

- 1. DEFINITIONS:**
Agreement: means Buyer's Order, together with Elkem's Confirmation, Elkem's GTC and Code. Where the parties have signed an agreement, it means that agreement, Elkem's GTC and Code.
Buyer: the buyer of the Goods under the Agreement.
Buyer Products: means any of Buyer's products, goods or processes that utilise the Goods.
Code: means the Code of Conduct for Elkem's Business Partners, published on elkem.com.
Confirmation: Elkem's written confirmation of Buyer's Order, which shall be deemed to incorporate these GTC in full, and which may include amendments to the Order.
Delivery: delivery of the Goods at the Delivery Point.
Delivery Date: the date or range specified for Delivery in the Agreement.
Delivery Point: the place specified for Delivery in the Agreement.
Dispute: means any dispute or claim that arises out of or in connection with the Agreement, or its performance, validity or enforceability, including non-contractual Disputes.
Elkem/Seller: the Elkem group entity that confirms the Order, or that is specified in the Confirmation.
FM: means 'force majeure', as further defined in Clause 7.
Goods: Elkem's goods, products or services, as described in the Agreement.
GTC: These General Terms and Conditions of Sales.
Incoterm: means the incoterm prevailing at the time of the sale as defined in the latest edition of the ICC's International Rules for the interpretation of trade terms, unless otherwise agreed.
Interest Rate: the lower of: (i) LPR published by the National Interbank Funding Center authorized by the People's Bank of China, or (ii) the maximum rate permitted by law.
Liability: every kind of loss, damage or liability arising out of or in connection with an Order or any Agreement (or the Goods supplied pursuant to the Agreement) including in contract, tort (including negligence), misrepresentation, restitution or otherwise, and howsoever arising.
Order: means any order that Buyer places with Elkem for the purchase of Goods, whether online, by email, telephone or otherwise.
Packing: means any packaging or material used to hold, protect, handle, deliver and present the Goods, which is supplied or lent by Elkem to Buyer.
Price: the price for the Goods specified in the Agreement excluding VAT/tax.
Specifications: the quality specifications for the Goods, which if not set out in, attached to, or incorporated by reference in the Agreement shall be Elkem's current specifications for the type of Goods specified or confirmed in the Confirmation, which are available to Buyer on request to Elkem.
- 2. OUR AGREEMENT**
- 2.1** Buyer's Order constitutes the acceptance by Buyer to purchase Goods from Elkem in accordance with Elkem's quotation (if applicable), these GTC and the Specifications. Elkem's Confirmation constitutes Elkem's acceptance of Buyer's Order on the terms set out in these GTC, together with any additional terms/conditions accepted or modified in the Confirmation.
- 2.2** In the event of any conflict of provisions in the Agreement, the following order of precedence shall apply: (i) Signed Agreement (if applicable) (ii) Confirmation, (iii) GTC/Code, (iv) Order.
- 2.3** The Agreement constitutes the entire agreement with respect to its subject matter. Any prior representations/statements, additional or different terms or conditions that Buyer seeks to include are hereby rejected by Elkem and shall not be binding unless expressly consented to in writing by one of Elkem's authorised representatives.
- 3. GOODS, SPECIFICATIONS, CLAIMS**
- 3.1** Elkem warrants that the quality of the Goods shall be as per the Specifications at the time the Goods are dispatched by Elkem. Buyer is solely responsible for requesting the Specifications and determining the suitability of the Goods for any particular use or application, including for Buyer Products. The Goods may only be distributed to third parties (except for Buyer's affiliates/Buyer group companies) to the extent that the parties have agreed to a distribution agreement.
- 3.2** Unless otherwise agreed, a +/- 2% tolerance shall apply to any quantity of Goods in the Agreement. Elkem shall not be in breach of the Agreement if the delivered quantity is within this tolerance, however Buyer shall only pay for the quantity so delivered.
- 3.3** Buyer must inspect the Goods on receipt and must notify Elkem of any packaging or quantity claim without undue delay and under any circumstances within 5 days of Buyer's receipt of the Goods, together with supporting documents and information, failing which such claim shall be time barred and Elkem shall have no Liability to Buyer. Buyer must notify Elkem of any quality claim without undue delay after opening the packaging. In no event shall Elkem be liable for any quality claim after product shelf life expires.
- 4. DELIVERY AND RISK**
- 4.1** If the Delivery Point/Incoterm is not specified in the Agreement, Delivery shall take place and risk shall transfer to the Buyer upon Elkem's provision of the Goods to the carrier at the point of origin.
- 4.2** Delivery Dates are indicative estimates given by Elkem without guarantee, unless otherwise specified. Save in the case of Elkem's willful misconduct or gross negligence and subject to Clause 8.2, delays in Delivery shall not entitle Buyer to reject the Goods, terminate the Agreement, or claim damages.
- 4.3** Where the Agreement specifies multiple deliveries or specifies a term arrangement but does not specify Delivery Dates and delivery quantities, the Deliveries and quantities will be reasonably evenly distributed over the delivery range, unless otherwise agreed.
- 5. PACKING MATERIALS / PACKAGING**
- 5.1** Buyer is deemed to be aware of and shall comply with all applicable laws, regulations and rules relating to Packing, including its use, disposal and waste (hereinafter "Regulations").
- 5.2** Packing is solely intended for use with the Goods and not for any other purpose.
- 5.3** Packing lent by Elkem to Buyer remains Elkem's property, and Buyer shall be its bailee. Elkem may invoice Buyer for replacement or repair of delayed, lost, damaged or destroyed Packing.
- 5.4** If Elkem transfers ownership of Packing to Buyer, Buyer shall then be responsible for the Packing, and Buyer shall remove all Elkem markings, logos and identifiers prior to reuse.
- 5.5** Elkem shall have no Liability to Buyer or any third party where Buyer fails to comply with any part of this Clause, or of any use or reuse of Packing once ownership has been transferred to Buyer.
- 6. PRICE, PAYMENT AND TAXES**
- 6.1** Buyer shall reimburse Elkem for all increases in or new import duties or tariffs that Elkem may be required to pay with respect to the Goods.
- 6.2** Buyer shall make all payments by or before the due date, in full without deduction, withholding or setoff. The existence of any Dispute shall not affect Buyer's obligation to pay in full and on time.
- 6.3** Where there are multiple deliveries under any Agreement, the Price for each delivery (and any other applicable costs) shall be invoiced and fall due individually. No delay or Dispute for one delivery shall entitle Buyer to delay or withhold payment for others.
- 6.4** Unless otherwise agreed the due date for invoices is 30 days from date of invoice. Late payments will automatically result in Buyer being invoiced for Elkem's reasonable costs of debt recovery. Invoices not paid by the due date shall accrue interest at the Interest Rate. In addition, as compensation for recovery costs, a fixed sum as well as any additional costs of the recovery of the original invoice (to the extent reasonably incurred), shall be payable.
- 6.5** Representations, warranties and agreements of the Buyer in any application for credit from Elkem are hereby incorporated by reference. Credit terms are subject to change at any time by Elkem in its sole discretion.
- 7. FORCE MAJEURE**
- 7.1** If, due to FM, either party is prevented from or delayed in performing its obligations (other than payment), then the affected party shall promptly notify the other party, and the affected party shall not be in breach of the Agreement or otherwise incur any Liability for such failure or delay. The time for performance of the affected obligations shall be extended until the FM ceases.
- 7.2** FM means any circumstance outside a party's reasonable control including but not limited to acts of God, extreme weather and natural disaster, epidemic/pandemic, fires, explosions, restrictions in power supply, terrorist attack, cyber-attack, war or threat of war, armed conflict, civil commotion or riots; contamination from nuclear, chemical or biological sources; any law or any action taken by a government or public authority, including imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent to Elkem; breakdown or disablement in Elkem's means of transportation of the Goods, plants or equipment; any labour or trade dispute, strikes, industrial action or lockouts; and non-performance by Elkem's suppliers or subcontractors, or Elkem's inability to obtain materials. Financial hardship or loss of profitability is not FM.
- 7.3** If FM continues for 45 consecutive days or more, either party may terminate the Agreement without any Liability to the other.
- 8. SUSPENSION AND TERMINATION**
- 8.1** Without affecting any other right or remedy of Elkem, Elkem may suspend or terminate the Agreement immediately if any of the following occur:
- (a) Buyer fails to pay any invoice when due.
- (b) Buyer fails to accept a Delivery when tendered by Elkem.
- (c) Buyer commits a material breach of the Agreement, and if such breach is remediable, fails to remedy it within 30 days of being notified to do so.
- (d) Buyer becomes unable to pay its debts as they fall due, or enters into any form of receivership, administration, liquidation, bankruptcy, winding up, or any composition or arrangement with its creditors, or suspends or threatens to suspend its business, or in Elkem's reasonable opinion has suffered a material adverse change in its financial standing.
- (e) Elkem reasonably believes there has been or will be a breach by Buyer of Clause 9.
- 8.2** The Buyer may as its sole remedy cancel a Delivery if Elkem has failed to deliver the Goods to the Buyer within 45 days of the Delivery Date, where such Goods have not yet been dispatched and where such failure is not due to FM or any fault of the Buyer. In such case, Elkem shall not be required to dispatch the Goods and Buyer shall not be required to receive or pay for the Goods. Clause 11 shall apply in any event.
- 8.3** A termination pursuant to this clause shall not affect any accrued rights and obligations of the parties, nor shall it affect any provision of the Agreement that expressly/impliedly is intended to continue in force on or after termination.
- 9. TRADE COMPLIANCE**
- 9.1** Buyer and Elkem shall in connection with the Agreement comply with all applicable laws, statutes and regulations and codes, including but not limited to Elkem's Code.
- 9.2** Buyer declares that it understands Chinese, Norway, the EU, U.S., UN and other applicable export control and economic sanctions laws and regulations, and warrants that it shall comply with them in all respects relating to the performance of this Agreement.
- 9.3** Buyer warrants and undertakes that, to the best of its knowledge, neither it nor any person or entity that it has control over or controls it ("control" shall mean the ownership of 50% or more of the equity and/or a majority of the board of directors and/or the ability to otherwise control the actions, policies or personnel decisions of the company or to issue mandatory directives) is an individual or entity (also known as "Designated Person") in the Restricted Parties Lists maintained by China, Norway, the EU, the U.S., the UN or other countries and regions involved in business (The Restricted Parties Lists shall mean the restrictive lists in the field of export control and economic sanctions, including but not limited to, sanctioned targets announced by the Ministry of Foreign Affairs of the PRC, the Entity List and the Unverified List maintained by the U.S. Department of Commerce, and the List of Specially Designated Nationals and the Sectoral Sanctions Identifications List maintained by the U.S. Department of the Treasury, etc.). In addition, Buyer warrants and undertakes to Elkem that if Buyer is designated as a Designated Person during the term of this Agreement (including any extension period thereof) and the Agreement cannot be performed, then Elkem may terminate this Agreement without any liability to compensate Buyer.
- 9.4** Buyer warrants and undertakes not to export, directly or indirectly, the items supplied by Elkem under this Agreement to any Designated Person, and not to export such items directly or indirectly to Iran, North Korea, Cuba, Syria, the Crimea region or other embargoed countries and regions involved in the business (collectively referred to as "Embargoed Countries"). In addition, the items under this Agreement shall not be used for prohibited End Uses such as nuclear, chemical and biological weapons, missiles, weapons of mass destruction, or terrorism.
- 9.5** If Buyer fails to comply with the foregoing warranties and undertakings, resulting in Elkem being subject to any governmental investigation, or violating any applicable laws and regulations, including but not limited to Elkem being subject to fines or other penalties, Buyer shall compensate Elkem and indemnify Elkem against any claims, demands, liabilities, losses or damages arising out of its breach of the foregoing warranties and undertakings. Buyer's obligations or liabilities in respect of the foregoing representation and indemnification shall survive the termination of this Agreement.
- 9.6** Buyer shall not place an Order or take any action or make any omission (whether in connection with the Agreement or otherwise) that may expose Elkem to a risk of: becoming sanctioned or being placed on any list of sanctioned or specially designated persons or asset freezes; violating any economic, trade or financial sanctions imposed by a relevant sanctioning body, including but not limited to Norway, China, United Nations, EU, USA, and the UK; or being subject to investigation by a relevant sanctioning body.
- 10. INDEMNITY**
- 10.1** Buyer shall indemnify, hold harmless and defend Elkem against all Liability, costs, expenses, damages and losses, arising out of or in connection with (i) any actual or alleged infringement of a third party's intellectual property rights, (ii) supply or use of Buyer Products, (iii) Buyer's failure to comply with a term of the Agreement.
- 11. LIMITATION OF LIABILITY AND EXCLUSIONS**
- 11.1** ELKEM'S MAXIMUM LIABILITY TO BUYER SHALL BE (AT ELKEM'S OPTION) LIMITED TO REPLACEMENT OF NON-CONFORMING GOODS OR AN AMOUNT NOT EXCEEDING THE PRICE OF THE SPECIFIC GOODS FOR WHICH DAMAGES ARE CLAIMED.
- 11.2** ELKEM SPECIFICALLY EXCLUDES ALL LIABILITY TO THE BUYER FOR PUNITIVE, SPECIAL, INDIRECT OR CONSEQUENTIAL LOSSES, AND SPECIFICALLY EXCLUDES ALL LIABILITY TO THE BUYER FOR LOSS OF PROFITS; LOSS OF SALES, BUSINESS OR CONTRACTS; LOSS OF ANTICIPATED SAVINGS; AND LOSS OF OR DAMAGE TO GOODWILL.
- 11.3** THE WARRANTIES MADE BY ELKEM IN THE AGREEMENT ARE ELKEM'S SOLE WARRANTIES WITH RESPECT TO THE GOODS. ELKEM SPECIFICALLY EXCLUDES ANY TERMS, WARRANTIES OR CONDITIONS IMPLIED BY LAW (WHETHER STATUTORY, COMMON LAW OR OTHERWISE), INCLUDING IN PARTICULAR (BUT NOT LIMITED TO) ANY WARRANTIES OR TERMS AS TO MERCHANTABILITY, QUALITY OR FITNESS FOR A PARTICULAR PURPOSE, BY TRADE CUSTOM/PRACTICE, BY ANY COURSE OF DEALING; THAT BUYER SEEKS TO IMPOSE/INCORPORATE; OR FROM ANY OF ELKEM'S ADVERTISING, WEBSITES, BROCHURES, CATALOGUES, OR SIMILAR SOURCES.
- 11.4** ELKEM'S LIABILITY UNDER CLAUSE 8.2 SHALL BE LIMITED TO BUYER'S DIRECT, REASONABLE AND DOCUMENTED COSTS RESULTING FROM THE LATE DELIVERY AND IN ACCORDANCE WITH THIS CLAUSE 11.
- 11.5** UNLESS OTHERWISE SPECIFIED IN THE AGREEMENT, ANY CLAIM AGAINST ELKEM MUST BE MADE WITHIN 30 DAYS OF THE DATE THE CAUSE OF ACTION ACCRUED AND UNDER NO CIRCUMSTANCES LATER THAN 12 MONTHS AFTER DELIVERY, FAILING WHICH IT SHALL BE TIME BARRED.
- 11.6** Nothing in this clause, these GTC or any Agreement limits Liability in contravention of the Governing Law of the Agreement, including but not limited to Liability for fraud, or for death/personal injury that is caused deliberately or negligently.
- 12. GOVERNING LAW AND DISPUTE RESOLUTION**
- 12.1** Any Agreement or Dispute shall be governed by and construed in accordance with the laws of the People's Republic of China (the "PRC").
- 12.2** (a) If both Buyer and Elkem are registered in the PRC, disputes shall be resolved by the competent court of where plaintiff is registered.
(b) If Buyer is incorporated outside the PRC (for this purpose, companies incorporated in Hong Kong, Taiwan or Macau areas are considered to be incorporated outside the PRC), any dispute arising from or in connection with this Agreement shall be submitted to China International Economic and Trade Arbitration Commission Shanghai sub-commission for arbitration which shall be conducted in accordance with the Commission's arbitration rules in effect at the time of applying for arbitration. The arbitral award is final and binding upon both parties.
- 12.3** The United Nations Convention for the International Sale of Goods does not apply.
- 13. OTHER PROVISIONS**
- 13.1** If any provision or Clause of these GTC or any Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified or deleted to the minimum extent necessary to make it valid, legal and enforceable. This shall not affect the validity and enforceability of the remaining provisions and clauses of the Agreement.
- 13.2** Buyer may not assign or otherwise transfer the Agreement.
- 13.3** The Agreement may only be amended by a written and signed agreement of Buyer and Elkem.
- 13.4** No failure or delay to exercise any right or remedy shall constitute a waiver.
- 13.5** No one other than the Buyer or Elkem may enforce a term of the Agreement or rely upon it.
- 13.6** Notices must be given in writing; email shall be acceptable if such contact details are specified in the Agreement. Elkem shall be entitled to serve notices upon Buyer using the contact details of the person placing the Order or as otherwise set out in the Order. Buyer shall be entitled to serve notices on Elkem using the contact details set out in the Confirmation or as otherwise stipulated by Elkem from time to time. The recipient of a notice shall upon request promptly acknowledge receipt.
- 13.7** The Price and terms herein specified may be adjusted by Elkem at any time. Buyer, after receiving the most updated price quotation but before the expiration of this most updated price quotation, may accept the new price and confirm purchase quantity. A rejection or no confirmation of Elkem's most updated price quotation by Buyer shall release Elkem from the obligation to sell or deliver to Buyer until such time as Elkem and Buyer have agreed on the Price of the Goods in writing.
- 13.8** Retention of Title: if permitted by law, ELKEM reserves title to the Goods until payment in full of the price and of all incidentals. The risk in the Goods shall however pass to Buyer upon Delivery, as defined in Article 4.1 above. If payment is late or remains unpaid whether in whole or in part, ELKEM

reserves the right on demand and without further formalities to require the delivered Goods to be returned to it, wherever they are located. Goods stored at the premises of Buyer (including depots, warehouses) will be deemed to be the subject of the unpaid invoices. Buyer shall therefore not grant any rights to third parties that might limit the exercise of the provisions of this condition, in particular Buyer is not allowed to create a charge, execute a bill of sale or to create a lien on the Goods. All costs of returning the Goods to ELKEM shall be borne by Buyer. If Buyer sells Goods subject to retention of title, he assigns to ELKEM all claims against his customer arising from the resale of the Goods, up to the amount owed to ELKEM and Buyer shall inform his customer of such assignment. If Buyer loses the Goods, he shall assign to ELKEM any claims against insurance companies or other third parties in connection therewith, up to the amount owed to ELKEM and Buyer shall notify the debtor of such assignment. If Buyer becomes insolvent or bankrupt, he must (i) notify ELKEM within 24 hours and (ii) immediately cease selling any Goods which are not yet his property. Buyer must also comply with his obligations as bailee and will keep the Goods, at his expense, separate from its own goods and those of third parties, properly stored, protected, insured to their full replacement value and identified as ELKEM's property. Buyer shall not remove packaging or labels from Goods stored by him and which are unpaid. Where the Goods are incorporated into other products, Elkem becomes a co-owner of such products. Elkem's ownership interest in such products is determined by the value of the Goods delivered in proportion to other goods incorporated into such products, as valued at the time of incorporation. The above provisions are without prejudice to any claim for damages for total or partial failure to pay the price of the Goods.