

General Terms and Conditions of Purchase of Kelviplast GmbH & Co KG for transactions within the territory of the European Union

1. Applicability

1. Our Terms and Conditions of Purchase, hereinafter set forth, shall apply as against every natural or legal person or partnership with legal personality acting in his, her or its commercial or independent professional capacity in concluding a contract (entrepreneur within the meaning of sec. 14 of the German Civil Code) and as against legal entities of public law or special asset entities of public law.
2. Our Terms and Conditions of Purchase shall govern exclusively. Terms and conditions of the Supplier which contradict these Terms and Conditions or deviate therefrom are not deemed to be acknowledged by us unless we have expressly consented to their application in writing. Our Terms and Conditions of Purchase shall also apply where we accept delivery from the Supplier, without reservation, and with knowledge of terms and conditions which contradict or deviate from our Terms and Conditions of Purchase.
3. All agreements made between us and the Supplier for the purpose of and in execution of an agreement shall only be valid if made in writing. Oral agreements shall not be binding unless they are confirmed by us in writing. Any agreements the parties make which deviate from or add to these Terms and Conditions shall apply only with respect to the single contract or order for which they are made.

2. Conclusion of contract

1. Our orders as well as our supplements and amendments to orders shall not be binding unless they are made in writing or by electronic means, contain an order number and identify the orderer and are signed by at least two authorised signatories. In no event shall the order be binding if, within a period of two weeks, we do not receive an identical confirmation of the order from the Supplier, in writing and quoting the order number.
2. Every order placed by us shall be deemed to be placed only subject to the express condition that the Supplier does not, in connection with the placement of the order, promise or grant favours or advantages of any kind to any of our employees whatsoever. In the event of a breach of this condition, we shall be entitled to rescind the contract. We also reserve the right to raise claims for damages in respect of such breaches.
3. Offers received from Suppliers shall be free of charge to us and shall not be binding on us.
4. Our employees, to the extent that the individuals in question are not corporate officers, prokurists or holders of powers of attorney, shall have no authorisation to give declarations binding the company.

3. Prices

1. The prices stated in our orders shall be binding. To the extent the parties do not otherwise agree in writing, the price shall cover "free delivery to our factory inclusive of packaging". No return of packing material shall be effected unless specially agreed by the parties.
2. The legal rate of VAT is not included in the price.
3. If labour should be necessary in order to effectuate the order which is not itself stated in the order, this shall be communicated to us immediately. We shall not reimburse any costs arising therefrom where we have not given our prior written consent to the performance of such additional work or services.

4. Invoicing and Payment

1. Invoicing shall be done in duplicate and shall quote our order number, identifying the person placing the order and the invoice number of the delivery note accompanying the shipment. A separate invoice shall be generated by the Supplier for each of our orders. The Supplier shall bear liability for all consequences arising from the failure to observe these obligations to the extent the Supplier fails to prove that the Supplier is not at fault therefor.
2. We shall effect payment of proper invoices within ten days claiming 3% cash discount, or net cash within 30 days from the date of delivery, by bank transfer to the account of the Supplier stated in the invoices or by offsetting any counterclaims we may have.
3. We reserve the right to effect payment by means of cheque or bank draft.
4. All payments made by us shall be under reserve and shall not constitute acknowledgement of freedom from defects or a waiver of the right to make warranty claims to which we are entitled.
5. We shall not be deemed to be in default unless and until we have received a written reminder issued to us after the due-date for payment has already passed.

5. Subject of Supply/Subject of Purchase

1. As to the contents, type and scope of supply, our order as well as the specifications and manufacturing documentation provided by us (drawings, plans, prototypes, models, etc.) shall control and be binding on the Supplier. If no instructions or specifications have been issued by us, then the relevant DIN norms shall apply. To the extent that no DIN norms exist, the relevant Euro norms shall be deemed to be agreed, and in the absence of such, then trade usage shall apply. Electronic parts must correspond to the specifications of the "Verband Deutscher Elektroingenieure".
2. The obligations of the Supplier to examine specifications and manufacturing documentation for completeness, accuracy and suitability shall remain unaffected hereby. The Supplier shall inform us without delay and in writing with respect to any possible discrepancies or as to identifiable defects. The Supplier's responsibility for the performance of the order shall likewise remain unaffected hereby.
3. The delivery must conform in design and scope to our order and/or our demands. We shall not be obliged to accept excess amounts. Shortages as to quantities supplied shall oblige the Supplier to make immediate supplemental deliveries. Shortages in weight or quantities supplied of more than 10 percent which interfere with our work flow shall entitle us to rescind from the contract if we have set a reasonable grace period for supplemental deliveries from the Suppliers in writing and the Supplier has failed to comply within such grace period.
4. Where shortfalls as to quantities arise but the value of the goods does not justify a supplemental delivery, we shall be entitled to abate the invoiced amount by issuing a debit note.
5. Partial deliveries shall not be permitted unless we have expressly consented thereto. We shall be entitled to demand deliveries in allotments.
6. To the extent that goods which have been ordered have not yet been manufactured, we shall be entitled to demand changes to the construction and design thereof if such changes do not constitute a fundamental change of the order.

6. Delivery dates, Delay

1. The delivery deadline stated in the order shall be binding.
2. Periods for delivery begin to run as from the date of the order.
3. The Supplier shall be obliged to inform us without delay and in writing when circumstances arise or come to the Supplier's knowledge as a result of which it would not be possible to comply with the agreed delivery date. In addition, cases of *force majeure*, as well as other delays in delivery for which the Supplier does not bear liability and which were unforeseeable to the Supplier, shall be communicated by the Supplier to us without delay when the Supplier learns thereof. Where the delay continues for a period exceeding two months, we shall be entitled to rescind the contract.
4. In the event of a default in delivery, we shall be entitled to avail ourselves of all remedies the law provides. In particular, we shall, upon the expiration of a reasonable time during

which no supply is effected, be entitled to demand damages rather than performance and/or to rescind the contract. If we demand damages, the Supplier shall be entitled to supply proof that it does not bear liability for the breach.

5. If the Supplier is in default, then we shall be entitled, without prejudice to our right to submit proof of greater damages, to demand lump-sum damages for default in the amount of 0.5% for each complete week of delay, which damages shall not exceed 10% of the value of the goods to be supplied. The Supplier shall be entitled to submit proof that we have suffered no damage. Our rights of rescission pursuant to para. 4 shall remain unaffected hereby.

7. Shipment, Acceptance, Passage of risk and documentation

1. Deliveries and shipments to us shall be free our factory at the risk and cost of the Supplier unless the parties otherwise agree. This shall also apply to any returns. The Supplier shall bear liability for compliance with stated shipping rules and regulations.
2. Risk shall pass to us as of such time as the delivery is made to the agreed receiving station.
3. The Supplier shall include an invoice quoting our order number, identifying the orderer, the date of order and our article and/or signature number in every delivery to us. In the event of a breach hereof, we shall be entitled to refuse acceptance and the Supplier shall not have or derive any claim against us on the basis thereof. The Supplier shall bear the costs of a well-founded rejection of acceptance.
4. If a delivery is sent directly to third parties at our request, then Supplier shall inform us thereof without delay by means of a notice of dispatch. The Supplier shall not disclose prices to any such third party. In the event of a breach hereof, § 10 sub. 4 shall apply *mutatis mutandis*.
5. If we should be prevented from accepting delivery as a result of *force majeure* or other unforeseeable circumstances through no fault of our own, in particular as a result of industrial action, our duty to accept delivery shall be dormant. We shall immediately communicate the existence of such circumstances. In such cases, we shall be entitled to rescind the contract or to demand delivery at a later date. No claims in favour of the Supplier shall arise herefrom. If our duty of acceptance remains dormant for a period lasting more than two months, then the Supplier shall also be entitled, after granting a reasonable grace period, to rescind the contract.

8. Inspection for defects, Liability for defects

1. We shall be obliged to examine the goods within a reasonable time with respect to possible variations as to quality and quantity; notices of defects shall be timely if they are received by the Supplier within a period of five business days as from the date of the receipt of the goods, and where the defects are hidden, as from the time of the discovery thereof.
2. We are entitled to assert legal warranty claims without limitation; in each and every case we shall be entitled to demand, at our discretion, that the Supplier either remedy the defect or effect substitute delivery of a new good. We are entitled to effect minor repairs ourselves at the cost of the Supplier after giving a corresponding notice of defect. We expressly reserve the right to demand damages, and in particular with respect to the right to demand damages in lieu of performance.
3. We shall be entitled to take remedial action ourselves at the expense of the Supplier in cases in which delay would entail risk or where there is a particular need for urgency.
4. The limitations period is 36 months as from the date of the passage of risk.

9. Intellectual property/Safety requirements

1. The Supplier warrants that no rights of third parties within the Federal Republic of Germany and the European Union shall be infringed in connection with its deliveries.
2. If we are subjected to claims by third parties for infringement of such intellectual property rights, the Supplier shall be obliged to indemnify us upon our first written demand; we shall not be entitled to enter into any agreements with third parties, including, in particular, the making of any settlements, without the consent of the Supplier.
3. The obligation of indemnification by the Supplier shall extend to all expenses we necessarily incur as a result of or in connection with claims that are made against us by third parties.
4. The limitations period as to the Supplier's duty of indemnification shall be 10 years, calculated from the date of the contract.
5. The Supplier shall, in addition, be obliged to manufacture the goods to be supplied in conformity with sec. 5 of these Terms and Conditions (Subject of supply/subject of purchase) such that they conform to the requirements of law and in particular to the legal regulations on accident prevention.

10. Confidentiality

1. The Supplier is obliged to maintain strict confidentiality. The Supplier is prohibited from copying drawings, plans, prototypes, models etc. supplied to it by us, except where such copies are required for manufacturing purposes, or from making the same known to or providing the same to third parties unless the Supplier has received our express written consent thereto.
2. All documentation and copies as may be made thereof shall be returned to us upon completion of the order and/or where a contract is not concluded or is rescinded or terminated.
3. Items manufactured to our order may not be offered or supplied to third parties, and particular may not be supplied to our competitors or customers.
4. In the event of a breach by the Supplier of the duties of confidentiality set forth above, the Supplier shall be obliged, without prejudice to our right to demand damages, to pay to us a penalty corresponding to the sum of the twice the net value of the order.

11. Reservation of title – Provision of material – Tools and media – Confidentiality

1. Title to the good supplied shall pass to us as from such time as payment is made.
2. To the extent we supply parts to the Supplier, we reserve title thereto. Processing or modification by the Supplier is effected for our benefit. If our reserved title property is processed with property not belonging to us, we shall acquire co-ownership of the new property at a ratio of the value of our reserved-title property (purchase price net of VAT) in proportion to the other processed items at the time of their being processed.
3. If the property supplied by us is inextricably commingled with other property not belonging to us, we shall acquire co-ownership of the new property at a ratio of the value of our reserved-titled property (purchase price net of VAT) in proportion to the other commingled items at the time of their being commingling. If the commingling occurs such that the Supplier's property is to be seen as predominant, then it shall be deemed to be agreed between the parties that the Supplier shall convey prorata co-ownership to us; the Supplier shall store our wholly owned or co-owned property for us.

12. Retention, Set-off, Prohibition on assignment

1. Assertion of rights of retention or set-off of counterclaims by the Supplier shall be permitted only where the counterclaim has been established by final court judgement, is not contested or has been acknowledged by us.
2. The delegation of performance of our order to third parties or assignment of claims or rights in connection with the delegation to third parties requires our express consent.

13. Products liability

1. To the extent the Supplier bears liability for a defective product, the Supplier shall be obliged to indemnify us from damage claims of third parties upon our first demand to the extent the cause thereof lies in its zone of influence and organisation and the Supplier itself bears liability in its relations to the outside world [sic – unklar].
2. Within the scope of Supplier's liability for product defects within the meaning of clause (1) the Supplier shall also be obliged to reimburse us for any possible expenses pursuant to §§ 683, 670 of the German Civil Code as well as pursuant to §§ 830, 840, 426 of the German Civil Code which may arise out of or in connection with a recall action undertaken by us. We shall inform the Supplier – to the extent possible and reasonable – with respect to the subject and scope of the recall action and shall afford the Supplier opportunity to comment thereon. All other and further legal claims and rights are reserved.
3. The Supplier covenants to maintain products liability insurance with a minimum coverage amount of € 10 Mio. per event of damage to person/property – lump sum– and to submit evidence thereof to us upon our demand; to the extent we are entitled to any further or other claims for damages, we reserve our rights thereto.

14 Final provisions, court of jurisdiction, choice of law

1. This Agreement shall be governed exclusively by German law, excluding the rules of International Private Law, and in particular excluding UN Sales Law (CISG).
2. The exclusive forum for disputes are the courts having jurisdiction over Linsengericht/Hessen. We shall also be entitled to file claims against the client [sic!] at the court having jurisdiction over its registered office.
3. To the extent our confirmation of order does not otherwise provide, our headquarters shall be the place of performance for all deliveries and payments.

Linsengericht-Grossenhausen, 2002
Kelviplast GmbH & Co KG