



## **KEMIN EUROPA NV GENERAL TERMS AND CONDITIONS OF SALE AND DELIVERY FOR KEMIN APPLICATION SYSTEMS**

### **ARTICLE 1 DEFINITIONS**

- 1.1 Agreement: the accepted order of Kemin Application System and the T&C together.
- 1.2 Customer: the customer ordering the Kemin Application System.
- 1.3 Effective Date: the date upon which the Agreement takes effect, once signed by the Parties.
- 1.4 Equipment: the Kemin Application System
- 1.5 Kemin: Kemin Europa NV, a company incorporated under the laws of Belgium, with registered office at 2200 Herentals, Toekomstlaan 42 (Belgium), registered with the Crossroad Bank for Enterprises under number 0411.987.209.
- 1.6 Parties: Kemin and the Customer.
- 1.7 Party: each of Kemin and the Customer.
- 1.8 Products: Kemin products being parts of the Agreement.
- 1.9 Software: Kemin software being parts of the Equipment or the Agreement.
- 1.10 T&C: these General Terms and Conditions of Sale and Delivery for Kemin Application Systems.

### **ARTICLE 2 SCOPE OF APPLICATION**

- 2.1 Kemin reserves the right to amend the T&C unilaterally at any time.
- 2.2 The T&C have been notified in advance to the Customer, who has accepted them. The Customer's general terms and conditions are not applicable and expressly excluded, irrespective of the time at which they are communicated or their subject title.
- 2.3 The English wording of these T&C shall prevail.
- 2.4 Any special or general requirements of the Customer stated in offers, orders, purchase conditions etc. shall not constitute an exemption from the T&C, unless expressly accepted by Kemin in writing.
- 2.5 The T&C apply to all requests, offers and agreements relating to the sale of Kemin Application System and/or the performance of ancillary services - irrespective of their nature - by Kemin to the Customer.
- 2.6 If there is a discrepancy or ambiguity between the provisions in the Agreement and the T&C, the provisions in the Agreement will prevail.

### **ARTICLE 3 EQUIPMENT DESCRIPTION AND OWNERSHIP**

- 3.1 Installation of the Equipment by Kemin does not include the programming of Customer's own equipment or other control systems. Customer agrees that without the appropriate programming of Customer's equipment and other control systems, Products applied using the Equipment may not be applied in accordance with Kemin recommendations.
- 3.2 Customer shall observe product levels and monitor Products levels used with the Equipment while the Equipment is in service or otherwise used by Customer. Customer shall be solely responsible for assuring that Products are being used in accordance with Kemin recommendations as well as all relevant food, feed and health regulations and is being delivered to Customer's final product. Customer will be responsible for assuring that its operators of the Equipment have received appropriate training.
- 3.3 During the term of this Agreement, Customer agrees not to use the Equipment for the application of any other product than the Products without Kemin's prior written approval.
- 3.4 Notwithstanding anything to the contrary set forth herein, the Software is licensed and not sold. Kemin grants to Customer, and Customer accepts a non-exclusive, perpetual, nontransferable, nonsublicensable right and license to use the Software in connection with the Equipment and in accordance with the terms of the Agreement. The license provided in this section is only for the version of the Software available on the Effective Date of the Agreement or any new upgrades, updates or releases of the Software provided to Customer during the term of the Agreement. Kemin will not provide any updates or maintenance to the Software under the Agreement after termination of the Agreement.

### **ARTICLE 4 OFFERS – ORDERS – CONCLUSION OF AN AGREEMENT**

- 4.1 All offers, indications of prices, or other type of proposal from Kemin are non-binding without Kemin's written acceptance of the order placed by the Customer through signature of the Agreement.
- 4.2 The specific Kemin Application Systems, quantity, price, total purchase price, shipping instructions, requested delivery dates, services and any other special instructions are confirmed in the Agreement.
- 4.3 The Customer acknowledges that it is aware of and approves the specifications of the Kemin Application System.
- 4.4 The Agreement may not be amended or modified, nor any provisions waived unless otherwise agreed in writing between the Parties.



**ARTICLE 5 INTELLECTUAL PROPERTY RIGHTS**

- 5.1 "Intellectual Property" is, without limitation, any and all proprietary ideas, designs, processes, technologies, patents, products (including the Products), trademarks, service marks, unpublished patent applications, any inventions, improvements, formulas, original works of authorship, marketing, business ideas and/or discoveries that may or may not be legally protectable, including but not limited to all know-how, data, copyrights, copyrightable work product, trade secrets, research plans and priorities, research results and related reports, statistical models and computer hardware or software (including the Software), computer programs and related reports and market interests and product ideas, all rights and claims relating to the foregoing which are confidential and not public information.
- 5.2 Each Party shall own exclusively all rights related to its existing Intellectual Property which it possessed prior to the Effective Date of the Agreement.
- 5.3 All new Intellectual Property that is developed as of the Effective Date and pursuant to and within the scope of the Agreement, including new Intellectual Property in association with the Equipment, Software, or Services (the "New Intellectual Property"), will be exclusively owned by Kemin and may not be used by Customer without prior written consent from Kemin. Customer hereby assigns all of its right, title, and interest in the New Intellectual Property to Kemin. All rights, title, and interest in and to the Company's Data (as defined in the data license agreement available on <https://www.kemin.com/eu/en/company/suppliers>) remain the exclusive property of the Customer. Customer grants to Kemin a license according to the terms and conditions of the data license agreement (available on <https://www.kemin.com/eu/en/company/suppliers>) for any use including disclosure to third parties, so long as such disclosure does not disclose Customer's identity, trade secrets of Customer and any Customer's Confidential Information as defined in Article 6.

**ARTICLE 6 CONFIDENTIAL INFORMATION**

- 6.1 Confidential Information shall mean all information relating to the business, affairs, activity, Equipment, Products, Services and other products, goods or services of Kemin. It includes, but is not limited to, the Agreement and its schedules and exhibits, Intellectual Property including computer programs and Software. Confidential Information" shall also mean all information relating to the business, affairs, activity and other goods or services of a Party, including but not limited to, whether developed by a Party or by others and whether patented or patentable, customer, distributor and supplier lists, trade secrets, designs, processes, formulas, know-how, ingredients, business plans and strategies, financial information, pricing information, specifications, devices, research and development data, manufacturing and processing data, clinical and engineering data, purchasing and marketing data and plans, samples, and the like of every kind. Confidential Information may be communicated orally, visually, in writing (including faxes and e-mails) or in any other recorded or tangible form and may be revealed by a Party to the other Party or from any source, including third parties. It shall not be restricted to material identified as "confidential" or "secret" with an appropriate legend, stamp or other written identification.
- 6.2 Each Party shall hold the other Party's Confidential Information in strict confidence, only disclosing it to those employees with a need to know to perform under the Agreement and who have been informed of and agree to the confidentiality requirements herein. Each Party shall not disclose the other Party's Confidential Information to any third parties without the disclosing party's prior written consent; if such consent is granted, disclosure shall not occur until such third party has signed a confidentiality agreement with terms at least as protective as set forth herein.

If compelled by applicable law or court order to disclose the other Party's Confidential Information, then, to the extent legally permitted, the receiving Party shall: (a) provide the disclosing Party prior written notice with sufficient time to challenge the request or seek a protective order, and (b) only disclose the minimum amount of the disclosing Party's Confidential Information necessary to comply with the applicable law or court order.

Limitations. The following information shall not be included in the definition of "Confidential Information":

- (a) Information that was known to the receiving Party prior to receipt from the disclosing Party, as documented in written records or publications that lawfully are in the possession of the receiving Party or known to the receiving Party prior to such receipt;
  - (b) information that was lawfully available to the trade or to the public prior to receipt from the disclosing Party;
  - (c) information that through no act on the part of the receiving Party, becomes lawfully available to the trade or to the public; and
  - (d) information lawfully received from a third party without restriction on disclosure.
- 6.3 All documents, protocols, data, know-how, methods, operations, formulas, Equipment design, Equipment specifications, computer programs, and Confidential Information of any kind provided to Customer pursuant to the Agreement are and shall remain Kemin's Intellectual Property.
  - 6.4 Copies of any or all documents referenced herein shall be returned to the disclosing Party or its designee upon request.
  - 6.5 Customer recognizes the possibility of reverse engineering of (computer programmes, including the Software, and proprietary algorithms related to) the Equipment and/or the Products and that such reverse engineering will seriously compromise Kemin's commercial position. Therefore, Customer agrees to refrain from and to not copy, modify, sell, or reverse engineer any (computer programs or proprietary algorithms related to the) Equipment and/or Products supplied or developed by Kemin in relation to the Agreement.



**ARTICLE 7 WARRANTY AND LIMITATIONS**

The Equipment has been designed specifically for use with Kemin Products and Software. Unless agreed otherwise in writing, Kemin warrants the Equipment for a period of twelve (12) months from invoice date or commissioning date (where relevant) under the following limited conditions:

- 7.1 When installed properly, used with Kemin's Products and Software, and maintained in accordance with Equipment specifications, the Equipment will be free from defects in material and workmanship, and will substantially conform to the technical specifications provided with the Equipment and will apply Kemin's Products when used as directed and in accordance with Kemin recommendations and label directions.
- 7.2 Customer will perform routine maintenance. Only Kemin or Kemin's representative is entitled to perform other maintenance works and repair of the Equipment. Such maintenance and normal repair costs will not be charged to Customer.
- 7.3 Customer will exclusively use Kemin's Products in (relation to) the Equipment during the term of the Agreement. Products are purchased in accordance with the minimum quantities and prices agreed in the Agreement.
- 7.4 No warranty set forth in this Article will apply to the Equipment that has been
  - a. Modified, altered or adapted in any way without Kemin's written consent;
  - b. Maltreated or used in a manner other than in accordance with Kemin's directions for use of the Equipment;
  - c. Repaired by any third party that has not been designated to do so by Kemin;
  - d. Improperly installed by any party other than Kemin;
  - e. Used with products, software or equipment that are not covered by this warranty, to the extent that problems are attributable to such use;
  - f. Relocated without Kemin's written consent, to the extent that problems are attributable to the relocation;
  - g. The Kemin serial number tag on the Equipment has been removed or tampered with; or
  - h. Any attempt to dismantle or subdivide such the Equipment constitutes a modification or alteration of the Equipment which voids the applicable warranty.
  - i. Transferred or resold to any third party.
- 7.5 Nothing in this statement of limited warranty affects any statutory rights of consumers or other purchasers that cannot be waived or limited by contract.

**ARTICLE 8 CUSTOMER UNDERTAKINGS**

Customer shall be solely responsible for:

- 8.1 Use and supervision of the Equipment.
- 8.2 All physical and material damages caused by the Equipment to his personnel or third parties resulting from misuse from or unauthorized modifications to the Equipment.
- 8.3 All damages beyond normal and reasonable wear or the physical loss of the Equipment.

**ARTICLE 9 INSPECTION – ACCEPTANCE**

- 9.1 In the case of Equipment requiring specific installation, a memorandum of installation and transfer form ("Applicator Acceptance Document") will be signed between Kemin and Customer at the commissioning date.
- 9.2 The Customer shall immediately after the delivery of the Equipment carry out an inspection to identify any visual defects or whether any portion fails to comply with the Agreement. In case of defects or nonconformity to the Agreement, the Customer may reject the defect or nonconforming portion of the Equipment by written notice to Kemin. Such written notice is only valid if:
  - i) The Customer has notified Kemin promptly upon discovery of the alleged defect or nonconformity and in any case:
    - For visual defects:
      - upon receiving the Equipment by making written mention on the transport document (CMR).
      - by notifying directly Kemin in writing no later than seven (7) calendar days from the date of delivery; or
      - in any event before the Equipment is used; or
    - For hidden defects:
      - no later than one (1) calendar year from the date of delivery;
  - ii) The Customer specifies and supports how the delivery fails to comply with the Agreement and/or the specifications of the Equipment;
  - iii) The Customer has to include all supporting evidence and documentation; and
  - iv) The notice is sent in accordance with Article 16.
- 9.3 The Customer will keep the allegedly defect or nonconforming Equipment available until Kemin has had the opportunity to inspect it.
- 9.4 In the absence of a timely and valid notice in accordance with Article 9.1, or if the Customer has not kept the Equipment available for inspection by Kemin in accordance with Article 9.3, the Customer shall be deemed to have irrevocably accepted the Equipment delivered.



**ARTICLE 10 INDEMNITY**

- 10.1 Kemin will indemnify, defend and hold Customer harmless from and against all claims, losses, damages, costs and expenses (including without limitation reasonable fees and expenses of attorneys incurred in investigation or defense of any third-party claim or action arising out of or related to i) Kemin's breach of any representation, warranty, covenant or other obligation pursuant to the Agreement, ii) any manufacturing defect of the Kemin Products, or iii) the negligence, gross negligence, bad faith or wilful misconduct of Kemin, its employees or other representatives. Likewise, Customer will indemnify, defend and hold Kemin harmless from and against all claims, losses, damages, costs and expenses (including without limitation reasonable fees and expenses of attorneys incurred in investigation or defense of any third-party claim or action arising out of or related to i) Customer's breach of any representation, warranty, covenant or other obligation pursuant to the Agreement, ii) any misapplication of Kemin's products or inappropriate or misuse of the Equipment, or iii) the negligence, gross negligence, bad faith or wilful misconduct of Customer, its employees or other representatives.
- 10.2 The obligations of the indemnifying party under this Article are conditioned upon the written notice to the indemnifying party with regard to a claim or lawsuit which is alleged to be covered within fifteen (15) days after the indemnified party has received notice of said claim or lawsuit. The above indemnities are further conditioned upon the cooperation of the indemnified party with the indemnifying party in any regard in the investigation and defense of any claim or lawsuit alleged to be covered by the above indemnities. Any indemnity shall be void as to any claim or legal action for which settlement or any offer of settlement is made without the prior written consent of the indemnifying party.

**ARTICLE 11 LIMITATION OF LIABILITY**

- 11.1 Neither Kemin nor companies belonging to the Kemin group of companies shall be liable in any way whatsoever for any consequential loss to Customer arising from the incorrect use of information, advice, services or other technical assistance made available by Kemin to Customer under the Agreement.
- 11.2 Customer's sole and exclusive remedy and Kemin's entire liability for breach of the Agreement or the warranty provisions will be the repair or, at Kemin's option and expense, replacement of defective Equipment and/or Products, or, if such repair or replacement is not reasonably achievable, the refund of amounts paid by Customer towards the purchase price for the Equipment and/or the Products. All express or implied conditions, representations, and warranties, including any implied warranty or condition of merchantability, satisfactory quality, fitness for a particular purpose and non-infringement, are hereby excluded to the maximum extent permitted by law.

**ARTICLE 12 INSURANCE**

Each Party shall maintain at its expense commercial general liability insurance in a principal amount of not less than the coverage generally maintained by companies of a similar size in its industry. Each Party shall have all the rights and coverages as the insuring party under said policies and shall be endorsed accordingly. The insuring Party shall notify the other Party in writing 30 days prior to the expiration of any coverages that are required by the Agreement.

**ARTICLE 13 CHANGE OF LEGAL STATUS AND/OR OWNERSHIP**

In the event of a change in legal status of Customer, or if their business is sold to a party not engaged in a business that is in competition with the business of Kemin, Parties will try to ensure to the best of their efforts that the Agreement remains in full force and effect.

**ARTICLE 14 TERMINATION**

- 14.1 "Termination" shall mean any and all means of bringing to an end prior to its expiration by its own terms of the Agreement, or any provision thereof, whether by release, discharge, abandonment, or otherwise.
- 14.2 Kemin is entitled to terminate the Agreement and to request immediate and full settlement of the outstanding amount of the Equipment invoice within ten (10) calendar days after notification of the termination if
- a. Customer uses products other than Kemin Products with or in the Equipment during the term of the Agreement;
  - b. Customer assigns or attempts to assign this Agreement or any of the rights or obligations hereunder without the prior written consent of Kemin being given;
  - c. any change occurs as per the provisions of Article 13, in the legal structure, organization, key management or owners or the financial or other circumstances of the Customer which, in the sole opinion of Kemin, is materially detrimental to the interests of Kemin including, without limitation, the transfer of any interests in Customer to any person engaged in a business that is in competition with the business of Kemin.
- 14.3 Clauses and pledges in relation to Confidential Information and Intellectual Property shall survive such termination.
- 14.4 Termination of the Agreement or any individual study being performed under the terms of the Agreement shall not affect any rights or remedies of either party at law or in equity.



**ARTICLE 15 FORCE MAJEURE**

- 15.1 Kemin shall not be liable for any delay in or impairment of the performance of the Agreement due to (for example but not limited to) war (declared or not), epidemics, pandemics, acts of God, fire, flood, strike, labour conflict, power failure, equipment breakdowns, inability to obtain or shortage of raw materials, total or partial mobilization, import and export prohibitions, regulations of any governmental authority, or any cause or condition beyond the reasonable control of Kemin, which could not have been reasonably foreseen on the date of the Agreement, nor can reasonably be avoided and which renders the performance of the Agreement by Kemin reasonably impossible.
- 15.2 In any such event, Kemin shall be entitled to such additional time to perform the Agreement as may be reasonably necessary and, in any case, not less than the period of delay caused by such circumstances.
- 15.3 In any such event, Kemin shall have the right to apportion its production and deliveries among its customers as it sees fit in its sole discretion.
- 15.4 In any such event, Kemin has the right to suspend or terminate totally or partially the Agreement without (i) being held liable, or (ii) owing any pay fees or damages to the Customer, or (iii) having to refund amounts already paid by the Customer.
- 15.5 A Party claiming force majeure must provide a notice to the other Party, evidencing the situation of force majeure within ten (10) calendar days of its occurrence and that Party must use all commercially reasonable efforts to mitigate the effects of Force Majeure.

**ARTICLE 16 NOTIFICATION**

All notifications referred to in this Agreement to Kemin must be made in writing to Kemin Europa NV, to the attention of Customer Service Kemin Europa, Toekomstlaan 42, 2200 Herentals, Belgium, by registered mail with receipt acknowledgment or through a courier service. An e-mail message to the following e-mail address: [kae.customer.service.in.belgium@Kemin.com](mailto:kae.customer.service.in.belgium@Kemin.com) is permissible on condition that an explicit read acknowledgment has been requested and received. Any such notice shall be deemed received and effective upon acknowledgment of receipt.

**ARTICLE 17 SURVIVING PROVISIONS**

The provisions of the Agreement which by their nature and scope are meant to survive the performance by (one of) the Parties also survive the termination, expiration, fulfilment or cancellation of the Agreement.

**ARTICLE 18 ADMINISTRATION**

- 18.1 Data Protection Laws and GDPR: Kemin and Customer agree to comply with all relevant Data Protection Laws, including the GDPR.
- 18.2 The Agreement may be executed in counterparts, each of which shall be deemed an original, but both of which taken together shall constitute one and the same instrument. In the event that advanced electronic signature conform with the eIDAS Regulation (Regulation (EU) N°910/2014) is provided, such signature shall create a valid and binding obligation of the Party executing (or on whose behalf such signature is executed) with the same force and effect as if such electronic signature page were an original thereof). Each Party has signed the Agreement through its authorized representative.
- 18.3 The Agreement shall be governed by and construed in accordance with Belgian law, with exclusion of the UN Convention on Contracts for the International Sale of Goods 1980.
- 18.4 In case of dispute the courts of Antwerp, section Antwerp, shall have jurisdiction.
- 18.5 If a court finds any provision of the Agreement unenforceable, the remainder of the Agreement shall be interpreted so as best to accomplish the intent of the Parties. The Agreement expresses the complete understanding of the Parties with respect to the subject matter and supersedes all prior proposals, or agreements. The Agreement may not be amended except in a writing signed by both Parties. The Agreement may not be explained or supplemented by a prior or existing course of dealing between the Parties, by any usage of trade or custom, or by any prior performance between the Parties pursuant to the Agreement or otherwise. The Agreement is not assignable. The Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors, legal representatives, and, to the extent permitted hereby, assigns. The failure to exercise any right provided in the Agreement shall not be a waiver of prior or subsequent rights. Each Party has signed the Agreement through its authorized representative. Any obligation which either expressly or by its nature continues after the termination or expiration of the Agreement, such obligation shall survive and remain in effect.
- 18.6 The Parties agree and acknowledge that the English language version of the Agreement shall be the controlling document for interpretation purposes. The parties understand the English language and are fully aware of all terms and conditions contained herein.