remedies if no claim is made within 6 months of the time of delivery (Article 5), unless such period would be unreasonably short under the circumstances.

7.4 Any use, processing or resale of the products after delivery shall constitute unconditional acceptance of the products.

7.5 The Customer bears the burden of proof that any defect existed at the time of delivery.

8. Liability and indemnification

8.1 The total liability of Arkem Chemicals B.V. arising out of or in connection with the contract, whether in contract, tort or otherwise, shall in all cases be limited to the higher of:

- (i) EUR 50,000; or
 - (ii) 100% of the invoice value of the relevant products, per event or series of related events, regardless of the legal basis of the claim.
- The value of the products delivered shall always be deducted from any compensation.

8.2 This Article 8 shall apply to all liability of Arkem Chemicals B.V., except to the extent that liability is specifically regulated in Article 6, in which case Article 6 shall prevail.

8.3 Arkem Chemicals B.V. shall not be responsible for any indirect or consequential losses, including loss of production, loss of profit or other economic losses. Nor shall Arkem Chemicals B.V. be liable for any loss, costs or expenses associated with the return, recall, repair, replacement, destruction or withdrawal of defective products or products incorporating such products.

8.4 The Customer shall indemnify and hold Arkem Chemicals B.V. harmless against any and all third-party claims arising out of or in connection with the use, processing, resale or application of the products.

8.5 Arkem Chemicals B.V. shall not be responsible for any damage caused by the products after they have been forwarded by the Customer to a destination different from the original delivery place or incorporated into other products and supplied to third parties.

8.6 Arkem Chemicals B.V. shall not be liable for any damage resulting from failure by the Customer to comply with applicable laws, regulations or industry standards in handling or using the products.

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8.7 Nothing in these Terms and Conditions shall exclude or limit any liability which cannot be excluded or limited under applicable law, including liability arising from wilful misconduct (opzet) or gross negligence (grove schuld) of Arkem Chemicals B.V.

9. Force majeure

9.1 In the event of force majeure, Arkem Chemicals B.V. is entitled to terminate the agreement in whole or in part without liability to the customer, suspend its obligations for the duration of the force majeure event, or adjust its obligations, including delivery periods.

9.2 Force majeure exists if Arkem Chemicals B.V. or its subcontractor and/or carrier is prevented from fulfilling the agreement due to war, civil war, rebellion, terrorism, government restrictions, import or export bans, blockades, strikes, work stoppages, natural disasters including, but not limited to, earthquake, storm flooding, extensive flooding, tornadoes, volcanic eruptions, or similar, which could not have been foreseen by Arkem Chemicals B.V. at the time the agreement was entered into.

9.3 Force majeure shall also mean any circumstance beyond the reasonable control of Arkem Chemicals B.V., whether or not such circumstance was foreseeable at the time of entering into the agreement, which prevents or materially hinders the performance of its obligations.

9.4 Force majeure shall in any event include, but not be limited to, failure or delay of suppliers, transport issues, energy shortages, interruptions in supply chains, increases in costs of raw materials or energy, and any other circumstances affecting the normal course of business. The occurrence of such circumstances shall not be attributable to Arkem Chemicals B.V.

9.5 If a force majeure event affects only part of Arkem Chemicals B.V.'s obligations, Arkem Chemicals B.V. shall be entitled to perform its obligations to the extent possible.

9.6 The occurrence of a force majeure event shall not give rise to any right to claim damages on the part of the Customer.

10. Governing law and jurisdiction

10.1 The contract between Arkem Chemicals B.V. and the Customer, including the interpretation and fulfilment of these Terms and Conditions, shall be exclusively governed by Dutch Law.

10.2 The applicability of the United Nations Convention on Contracts for the International Sale of Goods (CISG) is expressly excluded.

10.3 All disputes arising out of or in connection with the contract shall be exclusively submitted to the competent court of the Arkem Chemicals B.V.'s place of business.

10.4 If a third party brings a claim against Arkem Chemicals B.V. in connection with the resale or use of the products, the Customer shall, at the Arkem Chemical B.V.'s request, cooperate in such proceedings and, where legally possible, submit to the jurisdiction of the court seized of that dispute.

11. Miscellaneous

11.1. Arkem Chemicals B.V. shall be entitled at all times to assign, transfer or pledge any of its claims against the Customer to a third party. The Customer hereby consents in advance to such assignment or pledge. Arkem Chemicals B.V. shall further be entitled to transfer all or part of its rights and obligations under any agreement with the Customer to a third party. The Customer hereby provides its prior cooperation to such transfer within the meaning of Article 6:159 of the Dutch Civil Code. The Customer shall provide all reasonable cooperation required in connection with any assignment or pledge, including providing information and confirmations. The Customer shall be obliged, upon first request, to pay any assigned or pledged receivable to the relevant third party.

11.2 The Customer shall not be entitled to assign, transfer, pledge or otherwise encumber any of its rights or obligations under any agreement with Arkem Chemicals B.V. without the prior written consent of Arkem Chemicals B.V.

11.3 The Customer waives any right to nullify or annul the agreement on the basis of error (dwaling). The Customer acknowledges that it has sufficiently informed itself about the products and the terms of the agreement.

11.4 If any provision of these Terms and Conditions is void, invalid, unenforceable or is annulled, the remaining provisions of these Terms and Conditions shall remain in full force and effect. The provision concerned shall, as regards its content and purpose, be interpreted and applied as far as possible in a manner that has a corresponding legal and economic effect, so that it may still be relied upon to the fullest extent permitted by applicable law.