

## Conditions for Sale and Delivery

Knauf Danoline A/S (Danogips A/S), Danish company registration no. 54 05 03 13, [www.knaufdanoline.com](http://www.knaufdanoline.com)

### Application

1. In these conditions for sale and delivery, hereafter referred to as the Conditions, the Seller shall mean Knauf Danoline A/S, Danish company registration no. 54 05 03 13, referred to hereafter as the Seller, and the Customer shall mean the other party to the agreement between the parties, referred to hereafter as the Customer. The Goods shall mean the products supplied by the Seller, the Services shall mean any technical advices, recommendations or services supplied by the Seller and the Contract Price shall mean the price of the Goods invoiced by the Seller in accordance with Condition 39 of these Conditions.
2. Unless the Seller and the Customer have expressly agreed in writing that these Conditions or parts hereof shall not apply, the Conditions shall apply to and form an integral part of any offer and any agreement concerning Goods and any Services supplied by the Seller. In case of discrepancy between the conditions in the Customer's purchase order, offer, acceptance or other document or requirement of the Customer and these Conditions, such other conditions than the Conditions shall not form part of the agreement between the parties unless expressly agreed with the Seller in writing.

### Offers and orders

3. A written offer from the Seller concerning sale of the Seller's Goods is valid for 30 days after the Seller has sent it to the Customer, subject to the Goods remaining unsold.
4. The specifications of Goods and/or product details in marketing material and price list are not binding upon the Seller and may at all times be subject to changes at the Seller's discretion without notice to the Customer.
5. The Seller's specifications and product details will be supplied at the request of the Customer, but the Seller assumes no liability for errors or mis-statements contained therein. In no circumstances does the Seller undertake any liability for checking or approving any specifications concerning the Goods made by the Customer.
6. Trade samples shall be regarded as indicative only. The Seller assumes no responsibility in respect of delivered Goods corresponding to any such samples provided to the Customer.
7. Any Services, including expert advice or recommendation provided by the Seller or its employees to the Customer or its employees or to a third party as to any technical advice, bill of quantities, storage, application, use or transportation of the Goods or simi-

lar service of any kind is provided free of charge by the Seller and accordingly the Seller shall not be liable for any such advice, recommendation or service, irrespective of any possible mistakes by the Seller or its employees.

8. The Seller's employees are not authorised to make any representations concerning the Goods unless authorised to do so by the Seller in writing. When entering into any agreement with the Seller the Customer acknowledges that it may not rely on, and waives any claim for breach of any such representations which have not been confirmed accordingly.
9. An order from a Customer is binding upon the Seller when the Seller has accepted the order in writing by sending the Customer an acknowledgement of the order. Further, if the Seller has sent a written offer concerning the sale of Goods to the Customer, and the Customer accepts such offer within 30 days, the order is binding upon the Seller when the Seller has received a written acceptance from the Customer, and the Seller shall confirm this by sending the Customer an acknowledgement of the order.
10. If the Customer has any objections to an acknowledgement of an order, such objections shall be received by the Seller within five days after the date of the acknowledgement of the order.

#### **Delivery, risk of loss and delay**

11. Risk in the Goods shall pass to the Customer on delivery.
12. The Seller shall deliver the Goods according to the applicable Incoterms agreed upon between the parties. If no Incoterm has been agreed upon, delivery shall be Ex Works manufacturer plant as specified by the Seller. If no manufacturer plant is specified, then delivery shall be Ex Works at the Seller's premises on or by the date or dates agreed. In case the respective stipulated Incoterm obliges the Seller to perform any import formalities for the import into the country of delivery, the Customer at its cost is obliged to support the Seller in any way reasonable required by the Seller. Any delay (other than the delay of the Seller) in completion of import formalities shall be an event entitling the Seller to an extension of time and compensation of all costs resulting from the delay by the Customer. Transfer of risk of loss and damage to the Goods shall be in accordance with the stipulated Incoterm. Subject to prior written agreement between the parties the Seller may deliver the Goods to the Customer's premises at the Customer's risk and expense. Where the Seller is to deliver Goods, delivery will be to as near to the place where the Purchaser requires delivery to be made as, at the discretion of the Seller, a safe, hard road permits.

13. The Customer shall be solely responsible for the unloading of the Goods if the Seller has delivered the Goods or for the loading and transport of the Goods if the Customer is collecting the Goods and the Seller shall not be liable for any damage that occurs in the course of such loading or unloading/transport.
14. In the event that such loading or unloading exceeds a period of one hour, then demurrage may be charged by the Seller.
15. Where the Seller is to deliver the Goods, the Customer shall provide personnel for unloading. If sufficient personnel is not provided at the time of unloading, or if the Customer fails to collect the Goods or fails to give the Seller adequate delivery instructions, the Seller may either unload the Goods, return with the Goods or deliver the same to a warehouse, at the Customer's risk and expense, including insurance and storage costs, and shall be deemed to have fulfilled its obligation under the agreement and be entitled to payment of any amounts contingent upon delivery. Costs of any re-delivery of the Goods will be charged to the Customer.
16. If the Customer requires proof of delivery or collection any such request for proof shall be notified to the Seller in writing within thirty days of the date of the Seller's invoice.
17. Upon receipt, the Customer shall examine the Goods and promptly (but in no event more than 7 days) inform the Seller in writing of any damage to the Goods or to the external packing hereof. In case of damage the Customer must make a written reservation on the Seller's delivery note at the time of delivery specifying the nature and extent of the damage ascertained. A signature by the Customer without such reservation on the Seller's delivery note is regarded as evidence that the Goods were free of visible defects and damage at the time of delivery.

### **Weights and measures**

18. All information, statements of packing, measurements and gross weights are an approximate guide and not binding on the Seller. Information concerning weight from the Seller is in kilograms unless otherwise stated. All information on weight from the Seller is merely estimated and the actual weight of the Goods may at the time of delivery deviate from the Seller's statement of weight for that delivery with +/- ten per cent without the Seller incurring any liability as a result of any such difference in weight.
19. All information about measures from the Seller is in millimetres unless otherwise stated.

**Time of delivery**

20. If no fixed time of delivery has been agreed upon between the parties, the Seller shall set a time for delivery. If a period for delivery has been set, the Seller may at the Seller's discretion choose the time for delivery within this period.
21. Partial deliveries and trans-shipments are allowed if deemed necessary by the Seller having regard to availability of supplies.
22. Each delivery of Goods to the Customer shall constitute a separate contract to which these Conditions shall be applied.
23. Any date of delivery or period for delivery agreed upon with the Customer may be postponed for up to 14 days by the Seller without the Seller being liable for any delay in the delivery of the Goods.
24. The Seller shall not be deemed to be in breach of contract or liable to pay damages if the performance of the agreement is delayed or otherwise affected by circumstances beyond the reasonable control of the Seller, such as strike, lock-out, restriction or stop of production, break-down of machinery, restrictions on import or export, intervention by authorities, adverse weather conditions, fire, flooding, other accidents or overdue or default deliveries from the suppliers to the Seller. In particular, no liability shall be imposed on the Seller in respect of any late deliveries or failure to deliver arising from shortage of supplies or transportation delays beyond the Seller's control.
25. In such cases, the Seller shall be entitled to cancel the agreement with the Customer or to postpone delivery until a reasonable period after any fixed time of delivery.
26. In case a delay of more than 14 days after the agreed date of delivery or period for delivery is attributable to the Seller, the Customer is entitled to liquidated damages from the fifteenth day after delivery should have taken place. The liquidated damages shall be payable at a rate of 0.5% of the Contract Price for each completed week of delay. The liquidated damages shall not exceed 7.5% of the Contract Price. If only a part of the Goods are delayed, the liquidated damages shall be calculated only on the part of the Contract Price which is attributable to such part of the Goods as cannot in consequence of the delay be used as intended by the parties. The liquidated damages become due at the Customer's demand in writing but not before delivery has been completed or the agreement is terminated.  
The Customer shall forfeit his right to liquidated damages if he has not lodged a claim in writing for such damages within three months after the time when delivery should have taken place.

## Shortage and Defects

27. The Seller's liability is limited to defects which appear within a period of one year from delivery.
28. The Customer shall without undue delay notify the Seller in writing of any shortage exceeding 10% or defects which appear. Such notice shall under no circumstance be given later than two weeks after the expiry of the period given in Condition 27. The notice shall contain a description of the defect. If the Customer fails to notify the Seller in writing of a defect within this time limit, the right to have the defect remedied is forfeited.
29. In case of delivery of defective Goods, the Seller shall be entitled (at the Seller's option) to repair or replace free of charge any Goods which have shown to be defective in materials or workmanship or to pay a discount within 12 months of delivery. In case of repair, the Seller shall remedy the defect without undue delay at own cost. Repair shall be carried out at the place where the Goods are located unless the Seller deems it appropriate that the defective part of the Goods is returned to the Seller for repair or replacement.
- The Seller is obliged to carry out dismantling and reinstallation of the part if this requires special knowledge. If such special knowledge is not required, the Seller has fulfilled all obligations in respect of the defect when the Seller delivers to the Customer a duly repaired or replaced part. The Seller shall be under no liability to repair or replace defective Goods, if the Customer has not paid the Contract Price in full, or if the Customer has executed or attempted to execute repairs or alterations to the Goods without prior authorisation from the Seller or if the Seller has not been notified of any defect in the Goods within three months after delivery.
- If the defect cannot or has not been successfully remedied, as stipulated under Condition 29,
- a) the Customer is entitled to a reduction of the Contract Price in proportion to the reduced value of the Goods, provided that under no circumstance shall such reduction exceed 15% of the Contract Price for the part of the Goods being defective, or
  - b) where the defect is so substantial as to significantly deprive the Customer of the benefit of the agreement, the Customer may terminate the agreement by notice in writing to the Seller. The Customer is then entitled to compensation for the loss suffered up to a maximum of 15% of the Contract Price.

### **Liability of the Seller**

30. The Seller shall not be liable in any way whatsoever whether in contract, in tort, in misrepresentation or otherwise for any consequential or indirect loss resulting from delay, defects, shortage, loss of or damage to delivered Goods or any possible mistakes made in connection with any Services supplied, including losses incurred in connection with use or preparation of the Goods delivered (for instance costs covering the replacement or repair after use of the delivery for construction), loss on operations, loss of profits, loss of earnings, delay of construction work or industrial manufacture, etc. This applies regardless whether the Customer or a third party suffer such consequential or indirect losses, and irrespectively of any possible mistakes by the Seller or its employees or of the gravity of any such mistakes.
31. The aggregate amount of the Seller's liability for damages towards the Customer and a third party shall in any event be maximised to the Contract Price or payment which the Customer has paid/shall pay for the delivery or Services on which the liability claim is based.

### **Product Liability**

32. The Danish Act on Product Liability and the following Conditions 33-35 lay down the scope for any liability which Seller may incur for damages, death or personal injury resulting from defective Goods sold or manufactured by the Seller.
33. For any damage to or defects in the delivered Goods itself, Condition 26-31 shall apply.
34. The Seller is only responsible for any damage to objects which are usually applied for commercial use or which are primarily used commercially by the claimant, if the claimant proves that the product damage was caused by a defect in the Goods delivered resulting from a negligent act or omission by the Seller or its employees for which the Seller may be held liable by the Customer in accordance with Condition 26-31. The Seller shall under no circumstances be liable for any consequential or indirect loss resulting from product damage resulting from defective Goods delivered by the Seller, including loss on operations, loss of profits, loss of earnings, delay of construction work or industrial manufacture, etc. This applies regardless whether the Customer or a third party suffer such consequential or indirect losses, and irrespectively of any possible mistakes by the Seller or its employees or of the gravity of any such mistakes.

**Maximum Aggregate Liability**

35. The Seller's maximum aggregate liability towards the Customer under or in connection with any agreement or in connection with any supplied Services shall in no case exceed in the aggregate 3 million Danish Kroner, irrespective whether such liability arises by way of breach of contract (including defects and termination) or of statutory duty, negligence or other tort, strict liability, including product liability, indemnity, contract price reduction or repayment, withdrawal, remediation or otherwise.

**Contract Price and Payment**

36. All prices in any kind of written information provided by the Seller are exclusive VAT. The Customer shall pay VAT in accordance with current regulation.
37. Unless otherwise agreed between the parties, the catalogue price at the time of delivery shall apply. The Seller is entitled to include any adjustment necessary to take account of any increase in costs incurred by the Seller prior to the date of dispatch plus VAT for deliveries in Denmark in the Contract Price to be paid by the Customer. Delivery charges and other expenses incurred by the Seller in connection with delivery of the Goods will also be charged to the Customer.
38. Split deliveries as to time or destination are liable to surcharge.
39. The Seller shall be entitled to invoice the Customer for the Contract Price on or at any time after acknowledgement of the order or on the date of delivery of the Goods or the date for collection of the Goods.
40. Payment shall be made by the Customer in accordance with the payment conditions agreed upon with the Seller regardless that delivery or collection of the Goods may not have taken place or that title to the Goods has not passed to the Customer.
41. Unless otherwise agreed, payment shall be due by the end of the month following the month of issue of the Seller's invoice. Failure to observe these terms may result in cancellation of the Customer's credit facilities.
42. Non-payment on a due date will entitle the Seller to demand payment of all outstanding balances under the agreement concluded with the Customer or any other agreement between the Seller and the Customer whether it is due or not and/or cancel any outstanding orders without prejudice to any other rights the Seller may have as a consequence of the Customer's failure to make timely payment.

43. In the event of non-payment within the time stipulated, a charge of 2% per month of the invoice price, will be become due as per the date when payment was due until the date of actual payment (whether before or after a possible judgment).
44. The Seller shall be under no obligation to make any delivery if the Customer is in breach of the Seller's payment conditions.
45. The Seller shall at any time be entitled to deduct from or set-off against monies payable to the Customer such sums which the Customer owes the Seller.
46. The Customer may only deduct from or set-off against monies payable to the Seller such sums which the Seller owes the Customer if the Seller has agreed in writing to such deduction or set-off and the amount thereof.
47. The Seller has the right to invoice the customer by email where the customer has consented to invoices being submitted in this manner. Where invoices are sent out using electronic email they will be deemed to have been received by the customer on the date when they are sent provided that the electronic mail is transmitted between the hours of 9.00 am and 5.00 pm on a day between Monday and Friday not being a Bank Holiday (a Business Day). If the email is sent to the customer outside of this time span then the Customer will be deemed to have received the invoice on the following Business Day.

### **Returnable Goods**

48. Provided that Goods are standard size Goods, that the Goods are included in the Seller's general catalogue price, and further provided that the Goods are not defective and returned to the Seller free of any charges within three months from the manufacture of the said Goods, the Goods may be returned by the Customer. Specifically ordered or non-stock items are not returnable.
49. All returns must be sanctioned by the Seller prior to Goods being returned and when returned, the Goods shall be clearly labelled and include label information about the nature of the Goods, the Customer's identity and that the Goods are Goods that are being returned.
50. Goods returned at the Customer's request shall be returned at the risk and expense of the Customer regardless whether the Goods are returned using the Seller's vehicles.



51. Apart from a restocking and handling charge, currently 20% of the Contract Price, the Contract Price of the Goods returned in accordance with the above shall be credited the Customer.

### **Default or insolvency of Customer**

52. This condition applies if:
53. The Customer is in breach of any of its obligations under these Conditions; or
54. The Customer has a receiving order in bankruptcy made against him or makes any arrangement with his creditors or, being a Company, has a receiver, liquidator, administrator, supervisor or administrative receiver appointed over its property or assets or any part of them or if any order shall be made or any resolution passed for winding up the Customer; or
55. The Customer ceases, or threatens to cease, to carry on its business; or
56. The Seller reasonably considers that any of the events mentioned above will occur.
57. If this condition applies then the Seller may, without prejudice to its other rights or remedies, demand immediate payment by the Customer of all unpaid accounts and suspend further deliveries and cancel all contracts concluded between the Seller and the Customer without incurring any liability as a result of such suspension or cancellation and claim compensation from the Customer for any loss sustained thereby.

### **Applicable law**

58. These Conditions and any dispute arising out of or in connection with any agreement between the parties, including any disputes regarding the existence, validity or termination thereof shall be governed by Danish law irrespective of any conflict-of-laws rules which might refer the dispute to the laws of another jurisdiction. The United Nations Convention on Contracts for the International Sale of Goods (CISG) shall not apply to any agreement concluded with the Seller.

**Jurisdiction in relation to costumers domiciled within the EU and EEC**

59. Any dispute arising out of or in connection with these Conditions and any dispute arising out of or in connection with any agreement between the parties, including any disputes regarding the existence, validity or termination thereof, shall be exclusively settled by the Maritime and Commercial High Court in Copenhagen if competent, and otherwise by the City Court of Copenhagen. No other courts shall have jurisdiction to settle disputes between the parties.

**Arbitration in relation to costumers domiciled outside the EU and EEC**

60. Any dispute arising out of or in connection with these Conditions and any dispute arising out of or in connection with any agreement between the parties, including any disputes regarding the existence, validity or termination thereof, shall be settled by arbitration administrated by The Danish Institute of Arbitration in accordance with the rules of arbitration procedure adopted by The Danish Institute of Arbitration and in force at the time when such proceedings are commenced.