

# General Terms and Conditions for Service Works and Supplies

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## 1. General Provisions

1.1 These General Terms and Conditions for Service Works and Supplies (hereinafter referred to as "**Conditions**") apply to the present and all subsequent agreements (hereinafter collectively referred to as "**Contract**") for

- assembly, installation, inspections, maintenance, repair, refurbishment, upgrades, modernization and other works and services related to products (hereinafter referred to as "**Products**") and referring to the related prementioned works and services "**Product Services**"), and/or
- supervision of such Product Services rendered by a third party or the Customer (hereinafter referred to as "**Services of Supervision**"), and/or
- consulting and training, especially in the handling and operating of Products (hereinafter referred to as "**Training Services**") and together with Product Services and Services of Supervision as "**Service Works**"), and/or
- delivery of spare parts and overhauled parts (hereinafter referred to as "**Supplies**")

rendered by Kelvion Holding GmbH or any of its affiliated companies (each of them hereinafter referred to as "**Kelvion**") to the contracting party (referred to as "**Customer**") and together with Kelvion the "**Parties**") unless Kelvion does refer to other general terms and conditions in its offer, order confirmation or any other contractual document.

1.2 These Conditions apply only in business transactions with entrepreneurs, legal entities governed by public law, and special trusts under public law.

1.3 Conflicting or differing terms and conditions are not accepted and do not bind Kelvion, even if Kelvion does not explicitly object to them or if Kelvion unconditionally renders performance or accepts payments. Any deviations from these Conditions only become valid if expressly agreed upon in writing.

1.4 Unless stated otherwise, if reference is made to the written form this also includes email, facsimile and electronic communication. The term "days" refers to calendar days.

## 2. Conclusion of the Contract, Scope

2.1 Orders issued by the Customer always constitute a binding offer, unless stated otherwise therein. Kelvion may accept such offer within 2 weeks as of receipt.

2.2 Any Contract shall only become binding by and to the extent of Kelvion's order confirmation in writing or in the absence of an order confirmation, if Kelvion commences the Services Works requested by Customer without reservation and/or renders delivery of the Supplies.

2.3 Offers issued by Kelvion shall only initiate contract negotiations and are generally not legally binding. However, if an offer is declared as being binding by Kelvion in writing, it shall be revised and adapted, if, after its submission, modifications of the contractual obligations are necessary due to new or modified legal requirements or new requirements of public authorities and inspection boards, taking into account the reasonable interests of both Parties. The aforesaid provision applies to the Contract accordingly regarding such changes occurring after Kelvion's order confirmation.

2.4 Product Services only comprise the delivery of Supplies if expressly agreed so in the respective Contract.

2.5 The exact Scope of Service Works and/or Supplies to be rendered by Kelvion (including any reaction time if applicable) is conclusively laid down in the respective Contract concluded between Kelvion and the Customer.

## 3. Prices, Payment

3.1 Unless expressly agreed upon otherwise, prices for Supplies are net prices excluding statutory value added tax (VAT) and are quoted "Ex Works" (EXW according to INCOTERMS® 2020) premises of Kelvion. Any ancillary costs (e.g. taxes other than VAT, levies, costs for carriage, packaging, freight, customs import) will be charged separately by Kelvion.

3.2 If not agreed otherwise, especially if a lump sum price is not stipulated, the Customer shall remunerate Service Works on an hourly basis in accordance with Kelvion's applicable list hourly rates. However, in case a fixed price was agreed, such price does not include any additional work to the Service Works not provided for in the Contract. Such additional work is charged separately.

3.3 Hourly rates are net prices excluding statutory value added tax (VAT) and exclusively refer to Service Works rendered during Kelvion's normal business hours. Hourly rates do not include any additional costs incurred or spent in connection with the rendering of Service Works under the respective Contract like,

- travel and accommodation expenses,
- appropriate allowances (night-time work, public holidays, overtime work etc.),
- special tools, transport and site equipment.

Waiting time and additional travelling time for which Kelvion is not responsible and which Kelvion could not avoid with due care, shall be regarded as working time and charged correspondingly.

3.4 In the event Kelvion changes its applicable list prices for Service Works during the term of a Contract due to increased costs for personnel or other reasons, which could not be compensated by savings on other expenditures, Kelvion is entitled to increase prices not yet due accordingly. List price increases

are limited to three per cent (3 %) per calendar year. The aforesaid does not apply to Service Works rendered within four (4) months after the conclusion of a Contract.

3.5 Any taxes, including but not limited to sales tax or value-added tax, duties, levies or other fiscal charges imposed by any authority outside the country where Kelvion has its registered office are not included in the price and shall be borne by the Customer separately.

3.6 The working time spent by Kelvion to render Product Services will be noted on a working hours sheet which has to be signed by the Customer. If the Customer signs Kelvion's working hours sheet, he thereby acknowledges the corresponding claim for payment at his merits and to the extent noted in the sheet.

3.7 The Customer shall effect free and net payment to Kelvion's banking account(s) within fourteen (14) calendar days as of the invoice date. Timely payment is decided according to the date of receipt of the Customer's payment.

3.8 The Customer may set off only those claims in accordance with the applicable law that are undisputed between the Customer and Kelvion or that have been finally adjudicated. The aforementioned applies correspondingly to any right of retention of the Customer.

3.9 If Customer is in default with its payment obligations under a Contract, Kelvion is entitled - notwithstanding Kelvion's other rights and claims due to Customer's payment default - (i) to charge interest in accordance with the corresponding bank rates for overdraft facilities, however at least interest amounting to 9 percentage points above the interest rate for main refinancing operations (minimum bid rate) of the European Central Bank (ECB) as applicable at the respective point of time and (ii) to terminate the Contract at any time. The Customer's payment of default interest does not release the Customer from paying the amounts owed under a Contract.

3.10 Kelvion is entitled, at its discretion, to make outstanding Services Works and/or Supplies subject to prepayment or the provision of a security, if after the conclusion of the Contract circumstances emerge that impair the creditworthiness of the Customer, in particular - without being exhaustive - suspension of payment by the Customer, claim to open insolvency proceedings on the Customer's assets, bill or check protest, seizure measures. In the event a reasonable deadline set by Kelvion for the prepayment or the provision of a security elapsed to no avail, Kelvion may terminate the Contract.

## 4. Retention of title

4.1 Kelvion reserves its right of title regarding installed or replaced Supplies until complete and irrevocable payment of all open claims from the Contract against the Customer (hereinafter referred to as "**Reserved Parts**").

4.2 In case the legal order at the place of performance does not acknowledge retention of title, the Customer undertakes to support Kelvion in order to establish a comparable security right in relation to the Reserved Parts.

4.3 Adaption or processing of the Reserved Parts will be carried out for Kelvion. Parts processed and/or adapted shall be considered as Reserved Parts as specified in section 4.1. Should the Reserved Parts be assembled or adapted (i.e. processed, combined or inter-mixed) with other parts or units and should therefore Kelvion's ownership become void, Kelvion is entitled to co-ownership of the new property right in the ratio of the objective value of the Reserved Parts to the objective value of the parts or units added. The Customer shall already at this moment transfer his right of ownership to Kelvion correspondingly.

4.4 The Customer shall maintain the Reserved Parts in perfect condition. Furthermore, he shall take out sufficient insurance coverage for the Reserved Parts against damages arising out of fire, water and break-in incidents and authorizes Kelvion already at this moment to assert claims out of the respective insurance contract against the insurance company.

4.5 If the Customer fails to effect due payment or otherwise violates essential duties according to this section 4, his right of use expires, and Kelvion shall then be entitled to demand the immediate return of the Supplies in question at the Customer's cost and to the exclusion of any retention rights.

4.6 Kelvion shall release securities at its discretion up to a corresponding amount on request of the Customer if the total value of the securities given exceeds Kelvion's claims by more than 10 %.

## 5. Delivery of Spare Parts, Time-Limits for Services

5.1 Delivery of Supplies shall be made "EX Works" (EXW according to INCOTERMS® 2020) Kelvion, unless explicitly agreed upon otherwise in the Contract. Kelvion is entitled to partial delivery to the extent reasonable for Customer.

5.2 All indications concerning dates and time schedules set forth in a Contract are based on estimation and not binding. Binding dates and time schedules (hereinafter together referred to as "**Time-Limits**") must be expressly agreed upon as binding in writing in the respective Contract.

5.3 With regard to all Services Works and Supplies, Time-Limits are subject to the following prerequisites:

Customer has made down-payments, provided all securities agreed upon in due time and complied with its obligations as set out in sections 7.5 (if applicable) and 8 (to the extent applicable);

If Customer fails to comply with its obligations to cooperate, Kelvion's Time-Limits are suitably extended.

**5.4** Unless explicitly agreed upon otherwise in the Contract Time-Limits are met (i) for Supplies if Kelvion notifies the Customer of their readiness for dispatch before expiry, even if the Customer is unable to collect Supplies without Kelvion's fault; (ii) for Product Services, if Product Services owed under the Contract have been completed by Kelvion before expiry of the respective Time-Limit and, where applicable, are ready for Acceptance, (iii) for Training Services upon completion of the last training session.

**5.5** In case of a delay in Service Works and/or Supplies due to circumstances solely attributable to Kelvion, Customer's claims for damages and reimbursement of expenses are limited to an amount of 0.5 % per each completed week of delay up to a maximum of 5.0 % of the net Contract price of the part of Services Works and/or Supplies being in delay. The aforesaid does not apply in cases of wilful misconduct or gross negligence of Kelvion's legal, material or factual executive bodies (Art. 55 of the Swiss Civil Code - *Schweizer Zivilgesetzbuch*) or insofar as mandatory law provides otherwise.

**5.6** In the event of delays in Service Works and/or Supplies, the Customer may only withdraw from the Contract in accordance with the statutory provisions, if Kelvion is responsible for the delay and a reasonable grace period set by the Customer elapsed to no avail. For the delay in delivery of Supplies, the presumption in Art. 190 Swiss Code of Obligations (*Schweizer Obligationenrecht*) does not apply.

## 6. Transfer of risk

**6.1** The risk regarding Supplies passes over to the Customer as soon as Kelvion has made the Supplies available to Customer according to the applicable Incoterm, however at the latest (i) with the handing-over to the Customer or (ii) if the Supplies are subject to Acceptance in accordance with section 10.3, at the time of Acceptance.

**6.2** For Service Works risk shall pass over to the Customer upon completion or, if agreed, following Acceptance by the Customer according to sections 10.4 to 10.6 of these Conditions.

**6.3** Sections 6.1 to 6.2 of these Conditions do not apply to Contracts to be qualified as mere service agreements, such as Services of Supervision or Training Services.

## 7. Services of Supervision

**7.1** Kelvion shall execute the Services of Supervision on the basis of the relevant plans or technical guidelines as agreed under the Contract.

**7.2** Unless otherwise explicitly agreed upon in writing, Kelvion shall not be obliged to verify plans or other guidelines provided by a third party to be appropriate, correct or true. Subject to the Contract, Services of Supervision do not include supervision of planning, design or time management or any own calculation, consultancy, documentation, guidance or coordination of the works by Kelvion.

**7.3** Services of Supervision are rendered as random checks of the execution of third party's services. Kelvion shall not in any case be liable for success in the sense of the law on contracts for work but shall exclusively supervise works in a skilful manner.

**7.4** Kelvion is not obliged to interfere in the rendering of services by the third party or by the Customer or to give any kind of instructions to the respective third party, the Customer or their personnel. However, in case of imminent danger, Kelvion is entitled but not obliged to take corrective action or, as the case may be, give instructions.

**7.5** The Customer shall provide Kelvion with all necessary information reasonably needed to perform Services of Supervision, such as but not limited to plans, drawings and documents. Furthermore, the Customer shall grant Kelvion unlimited or appropriate access to any location where the services to be supervised are rendered.

**7.6** In case Kelvion notices that Customer's or third party's services are not executed in accordance with the terms of the applicable plan or technical guideline, Kelvion shall - within the scope of its duties - notify the Customer's responsible representative as appointed under section 8.1.1 thereof within a reasonable and adequate time period. The Customer is solely responsible to take the necessary measures in order to stop wrong execution of its own or third party's services.

## 8. Obligations of the Customer

**8.1** The Customer shall comply with the collaborative duties as set-out below:

**8.1.1** The Customer shall appoint a representative for Kelvion's Service Works having full authority to act on his behalf.

**8.1.2** The Customer shall provide Kelvion with all information reasonably required to execute the Contract and render Service Works properly (e.g. technical data, applicable HSSE regulations, legal protective regulations which Kelvion has to observe according to the applicable law at Customer's premises) and present necessary permits and documents.

**8.1.3** The Customer shall - at its own expense - assure that Service Works can be commenced immediately at the agreed place (hereinafter referred to as "**Work Site**") and time and carried out without hindrance or interruption as well as without risks for Kelvion's personnel and therefore provide all required and necessary accident prevention measures.

**8.1.4** The Customer shall immediately inform Kelvion if, during the visit of Kelvion's personnel at the Work Site, Customer becomes aware of a condition that

endangers the trouble-free operation on the Product or safety at the Work Site and shall, at the end of the Service Works, provide Kelvion with a written report.

**8.1.5** The Customer shall take all necessary measures prescribed by law and/or any other reasonable measures to ensure the safety of Kelvion's personnel and equipment at the Work Site. The Customer shall inform Kelvion in writing at least seven (7) days before commencement of any Service Works of the valid safety precautions and ensure that his personal responsible for safety matters is present during the time the Service Works are rendered at Customer's Work Site. The Customer shall provide all necessary assistance if Kelvion's personal suffers an accident or becomes ill during the execution of the Contract.

**8.1.6** The Customer shall also inform Kelvion without delay about any changes on the operating environment or changes to an agreed or noticed day for rendering Service Works, respectively a period of time, for the rendering of Service Works. Section 3.3 of these Conditions remains unaffected.

**8.1.7** In particular, the Customer shall provide at his own expense and in due time (if not included in the Contract price):

- the required permissions or licenses according to the applicable law and the company's own rules at the Work Site including entry, exit and working permits for Kelvion's employees if so required,
- the material, consumables, equipment and tools being necessary for starting and rendering Service Works,
- means for transport for Kelvion's personal and material,
- the required protective devices for Kelvion's personnel,
- electric power, welding gas, lightning (including necessary connections up to the Work Site), water, heating, compressed air, steam, fuels etc. in sufficient capacity and quality.
- telecommunication such as telephone, scanner, printer, fax, internet access etc.
- necessary spare parts provided that these are not to be supplied by Kelvion under the respective Contract.

The following provisions apply to Product Services only:

**8.1.8** The Customer shall store the materials to be used for Product Services, in particular spare parts and Product components, in such a manner that damages or deteriorations are prevented. Before Kelvion starts providing Product Services, the Customer shall check materials to be used for completeness and absence of damages in the presence of Kelvion's personnel and replace items found to be lost or damaged during storage at its own expense.

**8.1.9** The Customer shall, at its own cost, provide for: (i) heatable or air conditioned, lockable rooms for Kelvion's Work Site personnel, restrooms and changing rooms, including suitable sanitary facilities; (ii) lockable, dry rooms for the storage of Kelvion's equipment and material, both within vicinity of the Work Site.

**8.1.10** The Customer shall assure that Customer's or third party's workers are adequately qualified in order to perform their duties. Kelvion shall not be liable for defects caused by auxiliary workers nor for damages suffered by auxiliary workers. The Customer remains solely responsible for auxiliary works procured on his parts.

**8.1.11** Customer is responsible for the waste management at the Work Site, particularly for the environmentally appropriate disposal of replaced parts or consumables (gas, dust etc.) resulting from the Product Services.

The following provision applies to Product Services with respect to regular onsite inspection only:

**8.1.12** If the Contract includes Product Services with respect to regular onsite inspection, the Customer shall immediately inform Kelvion about any observed irregularities, damages or deficiencies of Products which make corrective maintenance necessary and shall indicate Kelvion the scope of inspection to be done.

The following provision applies to Training Services only:

**8.1.13** Training Services are exclusively aimed at employees of Customer and Customer's affiliated companies (hereinafter referred to as "**Permitted Participants**"). Customer must ensure that only Permitted Participants attend Training Services to the exclusion of any third party.

**8.2** The Customer is not entitled to subcontract the fulfilment of its obligations nor to assign its rights and claims under a Contract to any third party without the prior written consent of Kelvion.

**8.3** Tools, equipment and instruments provided by Kelvion to Customer for his use remain Kelvion's property and shall be used only for the purpose for which they have been provided, treated with due care and delivered back to Kelvion at Customer's expense and risk. The Customer shall in particular bear all related export, import, reexport and reimport costs.

## 9. Kelvion's rights and obligations

**9.1** Kelvion undertakes to carry out Service Works in a workman-like manner and with qualified personal. Kelvion is entitled to exchange its personal at all times and subcontract Service Works to third parties. Partial performance shall be allowed and charged correspondingly.

**9.2** If the Customer does not fulfil or only partially fulfils its obligations under sections 7.5 and 8 of these Conditions and a reasonable deadline for the complete fulfilment set by Kelvion - provided that such is required under the applicable law - elapsed to no avail, Kelvion is entitled, but not obliged, to remedy such deficiencies either by itself or by means of a third party at the cost of the Customer or terminate the Contract. Further claims and rights remain unaffected.

**9.3** If Kelvion's personnel encounters any danger (in particular lack of safety at Customers Work Site) or is considerably hindered in carrying out the Service Works due to any reasons not attributable to Kelvion, Kelvion is entitled to stop any

Service Works and withdraw the site personnel. In such event, the incurred expenses are invoiced as waiting time according to section 3.3 of these Conditions.

**9.4** If the Customer ordered not required Supplies and Kelvion takes back and accepts the returned Supplies on a goodwill basis and subject to Kelvion's written consent, the Customer shall pay 20 % of the order value of the returned Supplies plus any incurred freight charges to Kelvion.

## **10. Inspection and defect notification; Acceptance of Services**

**10.1** The Customer shall inspect Supplies (without any Product Services) upon delivery, or respectively, Product Services (with or without any Supplies, as the case may be) upon completion and shall immediately, however at the latest within five (5) working days, notify Kelvion in writing of all and any detected defects. In case of hidden defects, the Customer shall notify Kelvion in writing upon detection of said defect, however at the latest within five (5) working days upon detection. The aforesaid does not apply to contractual obligations to be qualified as service agreement (i.e. Services of Supervision or Training Services).

**10.2** If the Customer fails to notify Kelvion of obvious or hidden defects, the Product Services and/or Supplies shall be deemed approved with regard to these obvious or hidden defects and any and all warranty claims in this regard shall be excluded.

**10.3** Product Services and/or Supplies supplied by Kelvion to the Customer are subject to acceptance, if such acceptance is required by mandatory statutory provisions or has been agreed upon in the Contract ("**Acceptance**"). Product Services and/or Supplies are ready for Acceptance after completion or, if the Parties have agreed upon a formal information, when Kelvion has notified the Customer of the Product Service's and/or Supplies completion.

**10.4** Acceptance shall take place at Customer's expense and as soon as the Customer has been notified of the readiness for Acceptance, however, within five (5) working days after the completion notice has been given at the latest. Upon Acceptance, Product Services and/or Supplies shall be inspected by the Customer or its appointed representative(s) in the presence of Kelvion's representative(s). The Acceptance, including any agreed tests and any deficiencies detected during the Acceptance have to be recorded in a written acceptance protocol to be signed by both Parties after completion of Acceptance. Kelvion shall be entitled to keep the original of said acceptance protocol.

**10.5** However, the Customer is not entitled to refuse acceptance on account of minor defects.

**10.6** If the Customer fails to accept Product Services and/or Supplies in the agreed-upon time-frame or if the Acceptance is impossible due to circumstances not attributable to Kelvion, the Product Services and/or Supplies shall be deemed to have been accepted. Deemed acceptance ("**Acceptance**") shall also occur if the assembled, installed or repaired Products or Supplies are put into operation by the Customer without Kelvion's prior consent. In the event of deemed acceptance, Kelvion shall issue a notification of deemed Acceptance.

## **11. Liability for Defects and Default**

**11.1** The quality and specifications of Product Services and/or Supplies are exhaustively and conclusively agreed upon between Kelvion and the Customer in the Contract to the exclusion of any further implied or express warranties. Unless otherwise expressly agreed in writing, technical specifications just describe the agreed quality of Kelvion's Product Services and/or Supplies under a Contract, but do not constitute any guarantee for specific characteristics.

**11.2** Kelvion warrants that Product Services and/or Supplies are, at the time of transfer of risk, free from any defects. Insignificant or minor deviations from the agreed quality do not constitute a defect.

**11.3** If the Product Services and/or Supplies are defective, Kelvion shall rectify such defects at its sole discretion by repair or replacement or shall render Product Services and/or Supplies again (hereinafter together referred to as "**Rectification**") free of charge for the Customer, provided that such defects have been notified to Kelvion in accordance with section 10.1. The Customer shall give Kelvion adequate time and opportunity to operate Rectification. Replaced parts become Kelvion's property.

**11.4** If the Rectification fails, i.e. after three (3) unsuccessful attempts or if the Rectification is impossible, the Customer may claim a reasonable deduction from the Contract price or rescind the respective Contract.

**11.5** Kelvion shall not be liable for defects in the Product Services and/or Supplies if they are not based in bad material, faulty design or poor workmanship, in particular, but not limited to, those deficiencies resulting from:

- Rectification rendered by the Customer or third parties without Kelvion's prior written consent,
- installation or assembly work not undertaken by Kelvion,
- Customer's non-compliance with Kelvion's specifications and instructions regarding Kelvion's Products,
- faulty or unsuitable handling, in particular excessive loading or operation or inappropriate storage,
- faulty or unsuitable treatment, in particular defaulted or unsuitable maintenance or maintenance contradictory to Kelvion's instructions; the burden of prove for correct maintenance shall be borne by the Customer,
- wear and tear and normal abrasion,
- defective building work, unsuitable soil,
- chemical, electrochemical, electrical, physical and other unforeseeable influences.

**11.6** The Customer is not entitled to any warranty claims and rights if and to the extent that the Customer has not taken all precautions and/or immediate

appropriate measures to prevent an aggravation of the damage to the Products subject to the Product Services and/or Supplies.

**11.7** With regard to claims for damages, section 12 applies. Any and all further claims or rights or other than those set forth in Sections 11 and 12 of the Customer against Kelvion on grounds of a material defect, in particular the invocation of a fundamental error (Art. 24 of the Swiss Code of Obligations), are excluded.

**11.8** The limitation period for warranty claims shall be:

- regarding Supplies twelve (12) months from the date of delivery.

- regarding Product Services: twelve (12) months from the date of Acceptance, however eighteen (18) months upon completion at the latest.

**11.9** For deficiency in title, the following applies additionally:

**11.9.1** Industrial property rights or copy rights shall only constitute a deficiency in title if they are registered and made public in the country where the contracting Kelvion entity has its registered office.

**11.9.2** In case that a third party asserts justifiable claims against the Customer because of industrial property rights or copy rights, Kelvion shall either effect a right of use or change the dispatch of its Product Services and/or Supplies in such a way that the third party's right is not violated or replace installed parts. The rules for defects subject to clauses 11.2 to 11.8 apply accordingly.

**11.9.3** The duties pursuant to the aforementioned sub-section apply to the condition that the Customer notifies Kelvion in writing and without any undue delay of any claims asserted against the Customer and based on the infringement of intellectual property rights or copy rights and that any disputes, including settlements, shall be concluded only with the agreement and approval of Kelvion.

**11.9.4** Any liability of Kelvion due to an infringement of intellectual property rights or copy rights shall be excluded insofar as the infringement of such rights results from specifications made by the Customer, the Supplies are used in a way not foreseeable by Kelvion or if the Customer modifies or uses Supplies in combination with products that have not been delivered or destined for such use by Kelvion.

## **12. Limitation of Liability**

**12.1** Kelvion is only liable for damages or expenses in case of fault (wilful misconduct or negligence). Kelvion shall in no event and irrespective of the legal basis (contract, tort or any other area of law) be liable for loss of profit or revenue, loss of production, loss of use, loss of orders, loss of data, cost of capital, down-time costs, cost of substitute goods, as well as any incidental, indirect or consequential damages or any of the foregoing suffered by the Customer or any third party.

**12.2** Kelvion's overall aggregate liability for all claims of any kind, irrespective of their legal basis, shall in no event exceed

(i) for orders with a net order price equal or below 500.000,00 EUR, 200% of the overall amount of the respective net order value of the Contract, or 500.000,00 EUR, whichever is less; and

(ii) for orders with a net order price of more than 500.000,00 EUR, the overall amount of the respective net order price of the Contract; and respectively,

(iii) for Service Works rendered under a long-term Contract with a term of more than one year, the net order price of all Service Works of the year, in which the damage event occurs.

**12.3** The aforementioned restrictions of liability do not apply (i) in the event of wilful misconduct or gross negligence of Kelvion's legal, material or factual executive bodies (Art. 55 of the Swiss Civil Code - *Schweizer Zivilgesetzbuch*), (ii) in case of bodily injury attributable to Kelvion and (iii) insofar as mandatory law provides otherwise.

**12.4** To the extent that Kelvion's liability is excluded or limited, this also applies to the personal liability of the employees, servants, members of staff, representatives other than those mentioned in section 12.3 and those employed by Kelvion in the performance of its obligations.

## **13. Export Control Regulations**

**13.1** Kelvion may refuse to fulfil its obligations under a Contract with the Customer, to the exclusion of any claims of the Customer against Kelvion, if and to the extent the fulfilment of the contractual obligations is prohibited or impaired by national or international foreign trade law regulations or any embargos and/or other sanctions obstructing the fulfilment.

**13.2** In the event Kelvion is in delay with its obligations under a Contract caused by application, licensing or similar requirements or procedures of the applicable foreign trade law, the time of performance of such obligations is extended accordingly. Claims for damages by the Customer based on such delays are excluded if and to the extent such delays are not attributable to Kelvion.

**13.3** The Customer shall comply with all regulations on the controlling of import and export applicable to Kelvion, and shall, particularly, not re-export Supplies delivered under a Contract to countries referred to by the laws and regulations as set out in section 13.1.

**13.4** In the event the fulfilment of Kelvion's obligations under the Contract is prohibited or impaired by applicable national or international foreign trade law for a period of (3) three months or longer, Kelvion is entitled to cancel or rescind the Contract without notice, provided however, that the above-mentioned circumstances are not attributable to Kelvion.

## **14. Force Majeure**

**14.1** A force majeure event means an event where Kelvion fails to perform one or more of its contractual obligations provided that (i) such failure to perform was caused by an impediment beyond its reasonable control, (ii) Kelvion could not

reasonably have been expected to have taken the occurrence of the impediment into account at the time of the conclusion of a Contract and (iii) Kelvion could not reasonably have avoided or overcome the effects of the impediment (hereinafter referred to as "**Force Majeure**").

**14.2** In the absence of proof to the contrary it shall be presumed that Kelvion's failure to perform was caused by an impediment of Force Majeure in case of one or more of the following events (without excluding further causes): (i) war, armed conflicts and hostilities or the serious threat of the same, as well as civil war, riot rebellion, revolution, military or usurped power and mob violence, (ii) act of terrorism, sabotage or piracy, (iii) act of authority whether lawful or unlawful, compliance with any law or governmental order, rule, regulation or direction (iv) plague, epidemic, natural disasters (v) explosion, fire, destruction of machines, equipment, factories, prolonged break-down of transport, telecommunication or electric current (vi) general labour disturbance such as strike and lock-out (vii) shortage of material in case such shortage of material occurs in general at the market.

**14.3** In case of Force Majeure, Kelvion is, from the time the Force Majeure event causes the impediment to perform, relieved from (i) its duty to perform its obligations under a Contract, (ii) any liability in damages or other contractual remedy for breach of contract.

**14.4** If the Force Majeure event continues for a cumulative period of three (3) months or more or once it has become evident that it will continue for such a period, Kelvion or Customer may terminate the Contract by giving the other party thirty (30) days prior written notice.

### **15. Intellectual Property, Copyright, Trademarks**

**15.1** Unless otherwise agreed in writing, the copyright of all documents, reports and information produced by Kelvion is vested in Kelvion. The Customer's right to their use is restricted wholly to the purpose for which the Services are provided and no part of the reports, documents and information may be used for other purposes without Kelvion's written approval.

**15.2** Furthermore, all rights, title and interest in and to any work product including but not limited to any reports, drawings, photographs, data and specifications, irrespective of the storage medium, software programs, derivative works, discovery, designs, invention, patents, know-how or improvement (hereinafter referred to as "**Work Products**") which may be conceived, created or developed as a result of or in connection with a Contract shall be the sole property of Kelvion, to the extent permissible by law. Kelvion may grant a non-exclusive, non-transferable and royalty-free licence to the Customer to use the Work Products for its internal business purposes.

**15.3** The Customer is not entitled to use Kelvion's trademarks without prior written consent. If the Customer breaches this obligation, the Customer shall be liable for all resulting damages incurred by Kelvion on account for such breach. Furthermore, Kelvion is entitled to terminate all Contracts entered into with Customer.

### **16. Confidentiality**

**16.1** The Customer shall undertake to keep confidential knowhow, trade secrets and other information that a reasonable business person would deem confidential which Kelvion discloses to the Customer in connection with the execution of a Contract (hereinafter referred to as "**Confidential Information**"). The Customer receiving the information is in particular not authorized to forward such Confidential Information to third parties without the prior written consent of Kelvion. The Customer undertakes not to use Confidential Information for the study, analysis, decomposition, decompilation or any other method of reverse engineering relating to products manufactured by Kelvion. This interdiction of reverse engineering also applies if the Customers does not use Confidential Information. The Customer shall undertake to commit its employees as well as other persons receiving access to Kelvion's Confidential Information to confidentiality to the same extent.

**16.2** The obligation indicated in the abovementioned clause does not include information which (i) was lawfully in Customer's possession without obligation to confidentiality prior to receipt from Kelvion; (ii) is at the time of disclosure already in the public domain or subsequently becomes available to the public through no breach of Customer's confidentiality obligations and no breach of the corresponding obligations by the persons the Customer disclosed such Confidential Information; (iii) is lawfully obtained by the Customer from a third party without an obligation to keep confidential, provided such third party is not, to the Customer's knowledge, in breach of any obligation of confidentiality relating to such information; (iv) is developed by the Customer independently without breaching any obligations related to the restricted use; (v) is approved for release by written agreement of Kelvion.

**16.3** The Customer may disclose Kelvion's Confidential Information to the extent the Customer is required to do so by any order of a governmental or regulatory authority or court or by mandatory law, provided that, if not prohibited by law, written notice of such order is given without undue delay to Kelvion so as to give Kelvion an opportunity to intervene and provided further that the Customer uses reasonable efforts to obtain assurance that the Confidential Information will be treated confidentially. Confidential Information which is disclosed in such way must be marked "Confidential" and/or with any other pertinent marking such as "Privileged", as the case may be.

### **17. Termination of Contract**

**17.1** The Customer shall only have the right to cancel the Contract before the completion of Service Works and/or delivery of Supplies in case of a compelling reason. A compelling reason shall be assumed only if facts are present on the basis of which the Customer cannot reasonably be expected to continue the

Contract relationship to the completion of the Service Works and/or delivery of Supplies.

**17.2** For Contracts under which Kelvion has to render Services of Supervision and/or Training Services mandatory statutory provisions apply instead of section 17.1 of these Conditions.

### **18. No Waiver**

**18.1** No failure or delay by Kelvion in exercising any right, power or remedy shall operate as a waiver thereof or otherwise impair any of its rights, powers or remedies, unless stated otherwise in these Conditions. No single or partial exercise of any such right shall preclude any other or further exercise thereof or the exercise of any other right. No waiver of any such right shall be effective unless given in writing.

**18.2** The rights or remedies provided for herein are cumulative and, except as specifically provided herein, are not exclusive of any other rights, powers or remedies provided by law. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion of any other appropriate right or remedy.

### **19. Governing law and arbitration**

**19.1** Should any of the provisions of the Contract be or become invalid or otherwise unenforceable, this shall not affect the validity and enforceability of the remaining provisions. The invalid or unenforceable provision shall be replaced by an operative one coming as close as possible to the economic purpose and effect intended by the original provision.

**19.2** These Conditions including the Contract shall be governed by and interpreted, construed and enforced in accordance with the substantive laws of Switzerland.

**19.3** Any dispute, controversy or claim arising out of, or in relation to, this Contract, including the validity, invalidity, breach, or termination thereof, shall be resolved by arbitration in accordance with the Swiss Rules of International Arbitration of the Swiss Chambers' Arbitration Institution in force on the date on which the Notice of Arbitration is submitted in accordance with these Rules. The number of arbitrators shall be one. The seat of the arbitration shall be Zurich, Switzerland. The arbitral proceedings shall be conducted in English. The Emergency Arbitrator Provisions shall not apply.

**19.4** In case the Products are transported to or used in Russia, Belarus or Ukraine, whether known or unknown to the Customer, the following shall apply:

(i) Kelvion's warranty obligations are limited to repair or replacement at Kelvion's discretion in Kelvion's workshop. Customer shall be responsible for cost and risk of dismantling, transport to and from Kelvion's workshop and reassembly of Products;

(ii) Customer shall indemnify, defend and hold harmless Kelvion, its affiliates, successors, assigns, officers, directors, employees, subcontractors, agents and representatives, from and against any and all claims, demands, losses, damages, and causes of action (including all expenses of litigation, court costs and reasonable attorneys' fees) resulting from or in connection with the Products transported to or used in Russia, Belarus, or Ukraine.