General Terms and Conditions of Purchase of tk accelis Plastics GmbH

(1) Purchaser's General Terms and Conditions of Purchase shall apply exclusively to all – current and future – purchase orders for goods, services, work and labor and the handling thereof. Supplier's terms and conditions which deviate from Purchaser's conditions of purchase shall not be recognized by Purchaser unless Purchaser expressly consents to their validity in writing.

(2) The terms and conditions of purchase shall also apply exclusively if Purchaser accepts or pays for supplies/services in full awareness of contradictory or varying terms and conditions of Supplier.

(I) Purchase orders

(1) Purchaser orders shall be binding only if they are placed by Purchaser in writing. Verbal agreements – including subsequent amendments and additions to these terms and conditions of purchase – must be confirmed in writing by Purchaser for them to become valid.

(2) For the period of their validity, cost estimates shall form a binding basis for resultant orders. They shall not be remunerated unless expressly agreed.

(3) For freight forward deliveries we shall only pay for the lowest available freight costs unless we specify a specific type of shipment.

(II) Prices

(1) The prices are fixed prices. They are inclusive of everything Supplier has to do to fulfill his supply/service obligation.

(2) In prices stated "free domicile", "free … destination" and other "free / franco" deliveries, the freight and packaging costs shall be included. We shall pay for packaging only if and to the extent that compensation for such is expressly agreed otherwise.

(3) Documents used by Supplier in business dealings with Purchaser shall indicate at least: purchase order number, commission order number, plant, place of receipt, full article text/item description, volumes and volume units as well as VAT ID (for imports from the EU).

(III) Scope of supply/service; ownership; usage rights; third-party rights

(1) As part of the scope of supply/service

– Supplier shall transfer to Purchaser ownership of all technical documents (also for subcontractors) and other documents needed for manufacture, maintenance and operation. Said technical documents shall be in German and shall be based on the international SI standard system,

– Supplier shall grant Purchaser non-exclusive and irrevocable usage rights that are unrestricted in terms of location, time and content to all protectable supplies/services for all known and as yet unknown types of use; in particular Purchaser shall be entitled without restriction to duplicate, edit, disseminate in unaltered and altered form and publish via wire-based or wireless technology all supplies/services, and to transfer all contractually granted usage rights to third parties with or without charge,

– Supplier shall grant Purchaser exclusive usage and utilization rights in the scope described above to those supplies/services he produces specifically for Purchaser,

– Supplier pledges to strictly observe the provisions of the Employee Inventions Act and file claims to the corresponding inventions in due form and time. This shall also apply insofar as Supplier does not employ his own staff, but rather commissions third parties in the framework of the permitted employment of temporary workers,

– Purchaser shall have the unconditional authority to carry out or have carried out by third parties repairs and modifications to the purchased supplies/services, and also to manufacture spare parts or have them manufactured by third parties.

(2) If the scope of supply/service is to differ from that agreed, Supplier shall be entitled to additional claims or schedule changes only if a corresponding supplementary agreement is concluded in writing with Purchaser prior to performance of the order.

(3) The ordered volumes are binding. In the event of excess supplies/services, Purchaser shall be entitled to refuse these at the expense and cost of Supplier.

(4) The Seller warrants that the contractual use of the service/supply (including all specifications, assembly instructions, technical data sheets and drawings for production) does not infringe any third-party proprietary rights (e.g. patents, utility models, designs, semiconductor rights, proprietary information rights and any similar rights in any jurisdiction whether entered in full or in part in any register or not). Should third-parties assert claims against the Buyer or against customers of the Buyer or their customers due to the infringement of proprietary rights although the service/supply is used in accordance with the contract, the Seller shall, at the request of the Buyer, make all economically reasonable efforts to reach an amicable settlement with the third party out of court. Furthermore, the Seller shall be liable for all damages and expenses (including any contractual penalties and reasonable legal costs) incurred by the Buyer or the affected customer of the Buyer or his customers in connection with the (extrajudicial or judicial) dispute with the third party. The Seller's obligations under this paragraph shall not apply if the infringement of third-party proprietary rights is based on the further processing of the supply.

(IV) Quality

Supplier shall install and maintain a state-of-the art, documented quality system of suitable type and scope. Supplier shall prepare records, in particular of quality inspections, and make these available to Purchaser on request. Supplier hereby agrees to quality audits being carried out by Purchaser or Purchaser's representative to assess the efficiency of said quality system.

(V) Supply and service periods/deadlines/default

(1) Agreed delivery dates are binding. In the event that agreed deadlines are not met, statutory provisions shall apply unless otherwise agreed in these General Terms and Conditions of Purchase. The delivery period shall begin on the date of the legally binding purchase order unless otherwise agreed in writing. Supplies/services provided before the agreed delivery dates shall entitle Purchaser to refuse supply/service until it is due.

(2) Unless otherwise agreed in writing, the delivery date or delivery period shall refer to the date on which Purchaser receives the goods. This shall also apply to all shipment documents, operating instructions and other certificates necessary to fulfill Supplier's delivery obligations.

(3) If Supplier becomes aware that an agreed deadline cannot be met, he must inform Purchaser in writing without delay, stating the reasons and the expected duration of the delay. Supplier shall also propose suitable actions to avert the repercussions of such delay.

(4) Unreserved acceptance of the delayed supplies/services may not be construed as relinquishment of any compensation to which Purchaser is entitled; this shall apply until full payment of the fee owed by Purchaser for the supply/service concerned has been made.

(5) Without prejudice to the aforesaid, in the event of any delay in delivery for reasons attributable to Supplier, penalty payments shall be due to Purchaser equivalent to 0.5% of the purchase price for each week of delay or fraction thereof, up to a maximum of 5%, unless otherwise agreed. A proven higher damage can be claimed by Purchaser. If Purchaser names, and Supplier accepts, a specific vessel for the shipment of the goods, Supplier shall, notwithstanding the aforesaid, bear all charges for demurrage, dead freight, etc., if the goods are for whatever reason shipped late or not at all.

(VI) Delivery/performance and storage, risk

(1) Insofar as Supplier and Purchaser agree validity of one of the "Incoterms" of the International Chamber of Commerce (ICC) for the contract, the currently valid version thereof shall apply. They shall apply only insofar as they do not contradict the provisions of these General Terms and Conditions of Purchase and other concluded agreements. Unless otherwise agreed in writing, the supply/service shall be "delivered duty paid" (Incoterms: DDP) to the place of delivery/performance or use indicated in the purchase order.

(2) Supplies/services must be shipped to the addresses indicated. Delivery to/performance at a place of receipt other than that designated by Purchaser shall not constitute transfer of risk to Purchaser even if said place of receipt accepts the delivery/service. Supplier shall bear the additional costs of Purchaser resulting from the delivery being made to/service performed at an address differing from the agreed place of receipt.

(3) Part supplies/services are not permitted unless Purchaser has expressly consented thereto. Part supplies/services are to be marked as such, delivery/service notes shall be submitted in triplicate.

(4) Excess or short deliveries shall only be permitted within the normal framework.

(5) If weighing is necessary, the weight determined on the calibrated scales of Purchaser shall apply.

(6) Insofar as Supplier has the right to have the packaging needed for shipment/services returned, this shall be clearly marked on the delivery/service documents. In the absence of such marking, Purchaser shall dispose of the packaging at the cost of Supplier; in this case Supplier's right to have the packaging returned shall expire.

(7) Items needed for the fulfillment of an order may be stored on the premises of Purchaser in allocated storage areas only. For such items Supplier shall bear the full responsibility and risk of the entire order until the transfer of risk.

(8) During transportation the statutory provisions, in particular the provisions of the law on the transportation of hazardous goods and the applicable hazardous goods directives including the respective annexes and appendices must be complied with.

(9) The declaration of the goods in the consignment notes for shipment by rail shall comply with the valid provisions of the railways. Costs and damages incurred due to incorrect declaration or failure to declare shall be at the expense of Supplier.

(10) Supplier shall have the receipt of deliveries confirmed in writing by the indicated place of receipt.

(11) Supplier shall bear the risk of accidental loss and accidental deterioration, including for "franco" and "free domicile" deliveries, until the goods are handed over at the place of destination.

(12) Packaging costs shall be paid by Supplier unless otherwise agreed in writing. If in an individual case Purchaser bears the costs of packaging, this shall be charged to Purchaser at the lowest rate. The take-back requirements shall be based on the packaging ordinance of August 21, 1998 as amended. In the case of freight-paid return of packaging, the packaging shall be credited at 2/3 of the invoiced value.

(VII) Execution, sub-suppliers, assignment

(1) Insofar as supplies/services are provided under a contract for work and services the Supplier shall not be entitled to transfer the execution of the contract in whole or in part to third parties.

(2) Supplier is obligated to name his subcontractors to Purchaser on request.

(3) Supplier shall not be entitled to assign his contractual claims vis-à-vis Purchaser to third parties or permit third parties to collect same. This shall not apply for legally established or uncontested claims.

(VIII) Termination

(1) Purchaser shall be entitled to terminate the contract in full or in part without specifying reasons. In such an event, Purchaser is obligated to pay for all supplies/services completed up to that point and make appropriate payment for material procured and work/services performed; in this case § 648, Sentence 2 of the German Civil Code (BGB) shall apply. Further claims of Supplier are excluded.

(2) Purchaser is entitled to terminate the contract with immediate effect for cause in particular where a material deterioration in the financial situation of Supplier occurs or threatens to occur and thus endangers the fulfillment of commitments vis-à-vis Purchaser. In this case Purchaser has the right to acquire material and/or semi-finished products including any special equipment on reasonable terms and conditions.

(IX) Invoicing, payment, offsetting

(1) Unless otherwise agreed or unless Supplier offers more favorable conditions, payments shall be due after receipt of an invoice issued in accordance with § 14 German VAT Act (UStG) within 14 days with 3% discount or within 30 days in the full net amount. Invoices shall be settled no later than 30 days after delivery/performance and receipt of invoice. If goods/services are supplied/performed and accepted ahead of the agreed delivery date, the due date for payment shall continue to be based on the agreed delivery date.

(2) Payment and discount terms shall begin on receipt of the invoice, though not before receipt of the goods or in the case of services not before their acceptance and, insofar as documentation, test certificates (e.g. factory certification) or similar documents are required under the scope of supply, not before said documentation has been handed over to Purchaser as contractually agreed.

(3) Purchaser shall pay by check or bank transfer. Payment shall be deemed to be on time if the check is sent by post on the due date or the transfer is initiated at the bank on the due date.

(4) Interest after due date shall be excluded. The interest rate for default shall be 5 percentage points above the basic interest rate pursuant to § 247 German Civil Code (BGB). Purchaser shall be entitled in all cases to demonstrate that the damages caused by default are lower than those demanded by Supplier.

(5) Statutory rights of set-off and retention shall apply for Purchaser. Supplier may offset only against uncontested or legally established receivables; his rights of retention shall apply only insofar as they are based on the same legal relationship.

(6) On the basis of the authorization given to Purchaser by the companies belonging to Purchaser's group in accordance with § 18 German Stock Corporation Act (AktG)*), Purchaser shall be entitled to offset any claims due, for whatever legal reason, to Supplier from Purchaser or a company of Purchaser's group. The same shall also apply if cash payment has been agreed by one party and payment in bills of exchange or other arrangements on account of performance has been agreed by the other. In these cases such arrangements shall relate to the balance only. If the claims are due on different dates, Purchaser's claims shall become payable by no later than the due date at which Purchaser's liabilities fall due for payment and shall be settled at the value date.

(X) Claims under liability for defects

(1) Supplier guarantees that his supplies/services are of the agreed quality, fulfill the intended purpose and comply with the generally accepted rules of technology and the agreed properties and standards. In the event that Purchaser incurs costs such as transport/travel, working and material costs or contractual penalties as a consequence of defective supplies/services, Supplier shall bear said costs.

(2) Supplier undertakes to supply Purchaser only with goods that are free of all signs of ionizing radiation. All costs and damages incurred through violation of this obligation shall be borne by Supplier.

(3) All defects which are notified within the period of limitation shall, at Purchaser's choice, be remedied or replaced by Supplier by new goods/services without delay and at no cost to Purchaser. The costs of remedying goods or supplying/performing replacements, including all incidental costs (e.g. freight), shall be borne by Supplier in accordance with the statutory provisions. In the event that Supplier does not meet his remediation obligation within an appropriate period defined by Purchaser, Purchaser shall be entitled to eliminate the defects himself and demand reimbursement of the required expense or a corresponding advance from Supplier. This shall not affect statutory rights of withdrawal, purchase price reduction or compensation for damages. Remediation by Supplier shall be deemed to have failed after the first unsuccessful attempt.

(4) The limitation period for defect liability claims shall begin with the full supply/performance of the scope of supply/service or, if acceptance testing is agreed, on acceptance.

(5) The limitation period for defect claims is 36 months; longer statutory limitation periods shall remain unaffected by this. The limitation period shall start anew for newly supplied/performed parts, but for repaired parts only insofar as the same defect or the consequences of inadequate remediation are concerned and Supplier has not remedied the defect expressly only out of goodwill. Purchaser – or in the case of drop shipments Purchaser's customer – shall check deliveries upon receipt for quality and completeness to the extent that can be reasonably expected and within the scope of Purchaser's technical possibilities and any defects detected notified immediately. At all events the notification is deemed to be in good time insofar as it arrives at Supplier by mail, fax, e-mail or phone within a period of eight working days of receipt of goods and a longer period has not been agreed in the individual case, or – for hidden defects – from the time of discovery. For defects notified within the limitation period, the period shall end no earlier than six months after assertion of the notice of defects. Supplier shall not object on the grounds of delayed notification (§§ 377, 381, (2) German Commercial Code (HGB)).

(6) Purchaser may demand that Supplier reimburses the expenses in connection with a defect which Purchaser has to bear in respect of his customer if the defect already existed at the time of the transfer of risk to Purchaser.

(XI) Guarantees/indemnification

(1) Supplier pledges to Purchaser that he shall comply with the provisions of the German Minimum Wage Act (MiLoG) and indemnify Purchaser against claims by third parties, in particular claims pursuant to § 13 MiLoG.

(2) In the event that existing compensation claims by third parties can be asserted vis-à-vis Purchaser due to supplies/services of Supplier, Supplier shall on first demand indemnify Purchaser against the full amount of such claims and pledge to cover reasonable legal and court fees of Purchaser.

(3) Supplier further represents that goods produced, stored and transported on behalf of Purchaser, supplied to Purchaser or accepted by same shall be produced, stored, processed and loaded at secure operating and handling facilities, and protected from unauthorized access during production, storage, processing, loading and transportation. Supplier represents that the personnel involved in the production, storage, processing, loading, transportation and acceptance of such goods are trustworthy and that they are not persons to whom, according to the sanctions lists binding on the Purchaser, economic resources may not be made available. Supplier further represents that all business partners acting on his behalf have been informed that they also need to take measures to secure the aforementioned supply chain. Supplier agrees to his data being checked against current lists relevant for the Purchaser.

(4) If Supplier or one of its affiliated companies has culpably engaged in any agreement or other conduct with respect to the delivery of the contractual supplies, which constitutes an unlawful restraint of competition according to applicable antitrust rules (in each case determined by a final regulatory or judicial decision), then Supplier shall pay to Purchaser 8 % of the net invoice amount of the supplies affected by such violation of antitrust law as damages, unless Supplier can prove that Purchaser has suffered no or only lesser damage. This obligation shall survive termination or fulfillment of the supply contract and/or a relating framework supply agreement. Any other or further contractual or statutory claims of Purchaser shall remain unaffected; in particular, Purchaser may claim higher damage upon presentation of relevant proof.

(XII) Place of fulfillment, legal venue

(1) Unless otherwise agreed by Purchaser's plant, place of fulfillment for all supplies/services shall be the place of receipt indicated by Purchaser.

(2) The legal venue shall be the domicile of Purchaser, or at Purchaser's choice, Supplier's general legal venue.

(XIII) Applicable law

All legal relations between Purchaser and Supplier shall be governed by the prevailing substantive law of the Federal Republic of Germany to the exclusion of the United Nations' Convention of April 11, 1980 on the Contracts for the International Sale of Goods (CISG) in the currently valid version.

(XIV) Prohibition of advertising/secrecy

(1) The use of the tk accelis or thyssenkrupp logo/logotype and any mention of tk accelis, the thyssenkrupp Group, thyssenkrupp AG or individual Group companies as reference customers of Supplier requires the express prior consent in writing of tk accelis GmbH or thyssenkrupp AG in each individual case.

(2) Supplier shall maintain secrecy vis-à-vis third parties in respect of all operational events, facilities, plants, documents, etc. used at Purchaser's premises or those of his customers which become known to Supplier in connection with his activities for Purchaser, also after submission of the corresponding offers and after completion of the contract. Supplier shall impose corresponding obligations on his agents.

(XV) Reservation of title

(1) Purchaser shall only recognize any simple reservation of title by the contracting partner to the extent that ownership of the goods is transferred to Purchaser upon payment and Purchaser is authorized to resell and transfer the goods in the course of normal business. Purchaser shall not accept specific forms of reserved title, in particular transferred, subsequent or extended reservation of title, current account reservation or extended corporate reservation of title. Conflicting terms and conditions of the Supplier shall not be recognized by Purchaser; they are hereby expressly rejected and shall not form part of the contract.

(2) The Supplier may only demand the return of goods on the grounds of reservation of title if he has previously withdrawn from the contract.

(XVI) Severability/written form

Should individual provisions of these conditions become entirely or partly invalid, the remaining provisions shall remain valid. The same shall apply for the corresponding contract. Insofar as these General Terms and Conditions of Purchase demand declarations by the contractual parties to be made in writing, simple text form shall be sufficient.

(XVII) Data protection

Purchaser points out that he will store and process the Supplier's data in accordance with the provisions of the GDPR and the BDSG. Detailed information on the handling of personal data can be found in the "Data Protection Information for Business Partners".

(XVIII) REACH clause

Supplier must fulfill all specifications and measures resulting from the REACH directive for all materials, prepared materials and products supplied/provided to Purchaser.

(XIX) Declarations of origin

In the event that Supplier submits declarations of origin with regard to the goods sold, the following shall apply:

(1) Supplier undertakes to permit the customs authority to examine documentary evidence of origin and to provide the necessary information on this and supply any confirmations required.

(2) Supplier is obligated to offset the damages incurred as a result of the declared origin not being recognized by the competent authority due to a lack of documentary evidence or inability to check, unless he is not responsible for these consequences.

(XX) Force majeure

In the event of Acts of God, labor disputes, civil commotion, official actions and other unforeseeable, inescapable and serious events, the contracting parties shall be temporarily relieved from their obligations during the period such events continue and to the extent that their obligations are affected. This shall also apply in the event that the Supplier concerned is in default. The contracting parties undertake to provide any necessary information to proof the event of Force Majeure which may reasonably be expected without delay, and to adjust their obligations in good faith to the changed circumstances.

(XXI) Miscellaneous

Supplier, at his own expense and without undue delay, shall ensure that all documents required for the effectiveness of the contract in the vendor's country, e.g. export permits, are available and remain valid while the contract is in progress. Failure by Supplier to meet this obligation shall entitle Purchaser to withdraw from the contract and claim damages from Supplier. The same shall apply if, for example, despite Supplier's efforts the required permits are not granted within a period reasonably acceptable to Purchaser or are withdrawn or become invalid while the contract is in progress.

*) 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