

**General Terms and Conditions of Sale and Delivery  
of Isocyanates  
Effective as of 1<sup>st</sup> June 2017**

## 1 General

**1.1** The following General Terms and Conditions of Sale and Delivery of Isocyanates (“**GTCs-Sales**”) shall apply for the sale, delivery and supply (hereafter: “**Deliveries**”) of Isocyanates by BorsodChem Zrt. (“**BorsodChem**”) to its buyers and/or customers, (“**Customer**”) in all business cases where a separate, individual written agreement is not concluded.

**1.2** All Deliveries of Products shall be based on the following GTCs-Sales if an individual contract is not concluded. These GTCs-Sales shall form inseparable part and shall mandatorily apply to all binding offers and non-binding quotations placed by BorsodChem to Customer as well as to the Customers’ purchase orders to be accepted and confirmed by BorsodChem.

**1.3** “Isocyanate(s)”, or “Product(s) ” hereinafter shall mean any organic compounds produced and commercialized by BorsodChem that contain an isocyanate or group.

**1.4** Any oral arrangements, deviations from or additions to these GTCs-Sales require BorsodChem’s prior written approval and shall be effective only if BorsodChem expressly agreed to them in writing.

**1.5** Oral declarations, promises made before a contract is entered into are non-binding if not agreed in writing. Any communication, statement, acknowledgment sent by fax or reciprocally confirmed emails shall be considered as written confirmation.

**1.6** Any terms and conditions of the Customer which run contrary to these GTCs-Sales are herewith declared null and void and BorsodChem in not bound by them even if the Customer in its general terms and conditions excludes the validity and application of BorsodChem’s GTCs-Sales.

**1.7** These GTCs-Sales shall prevail over any general or other terms and conditions contained in the Customer’s purchase order or any other document released, made available or communicated in any other way by the Customer.

**1.8** BorsodChem offers and quotations made by BorsodChem shall always be deemed non-binding unless they are expressly marked as binding.

**1.9** All offers quotations submitted by BorsodChem are subject to acceptance and confirmation by the Customer in writing. Unless differently stated BorsodChem offers are open for acceptance within five (5) days after the day of issuance.

**1.10** All purchase orders of the Customer, are subject to written acceptance and confirmation by BorsodChem. In cases of immediate delivery written acceptance and confirmation of BorsodChem may be replaced by an invoice and/or delivery note.

**1.11** Any terms and conditions which are not included in, are additional to, contrary to, and/or different from BorsodChem’s offer or quotation and/or these GTCs-Sales, arising from objections made by BorsodChem to the Customer’s purchase order, or objections made by the Customer to the offer or quotation and/or to GTCs-Sales of BorsodChem, are subject to parties mutual agreement and shall be valid and effective and shall apply to the particular delivery contract only provided that parties mutually agreed on each specific term and condition and reciprocally accepted them in written expressing assent.

**1.12** The case specific terms and conditions which are mutually accepted and confirmed in written form by the parties in accordance with Section 1.11 above shall qualify as Specific Terms, shall form inseparable part of the particular contract together with the modified GTCs-Sales and shall prevail over these GTCs-Sales.

**1.13** If any term of these GTCs-Sales or Specific Terms should be ineffective, the effectiveness of the remaining terms of these GTCs-Sales or Specific Terms shall remain effective in unchanged form.

**1.14** BorsodChem’s offers and quotations as well as any information contained in price lists, catalogues, advertisements, advertising materials and information online and otherwise are non-binding, unless BorsodChem declared that to be binding separately, expressly and in writing.

**1.15** The price lists, catalogues, specifications and any similar documents issued by BorsodChem shall not be considered as a binding offer of BorsodChem.

**1.16** General product information, descriptions, illustrations provided by BorsodChem in printed or digital format, product catalogues and/or on the website, as well as product information leaflets, containing any data including properties, appearance, weight, measure, color and other details of the Products, should be regarded as an approximate description or identification only and such information does not qualify as basis for pricing, manufacturing and delivery obligations or particularly guaranteed qualities of the Products.

**1.17** The contract on the delivery of the Products is considered concluded between Customer and BorsodChem:

(a) When Customer accepts and confirms in written expressing assent, the binding offer or binding quotation of BorsodChem including these GTCs-Sales; or

(b) When BorsodChem accepts and confirms in writing including these GTCs-Sales, the purchase order of the Customer placed for the purchase of the Products; or

(c) When BorsodChem accepts and confirms including these GTCs-Sales the purchase order of the Customer, by delivering immediately Products and issuing the invoice or proving the delivery note; or

(d) When parties mutually agree on any and all Specific Terms and have reciprocally expressed and confirmed in writing their mutual agreement including these GTCs-Sales.

**1.18** The contract on delivery of Products is valid only together with these GTCs-Sales.

**1.19** These GTCs-sales are always available on BorsodChem Zrt. website: [www.borsodchem-products.com](http://www.borsodchem-products.com)

**1.20** By entering the delivery contract based on and including the GTCs-Sales Customer confirms that the GTCs-Sales has been previously made available to the Customer before the conclusion of the contract and Customer has expressly accepted the GTCs-Sales.

**1.21** BorsodChem reserves the right to modify or amend any of its offers and quotations and reserves the right not to accept the purchase order of the Customer and the right to reduce the amount of the Products to be supplied at BorsodChem’s own discretion without any further liability or other consequences.

## 2 Performance

**2.1** Unless otherwise agreed by parties, the place of performance shall be the registered offices, headquarters of BorsodChem, 1 Bolyai Tér Kazincbarcika, Hungary.

**2.2** The Customer acknowledges and expressly accepts that, in case of bulk delivery, due to the losses resulting from intermodal transportation means, BorsodChem has the right to deliver a smaller quantity of Products than agreed by the parties provided that BorsodChem notifies the Customer thereabout in advance in writing.

### **3 Prices, Payment Conditions**

**3.1** The prices of the Products in the commercial offer, quotation and in purchase order confirmation shall be determined by BorsodChem at the place of performance.

**3.2** Unless otherwise agreed in writing all prices are given on net value basis and contain no packing, loading, clearance, or other dispatching

**3.3** If BorsodChem agrees to deliver Products otherwise than at BorsodChem premises Customer shall pay all charges and duties in respect of carriage, freight, packing, loading, customs, insurance, administrative costs etc.

**3.4** BorsodChem shall issue the invoice based on the weighting results performed by BorsodChem at its seat.

**3.5** The price is exclusive of any applicable value added tax or any other taxes and duties which Customer shall be additionally liable to pay to BorsodChem. Unless otherwise agreed, the Customer shall pay the purchase price of the supplied Products within thirty (30) days from the date of the invoice via bank transfer. The date of payment is considered the day when the transferred amount is received by the account-keeping bank of BorsodChem. All banking costs and commissions incurred outside of Hungary shall be borne by the Customer.

**3.6** Any errors contained in offers, order confirmations or invoices, which have not been objected to by the Customer in written form within eight (8) calendar days from the date of receipt of the invoice, shall neither effect the Customer's overall payment obligation nor the period of payment.

**3.7** The Customer's obligation to pay shall survive the term of contract and of these GTCs-Sales and the contract shall not be deemed to be fulfilled until the contract price has been transferred and credited in full into BorsodChem's bank account.

**3.8** The date of payment is considered to be the date when the Bank of the supplier credits the value of the invoices to the supplier's bank account. The claim is considered to be settled, when the total amount of the claim is credited to the bank account of BorsodChem without any deduction of foreign bank charges.

### **4 Setoff and Retention of Payment**

The Customer shall not be entitled to retain any payments that are due to BorsodChem. The Customer shall only be entitled to offset any claims the Customer may have towards BorsodChem against any claims BorsodChem has towards the Customer provided that (i) BorsodChem acknowledges and confirms such claim of the Customer and the amount of it in writing, or (ii) the Customer's claim (and the amount thereof) is based on a final and binding judgement of a court.

### **5 Title Retention**

**5.1** BorsodChem retains the title of ownership of Products until the purchase price is paid in full. The delivered Products shall remain in the ownership of BorsodChem until BorsodChem receives the Customer's full payment, including any costs and interest to be borne by Customer.

**5.2** With the diligence of a prudent businessperson, the Customer shall keep the Products that are subject to retention of title separate from other goods and insure them properly and sufficiently against all risks at its own expense based on the replacement value against any damage including damage caused by fire, water, storm/hail, burglary, tap water system and sprinkler leakage, natural hazards.

**5.3** The Customer shall not be entitled to sell, blend with other goods or to process, resell or otherwise dispose or pledge or transfer by way of security the Products that are subject to retention of title.

**5.4** The Customer shall be obliged to clearly label the Products that are subject to retention of title directly and to record them in its bookkeeping records.

**5.5** The Customer shall assign to BorsodChem with immediate effect any claims concerning the Products that are subject to retention of title resulting from insurance contracts.

**5.6** If the Customer, against the express prohibition set forth in Section 5.3 and without the prior written approval of BorsodChem processes the Products that are subject to retention of title or combines or blends them with other goods, BorsodChem shall be entitled to a co-ownership of such newly created goods on a pro-rata basis in accordance with the sales price.

**5.7** BorsodChem shall have right of retention in respect of further deliveries until any and all deliveries have been paid for. If any information become known, which could reasonable affect the creditworthiness or readiness to pay of the Customer, then BorsodChem shall be entitled to demand security from Customer. If Customer refuses to give this security, then BorsodChem may withdraw from the contract.

**5.8** The Customer shall keep separately from its own funds any payments received with regards to the claims the Customer assigned to BorsodChem and shall transfer such amounts to BorsodChem accounts on the due date of the purchase price. The Customer shall clearly note this assignment in its bookkeeping records, including the open items' list, and on its own invoices.

**5.9** Before the full payment of the contract price including any ancillary claims, the Customer shall be prohibited from selling or otherwise disposing or pledging or transferring by way of security, and from processing of the goods that are subject to retention of title or any receivables assigned to BorsodChem.

**5.10** The Customer shall be obliged to immediately inform BorsodChem of any debt enforcement measures and other measures affecting BorsodChem's legal position as owner. The Customer shall immediately object to such measures by referring to BorsodChem's legal position as owner because of the retention of title.

**5.11** In case of any delay in payment and upon BorsodChem's request, the Customer shall return the Products that are subject to retention of title including any related documents. If the Customer fails to comply with such obligation, BorsodChem shall be entitled to independently retrieve the Products that are subject to retention of title from the Customer's custody. The Customer hereby waives its right to protection of possession for the above detailed case. The mere recovery of the Products does not represent a rescission of contract or a waiver of the right to demand the full amount of purchase price.

**5.12** The Customer shall compensate BorsodChem for any and all expenses and costs resulting from the recovery of the Products that are subject to retention of title.

### **6 Late payment**

**6.1** In case of late payment the Customer is obligated to pay default interest, the rate thereof projected to the overdue invoice value is three (3) months' base rate of the issuing central bank + seven hundred (700) basis points per commenced days in delay.

**6.2** Provided that the payment of the invoice is overdue for over eight (8) calendar days, BorsodChem shall be entitled to (i) suspend the delivery of further Products or any other products to be supplied by BorsodChem immediately at its own discretion, and/or (ii) request the immediate re-transportation of Products (the purchase price of which have not been settled) on the cost of the Customer to the headquarters of BorsodChem and/or (iii) sell the Products (the purchase price of which have not been settled) to any third party. The Customer shall bear all costs of BorsodChem arising in connection with the sale of the Products to a third party and the relating loss of BorsodChem.

Furthermore, BorsodChem shall be entitled: (i) to claim compensation for any disadvantage caused by the delay and/or (ii) to suspend fulfilment of BorsodChem own contractual responsibilities until the Customer's full settlement of payment; and/or (iii) to appropriately extend the delivery deadline; and/or (iv) to accelerate any outstanding claims from any contracts with the Customer and declare them to be due immediately; and/or (v) to immediately charge Customer for any discounts/reductions BorsodChem granted to the Customer for any orders that are unpaid.

**6.3** In case of any delay in payment, the Customer shall be obliged to bear all costs at standard rates caused by reminders, collection agencies as well as in and out-of-court debt collection, including the attorney-fees.

## **7 Transportation of the Products**

### **7.1 Transportation Performed by the Customer**

**7.1.1** Customer shall provide BorsodChem with information in respect of the transportation mean of the Products.

**7.1.2** Unless otherwise agreed by the contracting parties in writing, the transportation of the Products shall be performed at the Customer's cost and risk.

**7.1.3** The Customer shall be solely responsible for the environmental, hazard and safety ("EHS") compliance, the cleanness and compliance of the transportation means arranged for by the Customer and for any complains, fines, penalties and damages arising therefrom.

**7.1.4** The Customer shall comply with BorsodChem's seat specific, site access, Product handling, loading and transportation provisions and the REACH Regulation and the Safety Data Sheet ("SDS") as well as with all fire protection, disaster management and other EHS provisions applicable to the supplied Products, e.g. ADR, RID, etc. and shall confirm in writing that the transportation means provided by the Customer comply with all special provisions applicable to the supplied Products as well as with the transportation task and license.

**7.1.5** Customer shall be solely responsible to provide the transportation means with the required technical parameters, in clean and proper technical condition at the place of performance.

**7.1.6** BorsodChem shall be entitled to reject and refuse the site access and/or the weighting, and/or the loading of transportation means not fully complying with the above provisions and shall be always entitled to expel immediately the not complying transportation means and related staff from BorsodChem's headquarters and premises without any further contractual or other consequences caused to BorsodChem side.

**7.1.7** Customer shall indicate the time of the arrival of the transportation means possibly in the week prior to transportation, but at least forty-eight (48) hours in advance in order to avoid holdups and long waiting times. BorsodChem shall not be liable for any damages if there are any holdups or waiting times.

**7.1.8** Customer shall arrange for the insurance of the supplied Products against any damages in transit, on Customer's own cost.

### **7.2 Transportation Performed by BorsodChem**

#### **7.2.1 Provided Road and Deep-sea Transport**

(i) Customer is obliged to provide BorsodChem with information in respect of the transportation means of the Products.

(ii) If there will be any extra cost at BorsodChem's side arisen from incorrect and incomplete data given by Customer the costs will be charged to the Customer.

(iii) In that case the Customer reschedules or cancels the consignment after loading the arisen extra costs will be charged to the Customer.

(iv) BorsodChem shall provide maximum twenty-four (24) hours for the Customer to discharge the transportation means. If the transportation means are not discharged within the agreed period of time, BorsodChem shall charge demurrage fee.

(v) If the Customer will not perform the unloading in suitable, correct way and due to this BorsodChem will have any extra cost e.g. cleaning, heating, weighing, transport it will be charged to the Customer.

(vi) Any extra cost at BorsodChem's side arisen from fault of Customer will be charged to the Customer

**7.2.2** In all cases when the transportation is performed by BorsodChem, BorsodChem shall charge a fee for the use/ utilization of the tank cars and wagons that are owned or leased by BorsodChem and Customer shall bear as well any additional costs incurred by the Customer's eventual special, extraordinary delivery requirements.

**7.2.3** In case of railway transportation the Customer shall pay in addition for showing of the transportation means and the use of the railway line in accordance with the effective tariff of the transporting railway and except otherwise agreed Customer shall bear the cost of returning the empty transportation means to the headquarters of BorsodChem or any other location.

**7.2.4** Save as expressly provided for, BorsodChem shall provide maximum twenty-four (24) hours for the Customer to discharge the transportation means. BorsodChem charges a basic fee for such period of time. If the transportation means are not discharged within the agreed period of time, BorsodChem shall charges an increased fee for the use of the transportation means for each additional hour in the upcoming twenty-four (24) hours that commence.

**7.2.5** Customer shall notify BorsodChem immediately on the date and time of arrival of the transportation means to the Customer's site or to any other arrival destination and shall notify as well the performance of unloading via fax or email. The arrival and discharge notice shall be received and confirmed by BorsodChem to calculate the discharge time period. In the absence of such notification or notice confirmation, BorsodChem shall calculate the end of twenty-four (24) hours discharge period based on the transportation lead time and not based on the actual time of arrival of the transportation means at the Customer's site.

**7.2.6** Unless otherwise agreed by parties in writing, BorsodChem reserves the right to select the transportation means, method and route.

## **8 BorsodChem's Undertaking**

BorsodChem undertakes to supply Products that comply with the parameters specified BorsodChem product specifications and SDS effective on the day of delivery.

## **9 Quantity and Quality Control**

**9.1** Before delivery, BorsodChem shall perform the quality and quantity control of Products to be supplied to the Customer. Based on such control, BorsodChem shall hand over a quality certificate to the Customer.

**9.2** Quality complaints related to Products may be submitted only in writing within fifteen (15) days from the receipt of goods. Only quality defects notified within the above deadline are considered as "submitted without delay". In every case, the Customer shall have to prove that the Product supplied by BorsodChem was stored and handled in compliance with the conditions indicated on the technical data sheet and Product related material data sheet.

**9.3** Quantity complaints may be submitted only in writing, within eight (8) days from the receipt of goods. The quantity complaint shall also be indicated in the CMR and/or delivery note. Only quantity defects notified within the above deadline are considered as "submitted without delay".

**9.4** BorsodChem and the Customer shall have to agree on the method of investigating and handling the complaint on a case-by-case basis. The Customer shall bear all reasonable costs arising from unjustified complaints (e.g. in case the Product was not defective).



**9.5** The Customer shall store the Products affected by the complaint separately in a place which is isolated and properly separated from other Products and in compliance with the Product storage instructions and shall not blend, mix, use or process the Products complained in any way until the complaint has been handled and investigation has been finished by BorsodChem.

**9.6** The Customer shall be cooperative during the investigation and shall give the opportunity to BorsodChem to examine whether the complaint was justified.

**9.7** If Customer does not fulfil the above requirements, the complaint shall become null and void and BorsodChem shall be released from any further responsibilities, obligations, warranties or guarantees, BorsodChem's liability shall be excluded and only Customer shall be liable for any damages arising from the delay of the announcement of the complaint or the non-fulfilment of the requirements set forth in the above sections of GTCs-Sales.

**9.8** The submission of the complaint relating to the quantity or the quality of the Product does not affect the deadline(s) for the settlement of the purchase price of the Products.

**9.9** The defective performance claims arising from quality and quantity claims shall be subject to a statute of limitations being identical to the shelf life of the Product indicated in the product's technical data sheet;

**9.10** BorsodChem may at its own discretion decide either to eliminate the defects or to provide subsequent performance by delivering Products free of defects to exchange the Products that are subject to the Customer's complaint without examining the complaint. However, such repair or exchange by subsequent performance shall be made without recognition of any legal obligation, shall not be considered and/or could not be interpreted such as an acceptance of any liability of BorsodChem and in such case any further additional claims for defects are excluded.

## **10 Limitation of Liability**

**10.1** BORSODCHEM SHALL BE LIABLE TO CUSTOMER IN ACCORDANCE WITH THE LEGAL REQUIREMENTS FOR ALL DAMAGES IN CONNECTION WITH THE DELIVERY HOWEVER THE FOLLOWING LIABILITY LIMITATIONS SET OUT BELOW SHALL APPLY FOR ALL CASE OF DAMAGES, INDEPENDENT OF LEGAL BASE, AND WITH THE EXCEPTION OF CLAIMS RAISED BY CUSTOMER (I) BASED ON DAMAGES CAUSED INTENTIONALLY, (II) DUE TO FRAUDULENTLY CONCEALED DEFECTS, OR (III) RESULTING FROM DAMAGE TO LIFE, PERSONAL INTEGRITY OR HEALTH.

**10.2** In case of negligence, BorsodChem will be liable only for damages resulting from the breach of essential contractual duties the performance of which is required for due performance of contract and observance of which the parties may rely on regularly, however, the liability of BorsodChem in any case shall be limited to the typically foreseeable direct damages.

**10.3** THE LIABILITY OF BORSODCHEM FOR ANY DAMAGES ARISING OUT OF OR IN CONNECTION WITH A CONTRACT CONCLUDED IN ANY WAY AS PER POINT 1.17 IS LIMITED TO THE VALUE OF THE PRODUCT SUPPLIED UNDER THE CONCERNED CONTRACT AND BORSODCHEM EXCLUDES ANY AND ALL LIABILITIES FOR CONSEQUENTIAL, INDIRECT OR SPECIAL LOSSES, EXPENSES OR DAMAGES OF ANY KIND HOWSOEVER, INCLUDING WITHOUT LIMITATION ANY LOSS OF PROFIT, USE, GOODWILL, BUSINESS RECEIPTS, CONTRACTS OR COMMERCIAL OPPORTUNITIES, MARKET REPUTATION, OR LOSS RESULTING FROM SHUT DOWN OF ANY PLANT WHETHER FORESEEABLE OR NOT, ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE CONCLUSION, THE PERFORMANCE, THE FAILURE TO PERFORM, OR THE TERMINATION OF THE CONTRACT.

**10.4** THE CUSTOMER SHALL INDEMNIFY FOR AND DEFEND AND HOLD HARMLESS BORSODCHEM FROM THE LIABILITY FOR ANY AND ALL DEMANDS OR CLAIMS ARISING FROM INJURIES SUSTAINED OR DAMAGES SUFFERED FOLLOWING THE PASSING OF RISK AND/OR THE TRANSFER OF OWNERSHIP TITLE OF THE PRODUCT; WHICHEVER HAPPENS EARLIER.

## **11 Application of REACH Regulation and Environmental Health, Safety (EHS) legislation and prescriptions**

**11.1** BorsodChem remains fully engaged in the implementation of Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorization and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC ("REACH Regulation"), and is working closely with its customers and suppliers to ensure a smooth transition. BorsodChem is anticipating and reacting to a variety of issues raised by the REACH Regulation, in close cooperation with various trade organizations.

**11.2** Customer declares that it has understood the content of the REACH Regulation and SDS and hereby undertakes to comply with the content of the REACH Regulation, in the Product supply chain, in takeover, handling, loading, transportation, unloading, storage, processing, disposal, resale, any form of use, reuse of the Product supplied by BorsodChem to the Customer.

**11.3** Customer declares that the BorsodChem site specific EHS requirements, the BorsodChem Product Loading Prescriptions for Carriers and the updated Product related SDS prepared in line with the requirements of the REACH Regulation has been made available and/or handed over by BorsodChem to the Customer in paper or electronic form on BorsodChem's web site <http://www.borsodchem-group.com/Our-policies/Safety.aspx> and/or email and/or data medium.

**11.4** The Customer expressly acknowledges that the Customer is only liable and hereby undertakes to compensate any and all damages arising from or in connection with the infringement of the provisions or the duty to cooperation set forth in the REACH Regulation and the proper implementation and execution of requirements and regulations laid down in the SDS and BorsodChem site specific EHS requirements and BorsodChem Product Loading Prescriptions for Carriers as well as the EHS and other legal provisions of Hungary and the European Union.

**11.5** BorsodChem shall provide Customer with SDS of the Product before the first delivery or together with BC offer or quotation, than if the SDS has to be amended, with the amended SDS within one year from the latest delivery, as the case may be. Customer acknowledges that these documents are always available for Customer on BorsodChem's website <https://sds.borsodchem.eu> with their accounts (access is established before the first delivery) and shall be made always available to Customer at the Customer's request.

**11.6** Customer shall provide to the extent necessary its employees, agents, contractors, costumers, carriers, freighters, transport operators or other persons to whom it supplies, hand over and/or make available for transportation, any recipient or other actor in the supply chain and / or give any access to Product delivered hereunder:

a) A copy of the effective SDS and any other information relating to health, safety and environmental data in connection with the Product, or

b) Comparable information relating to health, safety and environmental data in connection with the Product delivered, in all cases when the place of final performance is located outside the area of the European Union.

c) A copy of BorsodChem site specific EHS requirements, the BorsodChem Product Loading Prescriptions for Carriers.

**11.7** Nothing herein shall relieve Customer of its duties in relation to the safe and proper take over, handling, transport, storage, blending, mixing, processing, usage, resale and disposal of the Product.

**11.8** If requested by Customer, BorsodChem may assist Customer in arranging the loading operations. PROVIDED THAT BORSODCHEM ASSISTS IN ARRANGING THE LOADING OPERATIONS, BORSODCHEM EXCLUDES ITS LIABILITY FOR ANY DAMAGES IN CONNECTION THEREWITH TO THE FULLEST EXTENT POSSIBLE UNDER THE APPLICABLE LAWS. FURTHER, CUSTOMER SHALL INDEMNIFY FOR AND HOLD HARMLESS BORSODCHEM FROM ALL DAMAGES, COSTS AND OTHER EXPENSES RESULTING FROM OR IN CONNECTION WITH PROVIDING ASSISTANCE TO ARRANGING THE LOADING OPERATIONS.

## **12 Force Majeure**

**12.1** Unless otherwise provided in the contract, if performance under the contract is prevented, restricted, or interfered with by reason of an event beyond the reasonable control of the parties, including, but not limited to, fire, flood epidemic, earthquake, explosion, act of God or public enemy, riot or civil disturbance, war, terrorist threat or activity, any government or administrative law, order or regulation, or order of any court or jurisdiction (hereinafter: "Force Majeure"), the restricted party shall not be in breach hereof and the performance or obligation of such party shall be excused for a period of time equal to the period during which the Force Majeure prevents such performance.

**12.2** Should a Force Majeure event occur which is beyond the control of any of the parties, then neither of the parties is liable for damages arising due to the Force Majeure event.

**12.3** Should a Force Majeure occur, then the affected party is obliged to send a written notification to the other party immediately but not later than within five (5) working days from the occurrence of the Force Majeure event. The party that fails to send the above notification shall not be exempted from the payment of damages based on this section.

**12.4** The party affected by the Force Majeure event is obliged to do its utmost to minimize the damage of the other party.

**12.5** In the case of unforeseen circumstances, especially Force Majeure, which is of economic importance, BorsodChem shall be entitled to adapt the contract in good faith to the changed circumstances. If it proves impossible to adapt the contract because this would have unacceptable negative financial consequences (i.e. be uneconomic), then BorsodChem shall be entitled to withdraw from the contact.

## **13 Governing Law and Dispute Resolution**

**13.1** The delivery contract as well as these GTCs-Sales shall be governed by the laws of Hungary which shall apply exclusively to the parties' contractual relationship with the exclusion of reference to any conflict of law rules, the United Nation Purchase Law, the United Nation Convention on Contracts for the International Sale of Goods (Convention of Vienna 1980, CISG). If term(s) and/or condition(s) of contract or GTCs-Sales should be ineffective, the effectiveness of the remaining terms and conditions remains unchanged.

**13.2** Should any dispute emerge in compliance with the stipulations of these GTCs-Sales, contract BorsodChem and its Customer does their best efforts so as to settle it in an amicable way.

**13.3** Should the parties' efforts remain unavailing, the parties agree that all disputes arising from or in connection with the contract, its breach, termination, validity or interpretation the amount in dispute of which does not exceed or is equal to HUF 40 million (forty million Hungarian Forints) or the foreign currency amount equal to the aforementioned HUF amount calculated on the official exchange rate of the Hungarian National Bank effective on the date of the filing of the claim with the respective court, shall be exclusively decided by the court competent according to the seat of BorsodChem pursuant to the Hungarian Act on the Civil Procedure.

**13.4** Should the parties' efforts remain unavailing, the parties agree that all disputes arising from or in connection with the contract, its breach, termination, validity or interpretation the amount in dispute of which exceed HUF 40 million (forty million Hungarian Forints) or the foreign currency amount equal to the aforementioned HUF amount calculated on the official exchange rate of the Hungarian National Bank effective on the date of the filing of the claim with the respective court, shall be exclusively decided by the Court of Arbitration attached to the Hungarian Chamber of Commerce and Industry, Budapest (Hungary) in accordance with its own Rules of Proceedings. The parties accept decisions of the aforementioned arbitration court as final and binding upon both parties. The arbitration court makes its decisions and judgements under Hungarian substantive law. Sessions of the arbitration court shall be held in Budapest. Official language of the arbitral proceedings shall be English.

## **14 Confidentiality**

**14.1** Each of the parties, their respective employees, officers, advisors and other representatives, shall handle on a strictly confidential basis all facts, data and information relating to the other party and to the contract between the parties (including its existence) which they obtained in connection with the conclusion of the contract or otherwise during the performance hereof. Furthermore, each of the parties shall ensure that the foregoing persons related to BorsodChem and the Customer, respectively, shall not publish or disclose to third parties any of the aforementioned confidential information without the prior written consent of the party concerned, except if the party shall be obliged to do so pursuant to law or authorities' or court's resolution. However, even in this case, such confidential information may be disclosed only to the extent such party is legally obliged to do so.

**14.2** In case the Customer discloses confidential information relating to BorsodChem without having a legal obligation to do so, for each case of an individual breach the Customer shall pay EUR 25,000 (twenty-five thousand) to BorsodChem as contractual penalty. The Customer shall not be exempted from the payment of damages exceeding the above penalty of EUR 25,000 (twenty-five thousand) that are caused by the disclosure of the confidential information.

## **15 Business Principles, Compliance with the Code of Ethics and Anti-fraud Policy**

**15.1** BorsodChem, as one of the leading chemical companies in Central Eastern Europe, is committed to obey constantly the ethical norms and regulations generally accepted in business life during its operation. As part of its endeavour, BorsodChem demands from its partners in relationship therewith to operate accordingly.

**15.2** The Customer expressly accepts that BorsodChem requires its business partners to comply with its Code of Conduct and Code of Ethics and provide BorsodChem with all information and documentation deemed necessary by BorsodChem to comply with the Code of Ethics.

**15.3** BorsodChem's business partners are to report to BorsodChem „Director Compliance & Internal Audit" any suspected or actual violations of BorsodChem Anti-fraud Policy and Code of Ethics of the BorsodChem Group that involve items or employees of BorsodChem or its subsidiaries to the extent such reporting is legally permitted in a business partner's country. The Customer has to disclose any internal and/or subcontractor's misconduct of the Code of Ethics and the Anti-fraud Policy. BorsodChem Anti-fraud Policy is available at [www.borsodchem-group.com](http://www.borsodchem-group.com). Such reports are to be provided via any of the contact options for BorsodChem Group Ethics Line available in BorsodChem's Code of Ethics.

**15.4** BorsodChem and the Customer represent and warrant that they shall perform the contract in full compliance with the applicable laws and principles set out in their respective Codes of Conduct (a copy of which is available on their respective website or on request). In the absence of such Code of Conduct for one of the parties, the parties shall comply with the principles of the Code of Conduct of the other party.

**15.5** The Customer declare that the transaction does not fall under embargo on arms and related materials based on the joint position and common steps of the EU Council, or on the decision of the Organization for Security and Co-operation in Europe or on the obligatory decision of the United Nations Security Council.

## **16 Governing Language**

**16.1** These GTCs-Sales have been prepared in English languages.

## **17 Transfer and Assignment**

Customer is not entitled to assign or transfer in any other form the contract (the order confirmed by BorsodChem or the binding offer accepted by the Customer) or any right or obligation hereunder to any third party without BorsodChem's prior written consent. Notwithstanding any such prior written consent, the Customer shall nevertheless remain jointly and severally responsible together with the assignee/transferee for the proper performance of the contract.