

## General Terms and Conditions of Delivery

### 1. General Provisions

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

- the manufacture and/or supply of products (hereinafter referred to as "**Product Deliveries**") and, in relation to the goods "**Products**", and together with Additional Services collectively "**Deliveries**"), as well as
- the provision of additional services, in particular in the form of assembly, erection, installation or commissioning of Products (hereinafter referred to as "**Product Services**") and/or the assistance for Product Services rendered by a third party or the Customer (hereinafter referred to as "**Technical Assistance**") and together with Product Services referred to as "**Additional Services**")

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 "**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 carries out Deliveries 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 e-mail, facsimile and electronic communication. The term "days" refers to calendar days. Unless explicitly stated, all technical information and figures are purely indicative and do not constitute any guarantees.

### 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 two (2) weeks as of receipt, unless the Customer specifies a longer acceptance period. Until the expiration of the acceptance period, offers shall be irrevocable..

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 Deliveries requested by the Customer without reservation.

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, Kelvion remains entitled to adjust it if, after its submission, modifications of the contractual obligations are necessary due to new or modified legal requirements or new requirements of supervisory or other public authorities, considering 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 The exact Scope of Deliveries 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, Payments, Securities, Assignment

3.1 Unless expressly agreed upon otherwise, prices for Product Deliveries 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 Additional Services on an hourly basis in accordance with Kelvion's applicable list of hourly rates valid at the time of conclusion of the Contract. However, in case a fixed price was agreed, such price does not include any additional work to the Additional Services not provided for in the Contract. Such additional work is charged separately.

3.3 Hourly rates are net prices excluding the statutory value added tax (VAT) and refer exclusively to Additional Services rendered during Kelvion's normal business hours. Hourly rates do not include any additional costs incurred or expended in connection with the rendering of Additional Services under the respective Contract like, without being exhaustive:

- travel and accommodation expenses,
- 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 The working time spent by Kelvion to render Additional 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.

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

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

The Contract price shall become due immediately upon receipt of the invoice in accordance with the following instalments, unless otherwise agreed:

- 20 % as down payment upon conclusion of the Contract;
- 80 % upon notification of readiness for dispatch for the Product Deliveries by Kelvion.

In any case, and irrespective of the agreed due dates between the Parties, the (outstanding) price as per Contract shall become due immediately if the Customer is in default of acceptance .

3.7 In the event, the price agreed between the Parties in the Contract exceeds the amount of EUR 500.000 (in words: five-hundred thousand euro), the Customer is obliged to provide an irrevocable payment security, such as either a bank guarantee on first demand or a confirmed letter of credit by a bank, acceptable to Kelvion. The aforementioned payment security must cover the total price as per the Contract minus the amount for the first down payment, if any.

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. Kelvion is entitled to assign accounts receivable to any third party without the Customers consent.

3.9 If the 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 rate for the main refinancing operations (minimum bid rate) of the European Central Bank (ECB) as applicable at the respective point of time and (ii) to partially suspend the Contract with regard to its Delivery-related obligations until the receipt of the delayed payment or (iii) to terminate the Contract at any time. Kelvion shall inform the Customer within a reasonable period of time whether he exercises its suspension right. 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 Deliveries 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 payments 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.

3.11 In case Kelvion is obliged by contractual agreement to provide the Customer with a security such as a guarantee or surety, Kelvion is always entitled to provide such security with a calendar expiry date. In case Kelvion has a contractual obligation to provide the Customer with a bank guarantee or a bank surety, Kelvion is entitled to provide this security at its discretion via a European or international bank.

### 4. Retention of Title

4.1 Kelvion reserves its right of title regarding Products until complete and irrevocable payment of any and all open claims or of the balance receivable (in case of current clearing) from the business relationship against the Customer (hereinafter referred to as "**Reserved Goods**").

4.2 In case the legal order at the place of performance does not acknowledge retention of title or provides for additional requirements such as but not limited to registration requirements, the Customer undertakes to support Kelvion in order to establish a comparable security right in relation to the Reserved Goods. Related costs shall be borne by the Customer. The Customer must immediately notify Kelvion in writing of any attachments, seizures or other measures by third parties which could impair Kelvion's ownership of the Reserved Goods and inform the third party of Kelvion's ownership of the Reserved Goods.

4.3 Products adapted and/or processed shall be considered as Reserved Goods as specified in section 4.1. Should the Reserved Goods be assembled or adapted (i.e. processed, combined or inter-mixed) with other goods 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 Goods to the objective value of the goods added. The Customer shall already at this moment transfer his right of ownership to Kelvion correspondingly.

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

4.5 Kelvion authorises the Customer to resell the Reserved Goods within the course of a proper business transaction. The Customer is not permitted any other disposal, in particular pledging or transfer by way of security.

**4.6** The Customer hereby assigns to Kelvion any and all claims against its customers arising from the resale of the Reserved Goods. Kelvion hereby accepts the assignment. In case the Customer resells the Reserved Goods together with other goods which are not property of the Kelvion, the assignment of claims arising in connection with the resale shall be limited to the value of the Reserved Goods. If the claim arising out of the resale of the Reserved Goods becomes part of a current account established between the Customer and its respective customer, the assigned claim shall, following the balancing, be replaced by the recognized accounting balance which is assigned in the amount of the resale value of the respectively sold Reserved Goods.

**4.7** The Customer is hereby authorised to collect the claims assigned to Kelvion from the resale and to realise the securities transferred with the assignment at its own expense. Kelvion is entitled to revoke the authorization to resell and/or collect the claims assigned to Kelvion if

- the Customer is in default with payments arising from the business relationship,
- the Customer has disposed of the Reserved Goods outside the ordinary course of business, or
- after conclusion of the Contract, a significant deterioration in the Customer's ability to pay becomes apparent which endangers Kelvion's claim, in particular in the event of cessation of payments, an application to open insolvency proceedings against the Customer's assets or an attachment or seizure.

After the revocation of the authorisation to collect claims, any and all assigned outstanding amounts shall be collected by the Customer immediately on a special account and the payments shall be clearly attributable to Kelvion. After the revocation of the authorisation to collect claims, the Customer must inform Kelvion of the name of the debtors of the assigned claims, the type and amount of the claims and of the securities transferred and hand over to Kelvion any and all documents required to enforce the claims; at Kelvion's request the Customer must notify the debtors of the assignment.

**4.8** If the Customer is in default of payment or violates other essential obligations under this section 4, Kelvion is entitled – subject to mandatory provisions regarding insolvency proceedings – to demand the return of the Reserved Goods excluding any retention rights. The Customer's right of use for the Reserved Goods shall expire accordingly. Kelvion shall be entitled – regardless of the payment obligation of the Customer – to make the best possible use of the Reserved Goods returned to Kelvion's possession in voluntary sale or to accept them back at the current market price. The proceeds of the sale or the market price shall be offset against the payment obligation of the Customer after deducting any costs incurred by Kelvion.

**4.9** Kelvion undertakes, at the Customer's request and Kelvion's discretion, to release the securities to which Kelvion is entitled insofar as their realisable total value exceeds Kelvion's claims to be secured by more than 10 %.

## **5. Deliveries, Delivery Dates, Delay in Delivery, Default of Acceptance**

**5.1** The Product Deliveries shall be made "EX Works" (EXW according to INCOTERMS® 2020) premises of Kelvion, unless explicitly agreed upon otherwise.

**5.2** Kelvion is entitled to partial supply of Deliveries and to invoice them correspondingly.

**5.3** With regard to all Product Deliveries and Additional Services, 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 6.5 (if applicable) and 9 (to the extent applicable).

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

**5.4** Unless explicitly agreed upon otherwise in the Contract, dates and time schedules (hereinafter together referred to as "Time-Limits") are met by Kelvion (i) for Product Deliveries if Kelvion notifies the Customer of their readiness for dispatch before expiry of the Time-Limit, even if the Customer is unable to collect the Product Deliveries without Kelvion's fault; (ii) for Additional Services, if these were provided by Kelvion before expiry of the respective Time-Limit and, where applicable, are ready for Acceptance.

**5.5** In case of a delay in Deliveries 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 Deliveries being in delay. Payment of damages pursuant to this section 5.5 shall constitute the sole and exclusive remedy of the Customer for delay. Any further claims and rights of the Customer shall be excluded. 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. In such cases (i) the Customer may only withdraw from the Contract or declare the Contract avoided if a reasonable grace period set by the Customer elapsed to no avail; (ii) the presumption in article 190 Swiss Code of Obligations (*Schweizer Obligationenrecht*) does not apply; (iii) at Kelvion's request, the Customer is obliged to declare within a reasonable period of time whether he continues to insist on the Delivery and/or whether he wants to assert any rights he may be entitled to due to a delay in delivery.

**5.6** In case the Customer is in default with its contractual obligation to accept Deliveries, Kelvion is entitled:

- to store the Product to be delivered at the Customer's risk at its premises or those of a third party; and
- to demand from the Customer the payment of 0.1% of the net order value per day up to a maximum of 5.0% of the total net order value of the part of the

Deliveries in default of acceptance as a contractual penalty, if the Customer is responsible for the default of acceptance. The assertion of further damages is not precluded, any contractual penalties must, however, be deducted. For the avoidance of doubt, the burden of proof that the delay has not been culpably caused by the Customer, shall in express deviation of article 161 section 2 of the Swiss Code of Obligations (*Schweizer Obligationenrecht*) rest with the Customer.

## **6. Technical Assistance**

**6.1** Kelvion shall execute the Technical Assistance on the basis of the relevant plans or technical guidelines as agreed under the Contract.

**6.2** 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, Technical Assistance does not include the assistance with planning, design or time management or any own calculation, consultancy, documentation, guidance or coordination of the works by Kelvion.

**6.3** Technical Assistance is 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 provide Technical Assistance in a skilful manner.

**6.4** 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.

**6.5** The Customer shall provide Kelvion with any and all necessary information reasonably needed to perform Technical Assistance, 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 assisted with, are rendered.

**6.6** In case Kelvion notices that services provided by the third party or the Customer are not executed in accordance with the terms of the applicable plan or technical guidelines, Kelvion shall – within the scope of its duties – notify the Customer's responsible representative as appointed under section 9.1.1 thereof within a reasonable and adequate time period. The Customer is solely responsible to take the necessary measures in order to prevent errors of its own or third party's services.

## **7. Transfer of Risk, Acceptance, Release**

**7.1** The risk of accidental loss and accidental deterioration shall pass to the Customer upon the delivery according to the applicable Incoterm.

**7.2** The risk shall also pass to the Customer if the latter is in default of acceptance

**7.3** The Deliveries provided by Kelvion to the Customer are subject to acceptance by the Customer, if such acceptance is required by mandatory statutory provisions or has been agreed upon in the Contract ("Acceptance"). Separable parts of a Delivery shall be accepted separately by the Customer after Kelvion has performed its services in accordance with the Contract.

**7.4** Acceptance shall take place at Customer's expense - except for Kelvion's own labour cost - 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. Kelvion is entitled to be present at the acceptance and any tests conducted by the Customer and/or its authorised representative. For this purpose, the Customer must inform Kelvion in due time in advance of the date of acceptance and of any tests, in case Kelvion is not aware of it. 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.

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

**7.6** If the Customer fails to accept Deliveries in the agreed-upon time frame or if the Acceptance is impossible due to circumstances not attributable to Kelvion, the Deliveries shall be deemed to have been accepted. Deemed acceptance ("Acceptance") shall also occur if the Products delivered by Kelvion are put into operation by the Customer or, with the Customer's consent by a third party, without Kelvion's prior written consent. In the event of deemed Acceptance, Kelvion shall issue a notification of deemed Acceptance.

**7.7** An earlier date for Acceptance resulting from statutory provisions or the Contract shall remain unaffected by sections 7.3 to (and including) 7.6.

**7.8** If an agreed payment date for a Delivery, also for a partial Delivery, is subject to an acceptance, the payment shall also become due in the case of an acceptance in accordance with sections 7.4. to (and including) 7.6.

**7.9** If the fulfilment of an obligation by Kelvion is dependent on the prior release by the Customer and if the release does not take place on time or in full through no fault of Kelvion, the release shall be deemed to have taken place upon the expiry of the time limit set in the Kelvion's prior written request for release. Irrespective of the above, the Customer is only entitled to refuse the release of a Delivery to be made by Kelvion, including a partial Delivery, if the (partial) Delivery does not meet the requirements agreed upon in the Contract.

## **8. Liability for Defects**

**8.1** Kelvion shall remedy any Deliveries which display a defect or a deficiency in title within the warranty period, at its sole discretion, by rectification or replacement

by new parts or shall render Deliveries again (hereinafter together referred to as "Rectification") free of charge, provided the defect or deficiency already existed at the time of transfer of risk. Replaced or exchanged parts become Kelvion's property.

**8.2** If the Rectifications fails after three (3) unsuccessful attempts or if the Rectification is impossible, the Customer may claim a reasonable deduction from the Contract price. Subject to all requirements set forth by the applicable law and this Section 8, the Customer is only alternatively entitled to declare the Contract avoided if the non-conformance or deficiency amounts to a fundamental breach of Contract and a reasonable period of time required for appropriate Rectification has expired to no avail.

**8.3** The Deliveries are only deemed to be defective if they, already at the time of transfer of risk, do not comply with the specifications and quality as conclusively and exhaustively agreed upon in the respective Contract. The application of any further express or implied warranties, including but not limited to warranties of merchantability and fitness for a particular purpose, or compliance of the Deliveries with any legal requirements existing outside the country where the contracting Kelvion entity has its registered office, are excluded. Unless otherwise expressly agreed in writing, technical specifications just describe the agreed quality of Deliveries under a Contract, but do not constitute any guarantee for specific characteristics.

**8.4** Insignificant or minor deviations from the agreed quality or specifications do not constitute a defect. In addition, Kelvion shall not be liable for defects if they are not based in bad material, faulty design or poor workmanship, in particular, but not limited to, if defects result from:

- defective building work, unsuitable soil or defective preliminary works by the Customer or a third party,
- defects in expendable and/or consumable parts regularly replaced due to normal wear and tear arising after the transfer of risk,
- faulty or unsuitably 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 proof for correct maintenance shall be borne by the Customer,
- installation or assembly work not undertaken by Kelvion,
- chemical, electrochemical, electrical, physical and other unforeseeable influences.

**8.5** The Customer is not entitled to any warranty rights and claims 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;
- not notified Kelvion during the defects liability period in writing of a defect or a deficiency in title without undue delay, at the latest however after (5) working days after the Customer's discovery or after the Customer should have discovered the respective defect (whereas the Customer is obliged to examine the Products with regard to potential defects immediately after the takeover) or deficiency in title, if the Customer had exercised the due care pursuant to the requirements of the applicable law.

With regard to his duties to notify any defect or deficiency in title without undue delay to Kelvion, the Customer shall not be entitled to rely on any excuse for its failure to give the required notice.

**8.6** With regard to claims for damages, section 10 shall apply. Subject to this section 8 and section 10, any other claims or rights of the Customer due to a defect or a deficiency in title of the Deliveries shall be explicitly excluded, in particular the invocation of a fundamental error (Art. 24 of the Swiss Code of Obligations).

**8.7** For deficiency in title the following applies additionally without prejudice to the prementioned provisions and limitations of liability for defects which remain unaffected:

**8.7.1** Without prejudice to any exclusion or reduction of Kelvion's liability pursuant to the applicable governing law, the Deliveries only have a deficiency in title if they are not free from enforceable rights or claims of third parties at the time of transfer of risk. Without prejudice to further legal requirements, third parties' rights or claims founded on 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.

**8.7.2** In the case that a third party asserts justifiable claims against the Customer because the Deliveries violate industrial or copy rights, Kelvion shall either effect a right of use, or change the Deliveries in such a way that the third party's right is no longer violated or replace the Products.

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

**8.7.4** Any liability of Kelvion due to an infringement of industrial or copy rights shall be excluded insofar as the infringement of such rights results from specifications made by the Customer or if the Customer modifies or uses the Products in combination with products that have not been delivered or destined for such use by Kelvion.

## 9. Customer's Duty to Cooperate

**9.1** The Customer shall – insofar as relevant in the individual cases – comply with the collaborative duties as set-out below at its own expense unless they explicitly included in the Contract price

**9.1.1** The Customer shall appoint one or more representatives for the Deliveries to be made by Kelvion, who is/are fully authorised to act on behalf of the Customer.

**9.1.2** The Customer shall provide Kelvion with any and all information reasonably required to execute the Contract and to make the Deliveries properly (e.g. technical data, applicable HSE regulations, and statutory provisions which Kelvion has to observe according to the applicable law at Customer's premises) and shall present any and all necessary permits and documents.

**9.1.3** The Customer shall assure that the Additional Services can be commenced immediately at the agreed place ("Work Site") and time and carried out without hindrance or interruption as well as without risks for Kelvion's personnel; therefore, the Customer shall take any and all required and necessary accident prevention measures for this purpose.

**9.1.4** The Customer shall immediately inform Kelvion if, during the visit of Kelvion's personnel at the Work Site, the Customer becomes aware of circumstances which endanger the trouble-free performance of the Additional Services on the Product or the safety at the Work Site and shall, after the termination of the Additional Services, provide Kelvion with a respective written report.

**9.1.5** 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. As a matter of principle, the Customer shall inform Kelvion in writing of the valid safety precautions at least seven (7) days before the commencement of the Additional Services, but at the latest immediately beforehand, and ensure that its personnel responsible for safety matters is present during the time the Additional Services are rendered at the Customer's Work Site. The Customer shall provide all necessary assistance, if Kelvion's personnel suffers an accident or becomes ill during the execution of the Contract.

**9.1.6** The Customer shall inform Kelvion without delay about any changes of the operating environment or changes to an agreed or determined day for the provision of Additional Services, respectively about the period of time for the provision of Additional Services. Section 3.3 remains unaffected by this.

**9.1.7** In particular, the Customer must procure or make available the following in good time (if relevant in the specific case):

- 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 Additional Works,
- means for transport for Kelvion's personnel 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.

**9.1.8** The Customer shall 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.

**9.1.9** The Customer shall assure that its personnel or third-party personnel 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, unless these are based on incorrect instructions given by Kelvion for which Kelvion is responsible. The Customer remains solely responsible for auxiliary works procured on its parts.

**9.1.10** 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 provision of Additional Services.

**9.2** Loaned tools and other loaned equipment provided to the Customer 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, re-export and re-import costs. At Kelvion's request, they shall be returned to Kelvion immediately.

**9.3** The Customer shall inform Kelvion in the event of a change of name, conversion, termination of business, change of address, etc. immediately and without undue delay.

**9.4** If the Customer does not fulfil or only partially fulfils its obligations under this section 9, 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 perform these acts of cooperation itself or through third parties at the expense of the Customer, to rescind the Contract or to terminate it. Further claims and rights of Kelvion, remain unaffected.

**9.5** If Kelvion's personnel encounters any danger (in particular lack of safety at the Customer's Work Site) or is considerably hindered in carrying out the Additional Works due to any reasons not attributable to Kelvion, Kelvion is entitled to discontinue the Additional Work until the remedy of the situation and to withdraw the site

personnel. In such event, the incurred expenses are invoiced as waiting time according to section 3.3.

## 10. Limitation of Liability

**10.1** 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 any third party.

**10.2** Kelvion's overall aggregate liability for all claims of any kind under or in connection with the Contract, 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;

**10.3** 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.

**10.4** 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 10.3 and those employed by Kelvion in the performance of its obligations.

**10.5** To the extent that liquidated damages are agreed for a specific event, payment of such liquidated damages shall be Customer's sole and only remedy for the specific event.

## 11. Warranty Period

**11.1** The warranty period for Customer's warranty rights and claims according to section 8 is the shorter of a) twelve (12) months from the date of delivery according to the applicable Incoterm or b) eighteen (18) months from date of notice of readiness for delivery.

**11.2** No new limitation period shall commence upon Rectification.

## 12. Export Control Regulations

**12.1** 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.

**12.2** 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.

**12.3** The Customer shall comply with all regulations on the controlling of import and export applicable to Kelvion, and shall, particularly, not re-export Products delivered under a Contract to countries referred to by the laws and regulations as set out in section 12.1.

**12.4** 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 terminate or rescind the Contract without notice, provided however, that the above-mentioned circumstances are not attributable to Kelvion.

## 13. Force Majeure

**13.1** 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").

**13.2** 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) labour disturbance such as strike and lock-out (vii) shortage of material in case such shortage of material occurs in general at the market.

**13.3** 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.

**13.4** 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 may terminate the Contract by giving the other party thirty (30) days prior written notice.

## 14. Intellectual Property, Copyright, Trademarks

**14.1** 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 Deliveries are provided and no part of the reports, documents and information may be used for other purposes without Kelvion's written approval.

**14.2** 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.

**14.3** 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.

## 15. Confidentiality

**15.1** 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") and to take any and all measures to observe secrecy. 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 disclose to its employees and other persons Confidential Information only on a need-to-know-basis for the performance of a Contract and to the extent that the aforementioned persons have agreed to confidentiality obligations to the same extent.

**15.2** 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.

**15.3** 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.

## 16. No Waiver

**16.1** 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.

**16.2** 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.

## 17. Final Provisions

**17.1** In case of a termination of the Contract by Kelvion under a provision explicitly set forth in these Conditions, Article 377 Par. 1 of the Swiss Code of Obligations (*Schweizer Obligationenrecht*) shall apply.

**17.2** The place of delivery (*Erfüllungsort*) for Product Deliveries is the location of Kelvion's delivery plant. Should Kelvion also have to render Additional Services, place of delivery shall be the location where the Additional Services are to be rendered. For the payment obligation of the Customer, payment of debts shall be rendered at the bank quoted in Kelvion's invoice. The aforementioned places of delivery also apply to Kelvion's obligation of subsequent performance and the mutual obligation to return the consideration by both Parties in the event of rescission or avoidance of the Contract.

**17.3** 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.

**17.4** These Conditions as well as any and all legal relations between Kelvion and the Customer out of or in connection with the Contract shall be governed by and interpreted, construed and enforced in accordance with the substantive laws of Switzerland.

**17.5** 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.

**17.6** 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.