General Terms & Conditions of Delivery and Payment of tk accelis Plastics GmbH

tk accelis

(I) Applicability/Offers

(1) These General Terms & Conditions shall apply to all present and future contracts made with businesspeople, corporate or public-law entities or public-law special funds for the delivery of goods or provision of services, including contracts for work, advice, proposals and other incidental services. In the case of drop shipments, the terms and conditions set out in the price list of the supplier plant shall additionally apply. Purchaser's terms and conditions of purchase will not be accepted even in cases where we have not expressly objected thereto upon receipt.

(2) Our offers are subject to change without notice. Any contracting-related oral agreements, promises, commitments or warranties made or given by our employees shall not bind us unless and until confirmed by us in writing.

(3) In case of any doubt, commercial clauses shall be interpreted pursuant to the Incoterms as amended.

(4) All specifications such as dimensions, weights, illustrations, descriptions, assembly or installation sketches and drawings contained in sample books, price lists and other printed matter have been determined to the best of our ability but are approximate only and therefore not binding on us. This shall also apply to any information given by plants. All models and drawings shall remain our property.

(5) In contracts for work, "Purchaser" shall for the purposes hereof include "Customer".

(II) Prices

(1) Prices shall be deemed ex works or ex warehouse plus freight and value-added tax.

(2) Unless otherwise agreed, the prices and terms set out in our price list (as amended by the contracting date) shall apply. Goods will be invoiced on a gross-for-net basis.

(3) If, later than four weeks after the contracting date, any taxes, fiscal charges or other third-party costs which are included in the agreed prices either change or are newly levied or charged, we are entitled to adjust our prices accordingly.

(4) With respect to quantities of goods not yet delivered, we reserve the right to increase the agreed price if a change in the raw-material or commodity market and/or in the general economic situation makes the production and/or purchase of the product concerned significantly more expensive than at the time when the prices were agreed upon. In such case, Purchaser may cancel the order(s) affected by such price increase within the four weeks following price increase notification.

(III) Payment and offset

(1) Unless otherwise agreed or stated in our invoices, the purchase price will be due net immediately upon delivery and shall be paid in such form that we are able to dispose of the full invoice amount on the payment due date, any payment transaction charges being for Purchaser's account. No amounts may be retained from, or offset against, such payment by Purchaser except to the extent that Purchaser's counterclaims are undisputed, uncontested or res judicata.

(2) If the payment credit term is exceeded or in the case of default/delay in payment, we will charge interest at 9 percentage points above the base rate (§ 288 Abs. 2 BGB) unless any higher rate has been agreed upon. Moreover, we reserve the right to claim any further default-induced loss.

(3) Purchaser shall be deemed to be in default of payment not later than 10 days after due date and receipt of the invoice/payment account or receipt of the goods/services.

(4) Since we have been authorized accordingly by the companies belonging to our group (Art. 18 German Stock Corporation Act– "AktG")*), we are entitled to offset any accounts whatsoever receivable by us or by these group members against all accounts due to Purchaser. This shall also apply if one side has agreed upon cash payment and the other on payment by bills of exchange or other arrangements on account of performance. Where applicable, these agreements shall apply only to the balance. If the receivables fall due for payment on different dates, our receivables shall be due by no later than the date at which our liability falls due for payment and will be invoiced as of such date.

(5) If we become aware after the contracting date of any circumstances which are, in our view, liable to impair Purchaser's solvency, we are entitled to urge the defense of uncertainty under the terms of Art. 321 German Civil Code ("BGB"). In such case all our accounts receivable (unless statute-barred) from current business relations with Purchaser shall immediately fall due. Moreover, the defense of uncertainty shall extend to cover any and all other contracts from the business relationship with Purchaser.

(6) Any agreed cash discount shall always apply to the invoice value only, excluding freight, and may only be claimed if Purchaser's accounts due have been discharged in full as of the date of deducting the cash discount.

(IV) Execution of deliveries, delivery dates and periods

(1) We will only be bound by our obligation to deliver provided that our own suppliers provide us on time with the proper goods, unless any improper or delayed delivery on the part of our suppliers is due to our fault.

(2) All delivery dates and periods indicated are approximate only. Delivery periods shall commence with the date of our order confirmation and apply only under the condition that all details relating to the order have been clarified and Purchaser has complied with all his duties, e.g. the submittal of any and all official permits, letters of credit and guarantees or the remittance of advance/upfront payments.

(3) Delivery dates or periods shall be deemed kept (i) if the date at which the goods are shipped ex plant or warehouse is inside the agreed period or (ii), if due shipment of the goods is delayed for reasons beyond our control, when the goods are notified ready for shipment.

(4) The occurrence of any events of force majeure will entitle us to postpone delivery for the duration of such event plus a reasonable start-up time. This shall also apply if such events occur while we are in default. Events of force majeure shall be deemed to include acts of monetary or trade policy or of any government, strikes, lockouts, any disruptions to our production operations for reasons beyond our control (e.g. due to fire, breakage of machinery or rollers, shortage of raw materials or energy, cyber attacks), transportation impediments, delays in import/customs clearance as well as any other circumstances beyond our control, including pandemics, which materially hinder, or even frustrate, delivery. In this context, the place of occurrence is irrelevant, be it at our supplier plant or any other pre-supplier's. If as a result of any of the aforementioned events either party can no longer be reasonably expected to perform the contract and, in particular, if performance of material parts of the contract is delayed by more than six months, such party may rescind the contract.

(V) Reservation of title and ownership

(1) All goods delivered shall remain our property (the "Conditional Goods") until all our claims against Purchaser under the contract have been satisfied, including any receivables from current-account balances due to us under the business relationship ("current account reservation") and including any receivables which the insolvency trustee or administrator declares owed unilaterally on the basis of his discretion and option to demand performance. The foregoing shall equally apply to future and conditional or contingent receivables or claims, such as under bills of exchange, as well as to payments for dedicated or otherwise specified receivables. The current account reservation will expire finally when all receivables outstanding and due to us on payment date and covered by such current account reservation have been settled.

(2) Any processing of the Conditional Goods (collectively the "Processed Goods") shall be deemed to be made on our behalf as manufacturer under the terms of Art. 950 BGB, however, without involving any obligation on our part. The Processed Goods shall be deemed Conditional Goods as defined in (V)(1). In the event that any Conditional Goods are united by Purchaser to, or combined by him with, or transformed by him into, other goods, we acquire prorated title to the new asset, our co-ownership of the new asset corresponding to the ratio of the invoiced value of the Conditional Goods to the invoiced value of the other goods added. If our title is extinguished by combination or transformation into the new asset, Purchaser hereby assigns and transfers to us his title to the new asset prorate of the invoiced value of the Conditional Goods and shall keep such asset in his custody on our behalf and free of charge to us. Our co-ownership rights shall also be deemed Conditional Goods as defined in (V)(1).

(3) Purchaser may sell any Conditional Goods only in the ordinary course of business on his standard business terms and conditions and only while not defaulting, however, under the condition that any claims or receivables under the terms of (V)(4)–(V)(6) accrue to us. Purchaser shall not have the right to dispose of Conditional Goods in any other form.

(4) The receivables from the resale of Conditional Goods, together with any collateral security acquired by Purchaser from such resale, are hereby assigned to us and shall serve the same collateralization purposes as the Conditional Goods. If Conditional Goods are sold by Purchaser together with other merchandise not sold by us, Purchaser hereby assigns to us his receivable from such resale at the ratio the invoiced value of the Conditional Goods bears to the invoiced value of such other merchandise. When reselling any merchandise co-owned by us under the terms of (V)(2) hereof, the portion of the receivable that corresponds to our coownership shall be assigned to us. If Purchaser uses any Conditional Goods to perform a contract for work, the account receivable by Purchaser under such contract is hereby assigned to us in advance in the same proportion.

(5) Purchaser will have the right to collect receivables from resale. This collection authority shall expire when revoked or cancelled by us, or when Purchaser has defaulted on payment, failed to honor a bill of exchange or applied for the institution of insolvency proceedings, whichever is earlier. We will not exercise our revocation right unless and until we become aware after the contracting date that our claim to payment under this or any other contract with Purchaser is or may be at risk due to Purchaser's poor solvency. At our demand, Purchaser will be obligated to immediately notify his customers of the assignment to us and furnish us with the documents we require for collection.

(6) No claims or receivables from resale shall be assigned unless made by nonrecourse factoring (to be communicated to us) for an amount in excess of our collateralized receivable. Our receivable shall become due immediately when the proceeds from factoring have been credited to Purchaser.

(7) Purchaser shall promptly notify us of any attachment, garnishment, pledging or other third-party interference with our rights, interests or title. Unless refunded by a third party, all costs incurred for the release from attachment, etc. as aforesaid or for the return of the Conditional Goods shall be for Purchaser's account.

(8) If and when Purchaser defaults on payment or fails to honor a bill of exchange when due, we have the right to take back the Conditional Goods and, where necessary, enter upon Purchaser's premises for such purpose. The same shall apply in cases where, after the contracting date, we become aware that our claim to payment under this or any other contract with Purchaser is or may be at risk due to Purchaser's poor solvency. Such take-back shall not be construed a cancellation of the contract, the applicable insolvency regulations remaining unaffected by the take-back.

(9) If the invoiced value of existing collateral exceeds the collateralized receivables including incidentals (interest, charges, etc.) by altogether more than 50%, we agree, at Purchaser's demand, to release collateral security pro rata at our sole discretion.

(VI) Qualities, dimensions and weights

(1) Grades, qualities and dimensions will be determined according to the agreed standards or, if none were agreed upon, the standards current at the contracting date or, in the absence of these, in accordance with good business practice. References to standards such as DIN/EN or their constituents such as material specification sheets, inspection certificates and testing standards, shall not be deemed warranted characteristics, nor shall the indication of grades, qualities, dimensions, weights and uses, or any declarations of conformity, manufacturer's declarations or corresponding designations such as CE or GS.

(2) The weights stated shall be based on the weighing records taken by us or our supplier. Weights may at our discretion be determined without weighing, calculated according to standards (theoretical/rated weight) plus 2.5% (commercial weight). We may also establish weights theoretically without weighing according to product length and area, respectively, with dimensions being determined on the basis of approved statistical methods. The quantities, number of coils etc. stated in the delivery note shall not be binding in the case of goods billed by weight. The total weight of the consignment shall apply unless the weighing of the individual goods is standard trade practice. Any differences from the computed individual weights will be prorated among these.

(VII) Acceptance testing/inspection

(1) Any agreed acceptance test or inspection of the goods may only be conducted at our plant or warehouse immediately upon receipt of notification of readiness for inspection. Purchaser shall bear his own acceptance testing/inspection costs, the technical costs being charged to Purchaser in accordance with our (or the supplier plant's) price list.

(2) If an acceptance test/inspection is performed either not at all, not in due time or not fully for reasons beyond our control, we may ship the goods without prior acceptance/inspection or store them at Purchaser's expense and risk and issue the corresponding invoice.

(VIII) Shipment, passage of risk, packaging, part deliveries

(1) We will determine the mode, method and means of shipment, as well as the forwarder and carrier.

(2) If, for reasons beyond our control, transportation of the goods on the scheduled route or to the scheduled destination is frustrated or materially impeded within the scheduled period of time, we may deliver the goods via a different route or to a different destination, it being understood that Purchaser shall bear any additional costs. Purchaser will in advance be invited to comment.

(3) The goods will be delivered unpackaged and without rust protection. If packaging is customary in the trade business, we will deliver the goods packaged. We will arrange for packaging, protection and/or transport/handling supplies at Purchaser's expense on the basis of our experience. These will be taken back at our warehouse. We will not assume the costs incurred by Purchaser for returning, or disposing of, the packaging.

(4) We will be entitled to reasonable part deliveries. Any reasonable excess or shortfall over contracted quantities will be permitted. The statement of an "approx." quantity entitles us to overrun/underrun and bill agreed quantities by a maximum of 10%.

(5) We are entitled to obtain confirmation of receipt of goods from the recipient in electronic form.

(IX) Orders for delivery on call

(1) In case of call orders, goods notified ready for shipment must be called off without undue delay, failing which we may, after written notice, ship them at Purchaser's expense and risk or, at our discretion, store them in our warehouse and immediately invoice them.

(2) In case of standing orders entailing continuous delivery, we should be notified of calls for delivery and quantities of types/grades for roughly identical monthly quantities, failing which we may determine them at our own discretion.

(3) If the individual call-off orders exceed the total contracted amount, we will be entitled but not obligated to supply the excess quantity. We may invoice the excess quantity at the prices prevailing on the date of call off or delivery.

(X) Warranty

(1) Any defects in the goods shall be notified in writing without undue delay, however no later than seven days after delivery. Defects which cannot be detected within this period despite extreme scrutiny shall be notified in writing immediately after being discovered, however no later than before expiration of the contractual or statutory limitation period with all processing to be ceased forthwith. We will not be liable in case of insignificant defects in value or fitness of the goods. In case Purchaser has resold, processed or modified the goods, he may only reduce the purchase price.

(2) In the event that a prior acceptance test or inspection of the goods has been performed, Purchaser may not claim any defects which could have been detected during such agreed test or inspection.

(3) If a claim is justified and asserted within the requisite period, we may at our discretion either repair or replace the defective goods ("subsequent performance"). If we fail or refuse to so remedy the defect, Purchaser shall be entitled to reduce the purchase price or – after the futile expiration of a reasonable grace period – rescind the contract. In the case of insignificant defects, Purchaser may only reduce the purchase price.

(4) All claims under this warranty are excluded if Purchaser does not immediately offer us the opportunity to verify the defect and, in particular, fails to furnish the defective goods or samples immediately at our request.

(5) If the goods are sold as lower-grade material (e.g. so-called "IIa" material), Purchaser shall not have any rights under this warranty with respect to the reasons for which the material was stated downgraded and those he could reasonably expect to find. We will not be liable for defects in the case of IIa material.

(6) We will bear the costs for subsequent performance through repair or replacement only up to a reasonable amount in individual cases, particularly in relation to the purchase price of the goods, but under no circumstances above 150% of the goods' value. Expressly excluded are the costs of installing and removing the defective

product, as are the costs incurred by Purchaser for remedying or repairing a defect himself unless the statutory conditions have been met for such cases. Nor will we assume any costs for the goods sold having been relocated to a place other than Purchaser's domicile or branch except in cases where this is their stipulated use.

(7) The aforesaid shall apply without prejudice to Purchaser's rights of recourse under the terms of Art. 478 BGB.

(8) We do not warrant any fitness for a particular purpose or use, unless expressly agreed in writing. The risk of fitness for a specific purpose or use of the goods shall be Purchaser's sole responsibility.

(XI) General limitation of liability

(1) We (including our officers, employees and vicarious agents) will only be liable for the violation of contractual and non-contractual obligations (including frustration of contract, default, culpa in contrahendo, and tort) if attributable to intent, willful misconduct or gross negligence, it being understood that such liability in the case of gross negligence shall be limited to the typical loss or damage reasonably foreseeable at the contracting date.

(2) These limitations shall not apply in the cases of (i) the violation due to intent or gross negligence of any material contractual obligations which jeopardize the achievement of the very purpose of the contract, (ii) statutory liability pursuant to the German Product Liability Act ("ProdHaftG"), or (iii) bodily injury to persons or health, nor (iv) in cases where, and to the extent that, we have either kept malicious silence about the existence of any defects or warranted their absence. The rules governing the burden of proof remain unaffected hereby.

(3) Unless otherwise agreed, contractual claims of Purchaser against us as a result of or in connection with the delivery of the goods shall become statute-barred one year after physical delivery of the goods unless such claims (i) refer to the indemnification for bodily injury or damage to health, or (ii) any other typical, foreseeable loss or damage, or (iii) are based on intent or gross negligence of the Seller. Our liability for intent, willful misconduct or gross negligence as well as the expiration of a statutory rights of recourse remain unaffected hereby. The period of limitation shall not recommence for subsequent performance (repaired or replaced goods).

(XII) Place of performance, jurisdiction, applicable law

(1) Place of performance for our deliveries shall be (i) for delivery ex works the supplying plant or (ii) for all other deliveries our warehouse. At our sole discretion, the place of jurisdiction shall be our registered principal place of business or Purchaser's registered office.

(2) All legal relations between Purchaser and us shall be subject to German non-unified substantive law in addition to these Terms & Conditions. The provisions of the UN Convention on Contracts for the International Sale of Goods (CISG) of April 11, 1980, shall not apply.

(XIII) Miscellaneous

(1) If a nonresident Purchaser based outside Germany or his representative or agent collects the goods, or if he carries, transports or ships the goods to a place outside Germany, such Purchaser shall furnish us with the required proof of exportation for tax purposes. Failing the production of such proof, Purchaser will be required to pay the statutory VAT for the invoiced amount at the applicable rate for shipments within the Federal Republic of Germany.

(2) In the case of shipments from Germany to another EU member state, Purchaser shall notify us of his VAT identification number under which his trade or business is taxed within the EU. Failing this, he will be required to pay the statutory VAT at the then current rate in addition to the agreed price. For each tax-free intra-Community delivery from the Federal Republic of Germany to another EU member state, the purchaser of the goods is obligated to provide us with proof of the actual arrival of the goods (confirmation of arrival) in accordance with §§ 17a and 17c of the VAT Implementing Regulation (Umsatzsteuerdurchführungsverordnung). Said proof shall be given on a form provided by us. Should such proof not be provided, the purchaser shall pay the VAT rate applicable to deliveries within the Federal Republic of Germany, calculated on the basis of the respective (net) invoice amount.

(3) Should any provision of these General Terms & Conditions of Delivery and Payment be or become ineffective or invalid, whether wholly or in part, the effectiveness and validity of the remaining provisions shall not be affected thereby.

*) These include in particular:
thyssenkrupp Steel Europe AG, Duisburg
tk accelis GmbH, Essen
tk accelis Trading GmbH, Essen
tk accelis Processing Europe GmbH, Krefeld
tk accelis Materials GmbH, Essen
Jacob Bek GmbH, Ulm