



## General Conditions

### General sales conditions (February 2009)

#### I. Preliminary

KABELWERK EUPEN AG, hereafter called Vendor, undertakes to supply Buyer with its products described on the reverse side hereof, in accordance with the present conditions, which constitute the entire agreement of the parties, notwithstanding any clause to the contrary stated in Buyer's order or otherwise, except for written and express agreement of Vendor.

Submission of an order signed by Buyer acknowledges Buyer's acceptance of these General Conditions and releases Vendor from compliance with the general conditions of purchase or any similar document of Buyer, unless Vendor has expressly accepted such conditions in writing.

If any law, regulation or standard comes into force after the date of Vendor's tender which increases or reduces the cost of performing the Contract, the Contract price shall be adjusted accordingly.

Vendor will only be bound to carry out an order if he has previously accepted such order in writing.

Buyer will be entitled to cancel an order accepted by Vendor only:

- a. with the written agreement of Vendor and
- b. against payment by Buyer to Vendor of a fair and equitable amount calculated on the basis of its real cost until order's cancellation approval date. Such cost will include the cost of completion, by individual workshop labour, of the products being manufactured on cancellation date, as well as the purchase cost of all parts, required for manufacturing such products, sent to Vendor or which cannot be countermanded.

#### II. General Conditions

All special sales conditions attached to this contract are, under this provision, incorporated in this contract, and have the same value and effect as if they appeared in it completely. In the event that any of these terms and conditions are void or unenforceable, the other terms and conditions shall survive, and the void or unenforceable provision shall be replaced by a valid and enforceable provision which most closely resembles the commercial purpose of the replaced provision.

#### III. Delivery and transfer of risks

Products which are made available at Vendor's plant are deemed delivered, unless stated otherwise.

Products will be transported at Buyer's risks. All carriage and delivery costs will be born by Buyer. Any claim for alleged missing goods, damages occurred after delivery to the carrier, or for increases of the carriage cost, will be addressed directly to the carrier by Buyer.

Except in the event of a special written agreement to the contrary, terms are only provided for guidance. Late delivery will never give rise to any kind of indemnification.

Any claim regarding the invoice will be addressed to Vendor within 14 days following date of the invoice by Buyer. After such term, Buyer will be considered as waiving all his rights with respect to any claim.

Risks associated with the products shall be transferred upon delivery. Buyer shall provide the insurance required for the coverage of said risks immediately upon transfer.

#### **IV. Invoicing**

Goods will be invoiced to Buyer either on expedition date or on the date they are made available at Vendor's plant, Eupen, Belgium, if Buyer lacks giving any delivery instructions.

Vendor may deliver and invoice a quantity of goods inferior or superior - with a 10% maximum tolerance - to the specific ordered quantity, except for contrary express clause embodied in this contract.

Issue of negotiable instruments for payment of invoices issued by Vendor will not entail novation of this sale agreement.

#### **V. Payment**

Unless stated otherwise, prices and payment conditions are FREE Vendor's plant, Eupen, Belgium including packing costs.

Invoices are to be paid within 30 days of their issuance, at the Vendor's address, net and free of any discount, unless stipulated otherwise in the special sales conditions.

Buyer will pay and bear all taxes and duties, of any kind, to be levied at the present time or in the future, directly or indirectly, on the sale of Vendor's products or the cost of carriage.

In the event of default in payment of an invoice when due, its amount will bear, without formal notice and automatically, a contractual 15 % indemnity, calculated on the total amount of the invoice, with a minimum of 50. Vendor will be entitled to charge interest on all overdue amounts at the legal in Belgium applicable rate + 2 %.

The parties hereto expressly agree that any payment obligations pursuant to this Contract which are presently denominated in a national currency of a member state of the European Union shall be automatically converted to an equivalent obligation in the proposed single European currency unit (the Euro) on the date on which the Euro becomes the sole legal currency of such member state. The rate of conversion shall be the irrevocable fixed conversion rate adopted by the Council of the European Union.

For exports from the country of Vendor, Buyer shall pay to Vendor the amount of any VAT or similar taxes unless in all cases satisfactory proof of export is provided within 30 days of delivery of the equipment by Vendor and in the case of export from one European Union country to another full and correct details are provided by Buyer to Vendor prior to delivery of Buyer's then current VAT registration in the country of import under which it will account directly for the VAT in respect of that delivery.

#### **VI. Solvency**

Vendor reserves the right either to refuse delivery, or to require prior payment of all orders or parts of orders in the event Buyer's solvency would deem insufficient or no more sufficient, in the event Buyer defaults in paying invoices when due, or in the event Buyer fails to comply with Vendor's instructions. In the event Vendor refuses to deliver due to one of the above mentioned reasons, Buyer will bear the costs of the work, performed so far, either partly or totally, to the extent set forth in the above-mentioned clause 1b concerning orders cancellations.

#### **VII. Force majeure**

Vendor's obligations will be voided ipso jure and without indemnity in the event force majeure hinders normal performance.

Force majeure shall be defined as any event that prevents total or partial execution of the Contract and that cannot be avoided and overcome despite reasonable effort on the part of Vendor or its agents.

Force majeure shall include, but shall not be limited to, the following events : strike, fire, natural disasters, equipment damage, riot, war, either by Vendor or by his suppliers or carriers, will be deemed force majeure, even though partial, and whichever cause they may have.

### **VIII. Claims**

In the event of a claim by Buyer, he will address it by registered writing to Vendor within ten days following delivery set forth in the above-mentioned clause III, and in any event before using the products. Vendor reserves the right to ask Buyer to return the litigious products or to make them available in order for him to dispose of them as he desires.

### **IX. Warranty**

a. Vendor warrants goods delivered hereunder against faulty workmanship and use of defective materials for a period of twelve (12) months from the date of delivery of the goods.

Faulty workmanship and/or use of defective materials shall be hereafter referred to as deficiency . The foregoing warranty shall not be enlarged, or affected by, and no obligation or liability shall arise or grow out of, drawings, technical advice, services or instructions in connection with the goods furnished hereunder. Such warranty is the only warranty made by Vendor and it can be amended only by written instrument signed duly by authorised officer of Vendor. If the goods furnished by Vendor hereunder are determined to contain a deficiency, Buyer s exclusive remedy shall be to have Vendor repair such goods or supply replacement goods or credit Buyer s account for such goods and accept their return, whichever Vendor may elect in his sole discretion.

Vendor s liability shall be limited to the price stipulated in the Contract for the equipment giving risk to claim.

Buyer shall hold Vendor harmless from any recourse or actions for recovery made by Buyer s insurers above the limits or beyond the exclusions contained in the present clause.

Furthermore, Buyer agrees that Vendor shall not be liable for any special, incidental, indirect or consequential damages or for any loss or loss of profit in connection with any deficiency, even if Vendor shall have been informed about the possibility of such loss or damage, nor for any damages to property or personal injury, whether claimed by Buyer or a third party in connection therewith.

b. Notwithstanding the foregoing provision, in no circumstances shall Vendor have any liability or obligation with respect to expenses, liabilities or losses associated with the installation or removal of any goods or the installation of replacement goods or for any inspection, testing, or redesign occasioned by any deficiency or by the repair and replacement of goods, Vendor s obligations are subjected to the further condition that Vendor shall have no liability whatever for any deficiency unless :

1) Vendor is notified in writing promptly (and in no event later than 30 days) after discovery by Buyer of the alleged deficiency, which notice shall include, a detailed explanation of the alleged deficiency.

2) The goods containing the alleged deficiency are promptly returned to Vendor, free Vendor s plant.

3) Vendor s examination of such goods discloses to Vendor s satisfaction that such alleged deficiency actually exists and occurred in the proper and normal use and was not caused by accident, misuse, neglect, alteration or improper installation, repair or testing.

c. If any goods are proved to contain a deficiency and Vendor elects to repair or replace them, Vendor shall have reasonable time to make such repairs or replacements.

### **X. Property of the material**

The products will become Buyer s property upon payment of the total contractual price.

Wherever it may be, it will remain movable property and Vendor will be able to dispose of it freely, totally or partly, in the event of breach of contract.

Buyer has to insure the goods against losses, damages or theft until full payment of the same.

Buyer is authorized to resell or transform the goods, but not to transfer their property or to give them by right of guarantee.

The authorization of reselling the goods is immediately withdrawn in case of non payment of the same.

In case of reselling the goods, Buyer is bound to transfer to us the obtained credit to the new buyer and this up to the amounts which are still due.

### **XI. Litigation**

This contract is governed by Belgian Law. In case of litigation, the Courts of Eupen will have exclusive jurisdiction.

> > Welcome to the world of EUPEN FOAM PRODUCTS! > General Conditions

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