



HELM, U.S. General Sales Conditions

1. **Scope of Application**

“We” and “our” means Helm, U.S. Corporation. Our contracts are exclusively governed by the terms and conditions stated in our sales confirmations and by our following General Sales Conditions. We herewith explicitly object to any deviating or conflicting terms or conditions of our Buyer, unless otherwise explicitly agreed in writing.

2. **Offer and Acceptance**

Our offers are non-binding. Orders from our Buyer shall not be binding on us until the earlier of our sales confirmation or our delivery.

3. **Prices and Payment**

3.1. The purchase price is payable without any deduction by the due date.

3.2. In the event of delayed payment, the Buyer shall pay interest from the date of maturity to definite receipt of payment at (i) a rate of 9 percentage points above the prime rate as reported by the United States Federal Reserve Bank, if the amount is invoiced in United States dollars or, (ii) at a rate of 9 percentage points above the discount rate of the central bank of the country of the invoiced currency at the time the payment is due if invoiced in any other currency, (ii) or the maximum extent permitted by law, whichever is greater.

3.3. Buyer hereby agrees to pay all fees and costs directly or indirectly incurred in the collection of past due or delinquent accounts, including but not limited to agency and attorney's fees.

3.4. In the event of any reasonable doubts concerning the Buyer's ability to pay and particularly if a default in payment has already occurred, we shall be entitled – without prejudice to any other rights – to revoke any credit terms granted and to demand payment in advance or sufficient collateral.

3.5. Set-off or retention with counterclaims other than those that are not disputed by us or are confirmed by final court decision shall be excluded.

3.6. Regardless of the place of delivery of goods or documents, the place of payment shall be our place of business.

4. **Delivery**

4.1. Delivery shall be effected as agreed in the contract. General Commercial Terms shall be interpreted in accordance with the Incoterms in force on the date the contract is concluded. To the extent that the Incoterms and the terms of these General Sales Conditions conflict, these General Sales Conditions shall apply.

4.2. In the event of delayed delivery on our part, the Buyer shall be obliged to grant a reasonable period of grace.

5. **Product Quality**

5.1. Unless otherwise agreed explicitly in writing, the quality of the goods is exclusively determined by our product specifications.

5.2. Identified uses under the European Chemicals Regulation REACH relevant for the goods shall neither represent an agreement on the corresponding contractual quality of the goods nor the designated use under this contract.

5.3. The properties of specimens and samples are binding only insofar as they have been



HELM, U.S. General Sales Conditions

explicitly agreed in writing to define the quality of the goods.

- 5.4. Quality and shelf-life data as well as other data shall constitute a guarantee only if explicitly agreed and designated as such in writing.

6. Advice

- 6.1. Any advice rendered by us is given to the best of our knowledge. Any advice and information with respect to suitability and application of the goods shall not relieve the Buyer from analyzing and testing the goods.
- 6.2. Technical and chemical specifications are no warranty or guarantee for a particular suitability or application of the goods.

7. Retention of title

- 7.1. Simple retention of title: Title to the goods delivered shall not pass to the Buyer before the purchase price has been paid to us in full. Notwithstanding for foregoing, the handling and disposal of any chemical, radioactive source, waste or by-product used or generated in the performance of these General Sales Conditions ("Hazardous Materials") is the sole responsibility of Buyer. Buyer agrees that any such Hazardous Materials will be transported and disposed of in accordance with applicable federal, state and local laws and regulations. Buyer hereby waives, releases and agrees not to assert any claim or bring any cost recovery action against HELM U.S. in connection with the use, generation, storage, transportation or disposal of Hazardous Materials arising out of these General Sales Conditions, under any common law theories or federal, state or local environmental laws or regulations, now existing or hereafter enacted without regard to the cause or causes thereof or the negligence of any party.
- 7.2. Right of access and disclosure: at our request, the Buyer shall provide all necessary information on the inventory of goods owned by us and/or shall identify our title to the goods on their packaging.
- 7.3. Late payment: in the event of late payment by the Buyer, we shall be entitled - without rescinding the sales agreement and without granting a period of grace - to demand the temporary surrender of the goods owned by us at the Buyer's expense.
- 7.4. In addition to our retention of title, Buyer hereby grants us a lien upon all goods sold by us to Buyer to secure our payment in full by the Buyer.
 - 7.4.1. Expanded retention of title: if the Buyer has paid the purchase price for the goods delivered but not yet completely fulfilled other debts arising from his business relationship with us, we shall retain, in addition, title to the goods delivered until all such outstanding debts have been completely paid.
 - 7.4.2. Retention of title with processing clause: if the Buyer processes the goods delivered by us, we shall be considered manufacturer and shall directly acquire sole title to the newly produced goods. If the processing involves other materials, we shall directly acquire joint title to the newly produced goods in the proportion of the invoice value of the goods delivered by us to the invoice value of the other materials.
 - 7.4.3. Retention of title with combination and blending clause: if the goods delivered by us are combined or blended with material owned by the Buyer and such material has to be considered the main material, it is deemed to be agreed that the Buyer shall transfer to us the joint title to such main material in the proportion of the invoice value of the goods delivered by us to the invoice value (or, if the invoice value cannot be determined, to the market value) of the main material. The Buyer shall hold in custody for us any sole



HELM, U.S. General Sales Conditions

or joint ownership originating therefrom at no expense for us.

- 7.4.4. Extended retention of title with blanket assignment: in the ordinary course of business, the Buyer shall have free disposal of the goods owned by us, provided the Buyer meets his obligations under the business relationship with us in due time. When concluding the sales agreement with us, the Buyer already assigns to us all claims in connection with the sale of goods to which we reserve the right of retention of title; should we have acquired joint title in case of processing, combination or blending, such assignment to us shall take place in the proportion of the value of the goods delivered by us with retention of title to the value of the goods sold by the Buyer. The Buyer already assigns to us any future confirmed balance claims under current account agreements in the amount of our claims outstanding when concluding the sales agreement with us.
- 7.4.5. Right of access and disclosure: furthermore, at our request, the Buyer shall provide all the necessary information on the claims assigned to us and/or shall notify his customers of the assignment of the claims to us.

8. Defects

- 8.1. The Buyer is required to inspect goods promptly after delivery and to give notice in writing of any defect, false delivery or deviation in quantity immediately but not later than one week after delivery. Delivered goods are deemed accepted if no written complaint is made. Defects that could not be discovered during inspection after delivery must be notified in writing immediately but no later than one week after discovery.
- 8.2. In the case of timely and justified complaints, the warranty claims of the Customer are initially limited at our discretion to the delivery of non-defective goods or to remedying the defect.
- 8.3. If our supplementary performance according to Sec. 8.2 fails, the Buyer may reduce the purchase price or withdraw from the purchase contract at his discretion. Claims for damages under Sec. 9 shall remain unaffected.
- 8.4. The filing of a complaint or any other claim does not release the Buyer from his obligation of payment.
- 8.5. We do not warrant or guarantee that the product is free from patents or other intellectual property rights of third parties.
- 8.6. The Buyer's claims for defective goods become time-barred one year after receipt of our products, notwithstanding any statutory provisions for a longer limitation period.

9. Liability

We shall be generally liable for damages in accordance with the law and according to the following rules: (i) In the event of a simple negligent violation of fundamental contractual obligations, however, our liability shall be limited to compensation for typical, foreseeable losses. (ii) In the event of a simple negligent violation of non-fundamental contractual obligations, we shall not be liable. (iii) The foregoing limitations on liability do not apply to damage to life, body or health.

10. Force Majeure

To the extent that any incident or circumstance beyond our control (including but not limited to natural occurrences, war, strikes, lock-outs, shortages of raw materials and energy, obstruction of transportation, breakdown of manufacturing equipment, fire, explosion, acts of government) reduces the availability of goods from the plant from which we receive the goods, meaning that we cannot fulfill our obligations under this



HELM, U.S. General Sales Conditions

contract (taking account of other supply obligations on a pro-rata basis), we shall (i) be relieved from our obligations under this contract to the extent we are prevented from performing such obligations and (ii) have no obligation to procure goods from other sources. The first sentence also applies to the extent that such incident or circumstance renders contractual performance commercially useless for us over a long period or occurs with our suppliers. If the aforementioned occurrences last for a period of more than 3 months, we shall be entitled to rescind the contract without the Buyer having any right to compensation.

11. Indemnification

11.1. BUYER ASSUMES ALL LIABILITY FOR, AND HEREBY AGREES TO PROTECT, DEFEND, INDEMNIFY AND HOLD HELM, U.S. AND THEIR INSURERS HARMLESS FROM AND AGAINST ALL DAMAGES, LOSS, LIABILITY, CLAIMS, DEMANDS AND CAUSES OF ACTION OF EVERY KIND AND CHARACTER, (INCLUDING ALL COSTS AND EXPENSES THEREOF AND REASONABLE ATTORNEYS' FEES) WITHOUT REGARD TO THE CAUSE OR CAUSES THEREOF, STRICT LIABILITY, OR THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE OR STRICT LIABILITY IS THE SOLE, CONCURRENT, ACTIVE OR PASSIVE NEGLIGENCE OF HELM, U.S., ARISING IN CONNECTION HEREWITH:

1. ON ACCOUNT OF BODILY INJURY AND/OR DEATH TO MEMBER OF THE CUSTOMER AND/OR DAMAGE TO THE CUSTOMER'S PROPERTY.

2. IN FAVOR OF HELM, U.S. ON ACCOUNT OF LOSS OF OR DAMAGE TO HELM, U.S.' PROPERTY, EQUIPMENT, MATERIALS, GOODS OR PRODUCTS, INCLUDING BUT NOT LIMITED TO (A) WHILE IN TRANSIT OR BEING MOVED ON ANY FORM OF TRANSPORTATION OWNED OR FURNISHED BY CUSTOMER (B) WHILE LOCATED AT THE PROPERTY OF BUYER, REGARDLESS OF WHETHER TITLE TO THE GOODS HAS TRANSFERRED.

11.2. CUSTOMER FURTHER AGREES TO PROTECT, DEFEND, INDEMNIFY AND HOLD HELM, U.S. AND ITS INSURERS HARMLESS FROM AND AGAINST ALL LOSS, LIABILITY, CLAIMS, DEMANDS AND CAUSES OF ACTION (INCLUDING ALL COSTS AND EXPENSES THEREOF AND REASONABLE ATTORNEYS' FEES) OF EVERY KIND AND CHARACTER, WITHOUT REGARD TO THE CAUSE OR CAUSES THEREOF, STRICT LIABILITY OR THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE THE SOLE, CONCURRENT, ACTIVE OR PASSIVE NEGLIGENCE (BUT EXCLUDING THE GROSS NEGLIGENCE) OR STRICT LIABILITY OF HELM, U.S., ARISING IN CONNECTION HEREWITH IN FAVOR OF CUSTOMER OR ANY THIRD PARTY FOR: PROPERTY DAMAGE OR LOSS THAT RESULTS FROM POLLUTION AND CONTAMINATION, WHETHER CAUSED BY CUSTOMER'S FAILURE TO PROPERLY HANDLE, TRANSPORT OR DISPOSE OF ANY HAZARDOUS MATERIALS AS REQUIRED BY PARAGRAPH 5(b) HEREOF OR OTHERWISE, INCLUDING CONTAINMENT, CLEAN-UP AND REMEDIATION OF THE POLLUTANT AND CONTAMINATION WHETHER OR NOT REQUIRED BY AN APPLICABLE FEDERAL, STATE OR LOCAL LAW OR REGULATION, PERSONAL INJURY, DEATH, OR PROPERTY DAMAGE OR LOSS THAT RESULTS THE GOODS, DAMAGE TO PROPERTY OWNED BY, IN THE POSSESSION OF, OR LEASED BY CUSTOMER, AND/OR THIRD PARTY, IF DIFFERENT FROM CUSTOMER.

11.3. If any defense, indemnity or insurance provision contained in this Agreement conflicts with, is prohibited by or violates public policy under any federal, state or other law



HELM, U.S. General Sales Conditions

determined to be applicable to a particular situation arising from or involving any work and/or Services hereunder, it is understood and agreed that the conflicting, prohibited, or violating provision shall be deemed automatically amended in that situation to the extent – but only to the extent – necessary to conform with, not be prohibited by and avoid violating public policy under such applicable law.

12. Miscellaneous

- 12.1. This agreement shall be governed by and interpreted in accordance with the substantive laws of Texas, excluding conflicts of law and choice of law principles.
- 12.2. The parties stipulate and agree that any litigation relating to this Agreement may be filed in Harris County, Texas.
- 12.3. If a provision of these foregoing General Sales Conditions is or becomes legally invalid, the validity of the remainder of the provisions shall not be affected thereby.