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## General Terms and Conditions of Sale and Delivery

### BruggemannChemical U.S., Inc.

**Date: January 1, 2017**

#### **I. General**

- 1.1 The following general terms and conditions of sale and delivery (hereinafter “General Terms and Conditions”) shall apply to all sales by BruggemannChemical U.S., Inc. (hereinafter “Seller”) of products to a purchaser (hereinafter “Buyer”), and no understanding, agreement, term, condition, or trade custom at variance herewith shall be binding on the Seller. Terms and conditions used by the Buyer shall not apply and shall not become a part of the contract even if the Seller makes delivery of the products to the Buyer with the knowledge that there are terms and conditions of the Buyer which contradict or depart from these General Terms and Conditions without expressly objecting to them.
- 1.2 Departures from and/or additions to these General Terms and Conditions are only valid with the Seller’s express written confirmation, and any such changes shall apply only to the respective transaction for which they were made.
- 1.3 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller.

#### **II. Offer and Acceptance of Contracts**

- 2.1 No quotations issued by the Seller shall be binding with regard to price, quantity and/or terms of delivery.
- 2.2 A contract shall become binding and enforceable when either: (a) the Seller sends written confirmation to the Buyer after receipt of the order; or (b) the Seller delivers the products to the Buyer.
- 2.3 The Seller shall retain all title and copyright in illustrations, drawings, calculations and other marketing materials. Before distributing such information to third parties, the Buyer shall obtain the prior written consent of the Seller.
- 2.4 The Seller does not make any representations or warranties as to the completeness or accuracy of any advice provided to the Buyer, and the Seller shall not be liable for any such advice given. Nothing herein shall be deemed to constitute a consultation agreement. The Buyer shall be solely responsible for carrying out the necessary tests and inspections of the product and in verifying the suitability

of the product and its compliance with any laws or regulations for the procedures and purposes intended by the Buyer.

- 2.5 The Buyer shall provide the Seller, in writing, with information about the current national technical standards applicable to the product. If the Buyer fails to do so, the Buyer may not hold the Seller responsible for non-compliance with these standards and shall indemnify, defend and hold the Seller harmless from and against all liabilities, costs, damages, and claims, unless the Seller has violated the aforesaid standards intentionally or by gross negligence.
- 2.6 No order which has been accepted by the Seller may be cancelled by the Buyer except with the prior written consent of the Seller and on the condition that the Buyer shall indemnify the Seller in full against all loss (including loss of profit), costs (including the cost of all labor and materials used), damages, charges and expenses incurred by the Seller as a result of such cancellation.

### **III. Prices**

- 3.1 All prices are Ex Works plus packaging costs, unless otherwise agreed to in writing by the Seller. The sale of all products by the Seller to the Buyer shall be governed by the Incoterms of the International Chamber of Commerce 2010 (the "2010 Incoterms").
- 3.2 If the period of time between the order and the delivery of the product exceeds ninety (90) calendar days, then the Seller reserves the right, by giving notice to the Buyer at any time before delivery, to increase the price of the products by up to ten percent (10%) if the Seller's costs of production have increased during such period. Such increase may also apply when delivery of the products has been delayed as a result of any instructions of the Buyer or failure of the Buyer to give the Seller adequate information or instructions. If the Seller needs to increase the selling price of the products by more than ten percent (10%) and the Buyer does not agree to such increase, then the Seller may either: (a) increase the price by up to a maximum of ten percent (10%); or (b) cancel the order. In the case of the aforesaid cancellation, the Buyer shall not be entitled to any claims for damages.

### **IV. Terms of Payment**

- 4.1 Unless otherwise agreed to in writing by the Seller, net payment of invoices is due within (a) thirty (30) calendar days of receipt by the Buyer of the invoice for the applicable products for sales in North America, and (b) forty-five (45) calendar days of receipt by the Buyer of the invoice for the applicable products for sales in South America.
- 4.2 Unless otherwise agreed to in writing by the Seller, any discounts or rebates granted by the Seller shall only apply to the respective order for which such discounts or rebates were agreed to in writing.

- 4.3 All payments shall be made by either check or bank transfer. Any transfer costs shall be borne by the Buyer. Payment by bill of exchange may only be made after obtaining the prior written consent of the Seller.
- 4.4 The Buyer shall automatically be in default of payment ten (10) calendar days after the due date (i.e., ten (10) calendar days after receipt by the Buyer of the applicable products). In the event of default of payment, the Seller is entitled to demand interest on the overdue payment at a rate of four percent (4%) above the prime lending rate of interest as published in the *Wall Street Journal* on the date of the applicable invoice. The Seller reserves the right to assert further claims over and above this amount. If payment by installments has been agreed to in writing by the Seller, and if the Buyer defaults on the payment of any installment, the entire balance of all unpaid installments shall be due for payment immediately.
- 4.5 The Buyer shall not have the right to set off against any amounts, which may become payable to the Seller under the contract or otherwise, that the Seller may allegedly or in fact owe the Buyer, whether arising under the contract or otherwise, unless otherwise expressly agreed to in writing by the Seller.
- 4.6 If, in the Seller's sole judgment, the financial condition of the Buyer deteriorates after the Seller's acceptance of the contract or if a deterioration only becomes noticeable once the contract has been accepted by the Seller such that the risk of nonpayment by the Buyer is increased, the Seller may, subject to any further claims, cancel any previously accepted orders or make further deliveries dependent on advanced payment or the grant of other securities, at the Seller's sole option. The same shall apply in the event of any default in payment.

## V. Delivery Dates and Deadlines

- 5.1 Delivery dates and deadlines are only binding if the Seller has confirmed them expressly in writing.
- 5.2 Observance of the delivery dates and deadlines by the Seller is subject to the Buyer having fulfilled all of its obligations hereunder. In particular, the Seller may delay shipment of any order by the Buyer if any payments on the Buyer's account are past due.
- 5.3 Observance of the delivery dates and deadlines by the Seller is also subject to the Seller having been supplied by the Seller's suppliers in a correct and timely manner. Should it become apparent that delay is likely, the Seller shall notify the Buyer as soon as practicable.
- 5.4 The delivery time shall be deemed to have been met if, by expiry of such date, the Seller has notified the Buyer that the product is ready for shipment.

- 5.5 If the Buyer is in default of acceptance or if the Buyer requests a delay in shipment of the product, then the Seller is entitled to store the product at the expense and risk of the Buyer. The Buyer shall pay to the Seller all reasonable costs incurred by the Seller for such storage, handling and administration. The Seller reserves the right to assert further claims over and above such costs.

## **VI. Force Majeure**

- 6.1 In the event that either party is unable to perform its obligations under the contract by reason of a cause beyond the reasonable control of such party, including, but not limited to, acts of state or governmental action, orders, legislation, regulations, restrictions, priorities or rationing, riots, breakdown of machinery or other mechanical failure, disturbance, acts of terrorism, war (declared or undeclared), strikes or lockouts, embargo, fire, earthquake, flood, hurricane, typhoon, volcanic eruption or activity, explosion and accident, acts of God and unusual weather conditions, then all rights and obligations of the parties under the contract shall be suspended (other than payment obligations and any other unaffected rights or obligations which accrued prior to the occurrence of the force majeure event), provided that the party affected by the force majeure event shall take commercially reasonable steps to avoid or limit its effects on the performance of that party's obligations under the contract. Impediments and delays arising from the due and proper compliance with public obligations in connection with any rules and regulations promulgated by the United States Environmental Protection Agency shall also be considered to be a force majeure event. If a force majeure event lasts for more than sixty (60) calendar days, each party to the contract is entitled to rescind the contract.

## **VII. Transfer of Risk of Loss, Partial Delivery**

- 7.1 As specified in Section 3.1, sales of the products hereunder shall be governed by the 2010 Incoterms and shall be delivered Ex Works. Consequently, unless otherwise agreed to in writing by the Seller, the risk of loss shall be transferred from the Seller to the Buyer at the facility of the Seller. If partial deliveries are made, this shall also apply to the respective partial delivery.
- 7.2 The Seller may deliver the products in partial shipments and the Buyer shall not be entitled to deny acceptance thereof. If the Buyer, in breach of its obligations, fails to take delivery of any partial shipment, then the Seller shall be entitled to treat the contract as terminated due to a breach by the Buyer. Without prejudice to any other damage suffered by the Seller, all costs incurred by the Seller as a result of such breach, whether storage costs or transport costs, shall be borne by the Buyer.
- 7.3 The Seller will not accept the return of any packaging from the Buyer.

## VIII. Reservation of Security Interest

- 8.1 Until full payment has been made by the Buyer for the product, the Seller shall have a first priority security interest in the product sold to the Buyer. These General Terms and Conditions shall serve as the security agreement reserving in the Seller a security interest until full payment of the purchase price. Upon the Seller's request, the Buyer shall execute and deliver to the Seller financing statements further evidencing the Seller's security interest. The Buyer authorizes the Seller to file a financing statement or statements relating to the product, without the Buyer's signature thereon, as the Seller may deem appropriate and appoints the Seller as the Buyer's attorney-in-fact for the limited purpose of executing (without requiring the Seller to do so) financing statements in the Buyer's name and performing such other acts which the Seller deems appropriate to perfect and continue its security interest and to protect and preserve the product. In the event that the Buyer defaults in making any payment due to the Seller, the Seller may exercise all of the rights of a secured party as provided for by the Uniform Commercial Code (as from time to time in effect in any applicable jurisdiction), including, but not limited to, entering the place where the product is located, with or without legal process, and repossessing the product.
- 8.2 The Buyer shall treat the product supplied with due care; in particular it shall insure the product sufficiently against fire, water and theft at replacement value at the Buyer's own cost. The Buyer shall name the Seller as the loss payee or additional insured with respect to insurance covering all products sold by the Seller to the Buyer, until full payment has been made by the Buyer for such products.
- 8.3 The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the products in which the Seller reserves a security interest, but if the Buyer does so, the Buyer shall notify the Seller in writing and all monies owing by the Buyer to the Seller shall (without prejudice to any other right or remedy of the Seller) forthwith become due and payable.

## IX. Defects in Material

- 9.1 The Buyer shall inspect the products immediately after receipt, provided this is possible, in the usual course of business and shall inform the Seller in writing of any obvious defects without delay, but in no event later than seven (7) calendar days after delivery. The Buyer shall notify the Seller in writing of any defects, which cannot be recognized in the context of its due course of business, without undue delay, but in no event later than seven (7) calendar days after discovery of the defect. If delivery is not refused and the Buyer does not notify the Seller in accordance with this Section 9.1, then the Buyer shall not be entitled to reject the products and the Seller shall have no liability for such defect or failure, and the Buyer shall be deemed to have accepted the products and be required to pay the

purchase price as if the products had been delivered in accordance with the contract.

- 9.2 If delivery is incomplete or if there is obvious external transport damage, the Buyer shall notify the transport company in writing (e.g., via fax, letter or e-mail) of such damage immediately upon receipt of the products, but in no event later than seven (7) calendar days after delivery. The Buyer shall simultaneously notify the Seller of such damage in writing (e.g., via fax, letter or e-mail).
- 9.3 Unless otherwise agreed, the contractually required quality of the product shall be set out exclusively in the product specifications of the Seller prevailing on the date of delivery. Properties of samples are only binding in as far as they have specifically been agreed to by the Seller in writing as a quality of the product. Information as to quality, product life, and other information shall only be considered to be guarantees if they have been agreed to and specified as such by the Seller in writing.
- 9.4 If the Seller is notified of any valid claim in respect of any of the products in accordance with these General Terms and Conditions, in the Seller's sole discretion, the Seller shall either: (a) replace the products (or the portion in question) free of charge; or (b) refund to the Buyer the price of the products (or a proportionate share of the price). The Seller shall have no further liability to the Buyer.
- 9.5 Claims for defects shall be invalid if the defects result from: (a) inappropriate or unsuitable use or storage by the Buyer; (b) inappropriate or unsuitable transport; (c) faulty or negligent handling; or (d) a change based on environmental conditions difficult for the particular nature of the product.
- 9.6 No products may be returned to the Seller without the Seller's prior written consent.
- 9.7 All claims for defects by the Buyer must be made within twelve (12) months of the date of delivery of the products by the Seller. Any claim after such twelve (12) month period shall be null and void.

## **X. Legal Defects**

- 10.1 In as far as the rights of third parties prevent the contractual use of the product, the Buyer shall inform the Seller without undue delay of the assertion of such rights by third parties and shall give the Seller all powers of attorney and grant all authorities required to defend the product against the rights of third parties asserted at the Seller's own cost.
- 10.2 In as far as the rights of third parties prevent the contractual use of the product, the Seller may, in the Seller's sole discretion: (a) introduce appropriate measures

to eliminate the rights of the third parties or the assertion thereof; (b) procure the right of use from the third party at the Seller's cost; or (c) alter or replace the products in such a manner that it no longer infringes the rights of third parties if and in so far as the compliance of the product with the contract is not impaired.

- 10.3 The Buyer is entitled to rescind the contract or to reduce the purchase price if the subsequent fulfillment in accordance with Section 10.2 above cannot be expected of the third party, is refused by the Seller, or is not executed by the Seller within a reasonable period of time set by the third party. In the event of minor disruption to the contractual use of the product, the contract may not be rescinded.
- 10.4 The Buyer cannot make the aforementioned claims if infringement of the rights of third parties is based on the Buyer's specifications and the Seller had no knowledge of the contradictory rights of third parties.

#### **XI. Limitation of Liability of the Seller**

- 11.1 The Seller shall not be liable to the Buyer or the Buyer's customers for incidental, consequential or liquidated damages including, but not limited to, loss of profits or revenue, loss of use of products, costs of replacement products, additional expenses incurred in the use of products, or the claims of third parties, even if the Seller has been advised of the possibility of such damages. This disclaimer shall apply to incidental, consequential or liquidated damages based upon any cause of action whatsoever asserted against the Seller, including one arising out of principles of contract, any breach of warranty, express or implied, guarantee, products liability, negligence, tort, or any other cause pertaining to performance or non-performance of the proposal or contract by the Seller. The Buyer shall hold the Seller harmless from any such claims by the Buyer's customers.
- 11.2 **THE SELLER WARRANTS THAT THE PRODUCTS DELIVERED HEREUNDER SHALL CONFORM TO THE APPLICABLE PRODUCT SPECIFICATIONS OF THE SELLER. ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, ARE HEREBY SPECIFICALLY EXCLUDED, IN PARTICULAR, THE SELLER MAKES NO WARRANTY RESPECTING THE MERCHANTABILITY OF THE PRODUCTS OR THEIR FITNESS FOR ANY PARTICULAR PURPOSE.**

#### **XII. Property Rights of the Seller**

- 12.1 The Buyer may not offer or supply replacement products to its customers instead of the products of the Seller while making reference to the Seller's product, or make the connection with the word "replacement" or make a comparison with the specifications of replacement products in price lists and similar business documents and product specifications of the Seller, irrespective of whether or not they are protected.

- 12.2 The Buyer acknowledges that the Seller, or an affiliate of the Seller, is the owner of all rights in any and all trade names and trademarks, including BRUEGGEMANNCHEMICAL, and the brand names which may be applied to the product (the “Trademarks”), and that only the Seller has the exclusive right to use the Trademarks.
- 12.3 When using products of the Seller for production purposes or further processing, the Buyer is not entitled to use a product’s name of the Seller, in particular its Trademarks, on such merchandise or on the packaging or in the associated printed matter and advertising material (in particular on a list of components) without the prior written consent of the Seller.

### **XIII. Miscellaneous**

- 13.1 To be valid, amendments and additions to these General Terms and Conditions shall be in a writing signed by both parties. This shall also apply to any amendment to the contract.
- 13.2 These General Terms and Conditions shall be governed by and construed in accordance with the laws of the State of Delaware, without regard to its choice of law principles. The United Nations Convention on Contracts for the International Sale of Goods is hereby expressly excluded.
- 13.3 Unless otherwise expressly agreed, the place of performance for payment shall be the Seller’s registered place of business.
- 13.4 The registered place of business of the Seller shall be the exclusive place of jurisdiction for all disputes arising from or in connection with these General Terms and Conditions and their validity. However, the Seller is also entitled to file any action at the place of business of the Buyer.
- 13.5 If a provision in these General Terms and Conditions and any other contract entered into should be or become invalid, such invalidity shall not affect the validity of the remaining provisions in these General Terms and Conditions. The parties shall replace the invalid provision with a provision which reflects as closely as possible the economic purpose of the respective provision. The above shall also apply in case of an omission.
- 13.6 In order to execute these General Terms and Conditions, the Seller shall be permitted to collect certain data and retain a copy of such information for processing.