

Kelviplast GmbH & Co.KG, Sandweg 14, D - 63589 Linsengericht

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Your ref:

Our ref:

Date

22/08/2019

## GENERAL TERMS AND CONDITIONS

Kelviplast GmbH & Co. KG is a manufacturer of cooling and temperature control systems designed and manufactured in Germany and used worldwide.

The following General Terms and Conditions form the contractual basis of our business relations with the purchaser of our products, insofar as the purchaser is an entrepreneur (Section 14 BGB [German Commercial Code]), a legal entity under public law or a special fund under public law. They become part of the contract at the time of acceptance of a contract offer (an order) by us. These General Terms and Conditions also apply to future transactions with the purchaser.

We do not recognise the purchaser's own terms and conditions unless we agree to their validity in writing. The purchaser's own terms and conditions do not apply even if we carry out the delivery without reservation in the knowledge of such terms and conditions without refuting these again.

### 1. Conclusion of the contract

Our offers are subject to change without notice. We are only bound by our offers if they are expressly designated as binding in text form. Otherwise they shall be regarded as an invitation to submit offers. In such cases, the conclusion of a contract requires our confirmation of the order in writing.

### 2. Quality, order confirmation

- 2.1 The order confirmation is decisive for the agreed quality of the goods. Public statements, in particular in advertising or in the labelling of the goods or due to commercial custom, are only part of the agreed quality if they are expressly stated in a binding offer or an order confirmation. Guarantees are only binding for us if they are described as such in an offer or an order confirmation and our obligations under the guarantee are also stated therein in detail.
- 2.2. Our order confirmation is decisive for the scope of delivery.
- 2.3. Verbal collateral agreements and assurances require our confirmation in writing to be legally effective.

### 3. Prices and payment terms

- 3.1 Our prices are net prices ex works and do not include the respective statutory value-added tax. The costs for packaging and, if applicable, assembly, which shall be carried out at the prices valid at the time of the work, are not included. The costs for shipping the goods are borne by the purchaser. These costs also include the taxes and customs duties, costs of a customs agent, etc. arising as a result of the shipment. If more than two months have passed between order confirmation and delivery, we are entitled to charge the valid current price.
- 3.2. Our prices are due immediately and payable two weeks after invoice and delivery; decisive is the date that payment is received by us. The purchaser shall be in default of payment if the purchaser receives a reminder after the due date or does not pay at a time determined or determinable by calendar. This does not affect the statutory provision, according to which the purchaser is in default no later than 30 days after the due date and receipt of the invoice or an equivalent request for payment.
- 3.3. If the purchaser is in default of payment, we shall be entitled, without prejudice to our other or further rights, to demand interest at a rate of 9% above the base interest rate applicable at the time.
- 3.4. Offsetting or exercising a right of retention on the basis of any counterclaims of the purchaser which are disputed by us and not legally established is precluded. Exercising a right of retention is also precluded if the counterclaims of the purchaser are not based on the same contractual relationship.

### 4. Delivery and transfer of risk

- 4.1. At the purchaser's request, shipment shall be effected ex works at the purchaser's expense and risk. The place of performance for our performance obligations is the registered office of the Company.
- 4.2. The risk passes to the purchaser at the latest upon delivery to the forwarding agent or other transport person. This also applies in the event that we exceptionally assume the shipping costs in accordance with a separate agreement. Unless the purchaser provides specific instructions, selection of a suitable forwarding agent is at our discretion.
- 4.3 Delivery periods are subject to the correct and timely receipt of products by us, unless a binding delivery period has been confirmed in writing.
- 4.4. Partial deliveries are permissible, providing these are economically reasonable for the purchaser.

### 5. Warranty for defects

- 5.1. The purchaser is obliged to give written notice of recognizable defects within one week of delivery of the goods at the latest and of unrecognizable defects within one week of their discovery at the latest. These deadlines are cut-off periods.
- 5.2. If the delivery is defective, we shall be entitled, at our discretion, to rectify the defect or make a replacement delivery (subsequent performance). The place of performance for our subsequent performance obligations is the registered office of our Company. Parts replaced during subsequent performance shall become our property. The transfer of ownership of exchanged parts, for example, the rights of third parties are superseded by the customer at his own expense.
- 5.3. If the subsequent performance has failed, the purchaser shall be entitled, at the purchaser's discretion, to withdraw from the contract or to demand an appropriate reduction of the purchase price.
- 5.4. The limitation period for claims based on defects is 12 months, calculated from the transfer of risk. This also applies to claims for compensation for consequential damages caused by a defect, unless claims on the basis of tort or fraudulent intent are asserted.
- 5.5. If a defect results from unsuitable or improper use, faulty assembly or commissioning by the purchaser or the purchaser's vicarious agents, unsuitable or improper use, faulty or negligent maintenance, unsuitable operating materials, chemical, electromechanical or electrical influences, natural wear and tear, faulty or negligent treatment, inadequate construction work, liability is precluded insofar as we are not responsible for the defect. The same applies to defects which are attributable to operating errors or improper repairs by the purchaser or third parties commissioned by the purchaser.

- 5.6. Further claims for defects by the purchaser are precluded subject to any claims for damages limited in accordance with Section 5.5.

## 6. Liability

- 6.1 Claims for damages by the purchaser are precluded unless otherwise specified below. This does not include claims for damages by the purchaser arising from injury to life, limb or health or from the breach of material contractual obligations as well as liability for other damages based on an intentional or grossly negligent breach of duty by us, our legal representatives or vicarious agents. Material contractual obligations are those whose fulfilment is necessary to achieve the objective of the contract. "Material contractual obligations" are obligations that must categorically be fulfilled for the proper performance of the contract, and the compliance with which the contractual partner regularly relies on and may rely on.
- 6.2 In the event of a breach of material contractual obligations, we shall only be liable for the foreseeable damage typical for the contract, but at most up to the amount currently covered by our liability insurance of EUR 5 million per claim if this is the result of simple negligence, unless the claims for damages arise from injury to life, limb or health.
- 6.3 In the cases of Section 6.2, the purchaser's claims for damages lapse at the latest two years after the date on which the purchaser becomes aware of the damage or, irrespective of this knowledge, at the latest three years after the date of the damaging event. For claims due to defects of the goods, the statute of limitations according to Section 5.4 applies.
- 6.4. Claims under the Product Liability Act remain unaffected.
- 6.5. The above limitations of liability also apply in favor of our legal representatives and vicarious agents if claims are asserted directly against them.

## 7. Retention of title

- 7.1. Ownership of the goods delivered by us shall not pass to the purchaser until all our claims arising from the business relationship with the purchaser have been paid in full. The retention of title also remains in force in the case that we combine one or all our accounts receivable into one account outstanding and offset any payments against it, provided that the purchaser acknowledges such outstanding invoice.
- 7.2. The purchaser is permitted to dispose of the goods within the framework of proper business operations. However, the purchaser hereby assigns to us all claims against the purchaser's customers or third parties arising from the resale of the goods subject to retention of title, irrespective of whether the delivery item has been resold without or after processing. The purchaser remains authorized to collect this claim even after the assignment. Notwithstanding our authority to collect the claim ourselves, we undertake not to make use of this as long as the purchaser meets the payment obligations from the proceeds received, the purchaser's financial situation does not deteriorate significantly, the purchaser is not in default of payment and, in particular, no application for the opening of insolvency proceedings has been filed or the opening of insolvency proceedings has been rejected for lack of assets. However, if this is the case or if another important reason exists, we can demand that the purchaser informs us of the assigned claims and their debtors, provides all information necessary for collection, hands over the relevant documents and notifies the debtors (third parties) of the assignment. This assignment in advance includes the acquired claim as well as collateral provided and any claim substitutes. Other disposals of the goods are not permitted and oblige the purchaser to pay damages.
- 7.3 If objects subject to retention of title are installed as essential components in the property of a third party by or on behalf of the purchaser, the purchaser hereby assigns to the entrepreneur any claims for payment with all ancillary rights, including the granting of a security mortgage, against the third party or the party concerned. If goods subject to retention of title are installed as essential components in the property of the purchaser, the purchaser hereby assigns to the entrepreneur all claims arising from the sale of the property or of property rights including all ancillary rights.
- 7.4 Any treatment or processing of the goods subject to retention of title is carried out by the purchaser on our behalf without any resulting obligations arising for us. If the goods subject to retention of title are processed or combined with other goods which do not belong to us, we shall be entitled to the resulting co-ownership share of the new item

in the ratio of the value of the goods subject to retention of title to the other goods. If the purchaser acquires sole ownership of the new item, we agree that the purchaser grants us co-ownership of the new item in proportion to the value of the processing or the combined goods subject to retention of title and stores this for us free of charge.

- 7.5. If the purchaser is in default of payment for the goods subject to retention of title, we may withdraw from the contract without having to set the purchaser a further deadline for payment.
- 7.6. The purchaser is obliged to point out our rights in the event of any seizures by third parties and to inform us immediately. Insofar as the third party is not in a position to reimburse us for the judicial and extrajudicial costs of an action pursuant to Section 771 ZPO[German Code of Civil Procedure], the purchaser is liable for the expenses incurred by us.
- 7.7. If the value of the securities existing for the entrepreneur in accordance with the above provisions exceeds the value of the entrepreneur's claims, and not only temporarily, by more than 20% in total, the entrepreneur is obliged to release securities of the entrepreneur's choice at the request of the purchaser.

## 8. Right of withdrawal/cancellation and changes to orders

- 8.1. Notwithstanding the statutory provisions, we reserve the right to withdraw from the contract for cause. Cause is deemed to exist in particular if insolvency proceedings are instituted against the assets after conclusion of the contract or if such proceedings are refused due to lack of assets.
- 8.2. We are entitled to withdraw from the contract or demand compensation if the purchaser defaults on the performance incumbent upon it. In this case, a lump-sum compensation for damages amounting to 15% of the gross order value is deemed agreed. We reserve the right to prove lower or higher damages.
- 8.3. If orders are cancelled by the purchaser in agreement with us, we may demand a flat-rate refund.
  - In the case of materials already ordered for the execution of the order, 50% of the order value.
  - For orders that are already in production, 100% of the order value.

Changes to orders already in progress will be invoiced on a time and material basis at the applicable hourly rates.

The purchaser retains the right to prove that we incurred no damage or less damage than the aforementioned amounts; we reserve the right to prove higher damage.

## 9. Software usage

- 9.1. Insofar as software is included in the scope of delivery, the purchaser is granted a non-exclusive right to use the delivered software including documentation in the contractually agreed condition. The software is made available solely for use on the delivery item intended for this purpose. Use of the software on more than one system is prohibited.
- 9.2. The purchaser may only reproduce, revise, translate or decompile the software to the extent permitted by law (Sections 69a et seq. Copyright Act). The purchaser undertakes not to remove or alter manufacturer information, in particular copyright notices, without our prior consent.
- 9.3. All other rights to the software and the documentation, including copies, remain with us or with the supplier of the software. Sublicensing is not permitted.

## 10. Miscellaneous

- 10.1. German law applies. The provisions of the UN Convention on Contracts for the International Sale of Goods (CISG) do not apply to this agreement.
- 10.2. The place of jurisdiction for disputes arising from our business relations with the purchasers is the registered office of our Company, provided that the purchaser is a merchant within the meaning of the German Commercial Code (HGB), a legal entity under public law or a special fund under public law. The same applies in the event that the purchaser does not have a general place of jurisdiction in Germany.