

## 1. Scope

- (a) These General Sales Terms and Delivery Conditions ("Terms") shall apply to all product ("Product") sales of KECK SCHMIERSTOFFSERVICE GmbH & Co. KG ("Seller") to customers ("Buyer") unless the Seller and Buyer (together "Parties") and each singularly "Party") have agreed otherwise in writing. Any Buyer's terms and conditions or deviations are hereby expressly rejected.
- (b) The following terms and conditions shall apply only where the Buyer is a merchant (according § 14 German Civil Law Code [Bürgerliches Gesetzbuch] – BGB), a public entity or a special fund under public law.
- (c) The invalidity of one or more of the following clauses does not affect the validity of the remaining clauses.

## 2. Quality, Quantities

- (a) Standard Product quality is agreed. The quality of the Products shall be mainly determined by the written agreement of Seller and Buyer. Where no quality specification has been agreed or is missing the quality determination in the Seller's sales confirmation shall apply. Any quality characteristics of any samples or examples, analysis details or specifications are illustrative and not binding. They shall not apply unless agreed in writing.
- (b) Quantities shall be determined by weighing or measuring at the point of departure (refinery, storage facility etc.). In case of delivery in a tank truck the quantity displayed at its measuring device shall be binding, unless the Buyer proves that they are incorrect.

## 3. Transfer of Risk

- (a) The risk of accidental destruction and accidental deterioration or loss [Gefahr des zufälligen Untergangs und der zufälligen Verschlechterung] of the Products shall pass to Buyer upon delivery of the Products. For agreements of sale by dispatch [Versendungskauf] involving the carriage of goods, the risks pass on upon handover to the carrier, transport agents or other person nominated to perform the delivery.
- (b) Buyer's default of the acceptance [Annahmeverzug] of the goods shall be treated in the same way as a handover in clause (a) above.

## 4. Delivery Schedules and Deadlines, Problems with Delivery

- (a) Seller's delivery schedules are approximate schedules. Partial deliveries shall be possible where Buyer can make use of the partial deliveries, Seller ensures the complete delivery amount of Product and Buyer does not incur or is not required to bear significant additional costs.
- (b) Seller shall not be liable for delivery delays, as long as they have been caused by circumstances that were not foreseeable [unvorhersehbare Umstände] at the time of the contract conclusion, that are beyond the Seller's control (and have not been caused by Seller's intent or negligence [Vorsatz oder Fahrlässigkeit], e.g. war, terrorist attacks, cyber incidents, natural disasters, illness, pandemics, epidemics, industrial actions including strikes or lawful lockouts, governmental acts including quarantine restrictions or embargoes ("Force Majeure").
- (c) In cases of Force Majeure performance shall be suspended for so long as the event of Force Majeure is continuing and taking into account a reasonable phase-out time. The Seller is obliged to inform the Buyer of the occurrence of any Force Majeure event as soon as the Seller has notice or has learned of the event. In case of a Force Majeure event exceeding 4 (four) consecutive calendar weeks either Party shall have the right to immediately terminate the contract.

5. Aside from Force Majeure as defined in clause 4 (b) the Seller shall not be liable for any delivery delays occurring as a result of Seller's failure through no fault of his own to receive Product or correct Product or for whatever reason despite the conclusion of a congruent cover transaction (Deckungsgeschäft). Seller shall provide Buyer with prompt notice of any incorrect or delayed delivery from his Supplier. Seller shall be obliged to assign any claims against his suppliers at the Buyer's request. Acceptance

- (a) If Buyer fails to take delivery of Product fully or partly Seller

may place the corresponding quantities in storage at Buyer's sole costs. Following expiration of any applicable deadline for Buyer's acceptance of goods, Seller shall have the right to terminate the contract in part or in full and demand compensation instead of performance [Schadensersatz statt der Leistung].

- (b) Buyer guarantees that the fueling, transport and storage equipment used for collection of Product are in perfect condition and are operated in compliance with all public and civil law safety requirements applicable.
- (c) The Buyer shall comply with all applicable legal requirements when collecting the Products especially with regards to the storage and transport of the Products. Furthermore, Buyer must also follow the Seller's or the terminal operator's instructions, in particular safety and conduct regulations at the collection location.

## 6. Prices

- (a) Unless otherwise agreed, the prices shall be exclusive of VAT, energy tax, customs and contributions to the German National Petroleum Stockpiling Agency (Erdölbevorratungsverband) carbon tax, green house gas quot or similar fees as well as fiscal ancillary services, if any, legally owed. Discharge and other costs incurred in addition to the charge, even in case of carriage free delivery are to be borne by Buyer.
- (b) In case of a ship transport any surcharges due to high or low tide, ice drift or other reasons beyond Seller's reasonable control shall be borne by Buyer. This shall also apply for any demurrage caused by exceeding the agreed lay time. Steam for discharge purposes and hoses necessary to unload the Products or other equipment are to be provided by Buyer at his sole expense.
- (c) In case any changes in transport costs, stock - or handling fees or changes caused by additional, higher or lower taxes or other fees on the Products or changes of Seller's purchase costs due to state action in any supplying country, after the conclusion of the agreement, prices shall be adjusted accordingly. The Seller shall inform the Buyer in writing about any price increases. In case of any price increase of more than 3 (three) % according to these reasons, the Buyer shall be entitled to rescind from the agreement. Buyer shall give Seller written notice of rescission within 7 (seven) days from publication of the price increase.

## 7. Defects

- (a) In case of a defect Seller may in its sole discretion, choose, either to repair or replace the goods. If the repair or replacement of goods is not possible, Buyer shall have the right to demand a reduction of the purchase price or terminate the agreement. In case of slight defects, however, the Buyer shall not be entitled to termination.
- (b) Buyer is obliged to examine the Products forthwith after delivery and inform Seller immediately of any defects. If any defect appears subsequently to delivery (concealed defect) [verdeckter Mangel] it must be reported forthwith following its discovery.
- (c) In case the Products are mixed / comingled [Verbindung/Vermischung] with other goods and are no longer distinguishable, the Buyer shall have no right to raise any claims for defects in the absence of proof that the defect is attributable to the Product.
- (d) To examine any defect the Seller and Buyer agree that for any sampling, the analysis must be based on at least 1 (one) liter or one kilogram of the respective Products and shall be sampled either in the presence of Seller's representative or witnessed by an expert appointed by the Seller.
- (e) Buyer shall secure any of the Seller's rights towards the transport agents (e.g. haulers) and shall immediately take the steps necessary to secure evidence.

## 8. Liability

- (a) Supplier's liability is excluded apart from cases of willful misconduct [Vorsatz] and gross negligence [grobe Fahrlässigkeit].
- (b) The above mentioned liability restriction in subparagraph 8. (a) of these Terms does not apply in the event of Buyer's claims derive from product liability [Produkthaftung] or an injury of life, limb or

health [Schäden an Leib, Leben oder Gesundheit] attributable to Seller or where essential contractual obligations [wesentliche Vertragspflichten] (obligations whose compliance is essential for due performance of the agreement and on whose compliance the Buyer regularly relies or is allowed to rely) are breached. In this case the liability is only limited to foreseeable damages that are typical for this kind of agreement [vorhersehbare und vertragstypische Schäden].

- (c) These limitations of liability shall apply as well to breaches of obligations by the Seller's legitimate representatives [gesetzliche Vertreter], agents [Erfüllungsgehilfe] or subcontractors [Verrichtungsgehilfe] and their private liability.

## **9. Transport, Storage**

- (a) If containers (such as e.g. tank rail cars) are lent or rented from the Seller to the Buyer, Buyer shall be liable until said containers are returned to the location determined by Seller. The containers may only be used for the Products which have been supplied by the Seller.
- (b) Buyer is obliged to immediately empty the containers that have been provided by the Seller to him and for their return carriage free and at no charge to the Seller's return-address. Rent for tank rail cars shall be calculated from the date of filling to the date of return of the rail cars to the return station determined by Seller at the daily rates valid at the time of conclusion of the contract, if not expressly agreed in writing otherwise.
- (c) Even where Seller and Buyer agree on a rent-free transport and return of the containers provided by Seller, the customary daily fees in the line of business for that kind of container shall apply if the return period is exceeded.
- (d) In case of incomplete emptying of the Seller's container(s) no refund shall be made for any remaining Product residue. Emptying and cleaning costs are to be borne by Buyer.
- (e) In case of delivery to containers provided by Buyer the Seller shall not be obligated to examine their suitability and cleanliness. Buyer shall be responsible for any contamination due to unclean containers unless the Buyer can prove that the Seller is responsible for the contamination.

## **10. Payments, Assignment, Offsetting, Retention**

- (a) Claims of the Seller shall be due, if not agreed otherwise, immediately and apart from that within the agreed payment period. The payment date shall be specified on the invoice.
- (b) The invoice value date shall be at the due date the latest. Discounts or other deductions from the agreed purchase price shall not be applicable. If direct debit payment via SEPA is agreed the pre-notification period shall be reduced to 1 (one) day.
- (c) If payment date is exceeded, Seller shall be entitled (without prior notice) to charge interest at a rate of 9 (nine) percentage points above the base rate [Basiszins] in addition to any and all his legal rights.
- (d) Seller shall have the right to unilaterally demand immediate payment prior to maturity for all open invoices on: if the Buyer culpably (i) fails to comply with the agreed payment terms for previous deliveries, (ii) the agreed credit limit is exceeded or (iii) the buyer has breached one of the obligations arising from the agreed retention of title [Eigentumsvorbehalt] (Clause 11). In the above mentioned cases Seller shall be also entitled to terminate the agreement in part or in full on notice and to demand compensation from Buyer in lieu of performance [Schadensersatz statt der Leistung].
- (e) Buyer shall have no right to assign claims against Seller without Seller's prior written consent.
- (f) Buyer may only offset claims which are undisputed or which are legally enforceable. The Seller reserves the right to offset Buyer's claims against any claims of Seller's affiliates (defined according to § 15 of the German Stock Corporation Act) [verbundene Unternehmen], including but not limited to the parent company, sister companies and subsidiary companies.
- (g) Buyer may only assert rights of retention resulting from the same contractual relationship where the claims are undisputed or legally binding.

## **11. Retention of Title**

- (a) Title to the Products shall remain with Seller until final payment has been received by Seller. Final payment means Buyer has paid any and all receivables due and owing resulting from the Seller's and Buyer's business relationship in general.
- (b) Buyer agrees to safeguard the Products with the due care and attention of a reasonably prudent market participant. Buyer shall inform Seller forthwith about any third party rights or claims or other encumbrances on the property and, if applicable, shall take measures to secure Seller's rights
- (c) Buyer shall have the right to resell the goods in the normal course of business as long as Buyer properly fulfils his obligations towards Seller. Besides the case where of § 354a German Commercial code [Handelsgesetzbuch] (HGB) applies, the resale of Product is not permissible where Buyer has agreed a prohibition of assignment with Buyer's customer. Buyer shall assign to Seller all receivables and rights deriving from the sale to its customer. Where Buyer and his customer agree to the assignment, and Buyer has a current account relationship with his customer, the amount of the gross invoice in the current account demand shall be assigned to Seller and after successful balancing the gross invoice shall be replaced by the acknowledged balance, which shall then be assigned.
- (d) Seller authorizes Buyer subject to revocation, to collect the assigned receivables in the course of normal business. Seller may not collect the assigned claims as long as the Buyer fulfills its payment obligations towards the Seller, remains current in its payments, no application for an insolvency proceeding is raised and the Buyer did not otherwise in default or breach of the agreement. In case any of the before mentioned cases occurs the Seller can request the Buyer to immediately disclose the assigned receivables and their debtors as well as to provide Seller with all necessary information and the respective documents for collecting the receivables and to inform debtors of the assignment and to inform the Buyer's customers. Furthermore, the Seller shall have the sole right to revoke the Buyer's authorization to collect the assigned receivables.
- (e) If the Product(s) is (are) mixed or comingled with any third party goods, Seller will alone or jointly own the new goods in the ratio of the gross invoice value of the Product(s) subject to retention of title to the other goods. If the goods are mixed or comingled with other goods of the Buyer, Seller will be entitled to the co-ownership of the mixed goods in the ratio of the gross invoice value of the other goods to the goods subject to the retention of title, which are kept for the Seller by the Buyer.
- (f) Insofar as the value of assigned receivables exceeds Seller's total payment demands by more than 10 (ten) %, Seller will release the corresponding proportion of receivables upon written request from Buyer. The realizable value or nominal value of the receivables shall be the basis for the valuation of securities.

## **12. Statute of Limitation**

Buyer's claims resulting from quality defects or defects in title will become time-barred 1 (one) year from the date risk in Product has been transferred. Any claims for injuries, loss of life, damages to limbs or health [Schäden an Leib, Leben oder Gesundheit], as well as damages caused by Seller's intent [Vorsatz] or gross negligence [grobe Fahrlässigkeit] or resulting from product liability [Produkthaftung] shall be exempted from above mentioned time limitation and be subject to the respective applicable statutory time bars.

## **13. Tax Warranty of the Buyer**

- (a) Buyer warrants to Seller an irrevocable guarantee [unwiderrufliche Garantie] that both Buyer as well as subsequent Buyer's customers or purchasers shall comply with and will not breach any tax and / or disposal provisions, applicable to delivery of tax-exempt or tax-privileged products under Buyer's permit [Erlaubnisschein] or general permission license [allgemeine Erlaubnis].
- (b) Buyer warrants that it will follow the applicable energy tax related procedure regulations and time limits then in effect for excise movements of energy products under duty suspension [Steueraussetzungsverfahren]. The Buyer shall inform the Seller immediately of any changes to the energy product's destination or if the goods have been split during the movement under duty

suspension. In these cases, Buyer shall be obliged to procure that the fiscal consignee [steuerliche Versender] duly receives all necessary information to be able to properly end the movement under duty suspension. These obligations also apply to changes of the destination or splitting of the goods carried out by the Buyer's customer during the movement of energy products under duty suspension.

- (c) For VAT-exempted deliveries within the European Union [umsatzsteuerfreie innergemeinschaftliche Lieferungen] (Buyer's pick up) at all loading points within the European Territory (according to Art. 138 EU Directive on the VAT System [Mehrwertsteuersystemrichtlinie] (MwStSystRL) Buyer warrants that the Products supplied shall be forwarded to an EU Member State other than that of the loading facility. The Buyer shall provide the Seller at the time of the order with a VAT-identification number that can be used for this purpose and which shall be legally valid [gültige zu verwendende Umsatzsteuer-Identifikationsnummer] at the time of the delivery. The Buyer warrants for the case of a VAT-free export delivery (Buyer's pick up) that the Products supplied shall be forwarded from the loading facility within the European Territory to a third country (according to Art. 146 MwStSystRL and that he is considered a foreign purchaser according to the applicable local VAT regulations). In all cases the Buyer will provide the Seller with undue delay [unverzüglich] all information and evidence necessary for tax assessment and processing according to the applicable local VAT or comparable regulations.
- (d) In the event of a warranty breach Buyer shall be obliged to indemnify and hold Seller harmless from all third party claims, in particular tax claims, customs duties, other fiscal dues and tax penalties to the full extent on first demand. Buyer shall also indemnify and hold Seller harmless from all costs arising from defense against third party claims.

#### **14. Compliance and Sanctions Provisions**

- (a) Each Party undertakes to comply with all national or international sanctions, export control and anti-corruption regulations applicable at the location of their respective place of business and the respective place of performance considering all applicable anti-boycott rules. Where performance of the agreement is definitively determined to be illegal, either Party shall have the right to terminate the agreement. Where the agreement may be performed with the approval or dispensation or order from the respective authorities, the Party affected by the prohibitions shall inform the other Party immediately and apply for such an approval with the relevant governmental authority. If the application is rejected or not approved within 4 (four) weeks of submission, each Party shall have the right to terminate the agreement.
- (b) Each party warrants that neither it nor any representative or agent acting on its behalf in connection with this contract is subject to any applicable trade restrictions.
- (c) Each party warrants that no person or company subject to applicable trade restrictions will benefit directly or indirectly from any part of the business or transactions governed by this contract.
- (d) Beyond clause 14. (a) to (c) of these General Sales Terms and Delivery Conditions insofar as any laws, regulations, orders, enactments, administrative decrees, claims, requests or requirements of the United Nations, the EU, any EU-member state, the UK, the United States or other countries or international organizations declare themselves applicable and prohibit the performance of the agreement and as a result either Party or their respective affiliate is exposed to potential fines or sanctions, the Parties considering any applicable anti-boycott rules agree that they will allocate the respective burdens as follows:
- The affected Party will inform the other Party immediately about the respective regulation and the imminent sanction.
  - The affected Party shall have the right to suspend the sanctioned performance (payment or other service) until the sanction is lifted.
  - If the performance obstruction continues until the end of the agreed compliance period or can be reasonably expected to continue beyond the agreed compliance period, either Party shall have the right to terminate the

agreement. Any and all payment obligations deriving from Product delivered prior to performance obstruction shall remain in effect and suspended pursuant to the preceding paragraph. Applicable interest charges shall remain unaffected.

- The non-affected Party shall have the right to withhold or suspend performance during the suspension of the affected Party's performance.

#### **15. Data Protection**

- (a) Within the scope of the business relationship with the Buyer, the Seller processes not only company-related data but also personal data of the buyer's employees or other persons who work on the Buyer's side in cooperation with the Seller.
- (b) The Seller shall only process the data to the extent necessary (i) within the scope of its legitimate interest in the proper execution of business correspondence and the processing of the contractual relationship (e.g. names, telephone numbers, e-mail addresses, communication content) (Art. 6(1)(f) GDPR), (ii) to fulfil tax, commercial and other legal accounting, reporting and documentation obligations (Art. 6(1)(c) GDPR), (iii) to protect its legal interests, e.g. for the assertion, exercise or defence of legal claims (Art. 6(1)(f) GDPR), (iv) for the purposes of its own advertising or for advertising purposes for specifically named affiliated companies, provided that the buyer as the addressee of such advertising has expressly consented to this in advance and the consent has not been revoked (Art. 6 para. 1 sentence 1 lit. a) GDPR).
- (c) The Seller processes personal data in accordance with the statutory provisions and its data protection information available at <https://www.mbenergy.com/global/en/data-protection/>.

#### **16. Amendments / Withdrawal or Termination**

- (a) If, after conclusion of the contract, applicable laws and/or regulations, including sustainability requirements and/or requirements or the validity of an applicable certification system, change so significantly that this has a material effect on the Seller's performance of the contract, the Buyer undertakes to negotiate with the Seller regarding the amendment of the contract. The Seller shall notify the Buyer in writing of the required adjustment to the contract within two (2) weeks of becoming aware of the changes.
- (b) If the parties do not agree on the adjustment of the contract within 30 (thirty) days of notification, or if this is unreasonable for the Seller, the Seller shall be entitled to withdraw from the contract. This right must be exercised within two (2) weeks of the expiry of the negotiation period by means of a written declaration to the Buyer.
- (c) The parties are not entitled to assert claims for damages resulting from or in connection with the adjustment or withdrawal or termination, applying the framework agreed in clause 8.
- (d) If these General Sales Terms and Delivery Conditions provide for a contractual right of withdrawal, the right of termination shall replace the right of withdrawal for continuing obligations.

#### **17. Miscellaneous**

- (a) The place of performance for the Seller's deliveries shall be the seat of the Seller's sales department as set out in the contract confirmation. The place of payments and other performances of Buyer is the seat of the Seller.
- (b) If the Buyer is a merchant or a public entity or a special fund under public law the Parties agree that all legal disputes arising from agreements subject to these Terms apply shall be subject to the courts in Hamburg (Mitte), Germany. The Seller shall also be entitled to commence proceedings in the Buyer's jurisdiction of incorporation.
- (c) The law of the Federal Republic of Germany shall apply excluding its conflict of law rules [Kollisionsregelungen des internationalen Privatrechts].
- (d) The United Nations Convention on Contracts for the International Sale of Goods (CISG) is expressly excluded.
- (e) Any reference to INCOTERMS without any year published shall be deemed to mean the version of INCOTERMS in effect at the time of deal conclusion.