

Terms of Sale and Delivery of Kryta A/S (CVR/VAT no. DK 66998916)

I. INTRODUCTION

1. These Terms of Sale and Delivery shall apply unless they are derogated from by written agreement between the parties.
2. In the following, a "product", a "delivery", or a "supply" shall mean any product and any service offered for sale or sold by the Seller.

II. DESCRIPTIONS, SAMPLES, ETC.

1. All specifications and information about prices, dimensions, weight, performance, properties, compounds, formulations, technical and other data stated in catalogues, product sheets (data sheets), websites, advertisements, price lists or similar material are approximate and exclusively of an indicative nature. Such information, which may be altered by the Seller at any time without any notice, **is therefore only binding to the extent that this has been expressly agreed in the purchase agreement.**
2. In case the design, specifications and formulations, etc. of a product sold by the Seller might be changed before the time of delivery, the Seller shall be entitled to supply the product with the subsequently available design, specifications and formulations, etc. if the product – based on an objective assessment – has not thereby been deteriorated.
3. All samples supplied by the Seller shall be considered type samples. Thus, the Seller shall have no responsibility for ensuring that the products supplied are in conformity with the samples, **unless this has been expressly agreed in the purchase agreement.** Otherwise, samples shall be subject to the provision set out in clause II.1.

III. TERMS OF DELIVERY, ETC.

1. The Seller's quotation shall, unless otherwise stated therein, be binding for eight days from the date of the quotation, always subject to the goods being unsold, however. If the date of delivery stated in the Seller's quotation is more than two months after the dating of the quotation, the price quoted shall in all respects be subject to confirmation and may later be raised.
2. All prices stated in written material from the Seller, including the order confirmation and quotation, are exclusive of VAT, customs duty and any other central government tax **unless otherwise agreed in each particular case.**
3. All prices stated in the Seller's quotation or order confirmation are based on the foreign exchange rates assumed by the Seller. In case of changes in foreign exchange rates, etc. the Seller reserves its right to raise the price, if the exchange rate on the date of payment varies by more than 2.5% relative to the above-mentioned rate.
4. The place of delivery is the Seller's address in Denmark **unless otherwise agreed in each particular case.**
5. Additional expenses caused by any non-agreed part-delivery requested by the Buyer shall be paid by the Buyer.
6. The Buyer shall have no access to return to the Seller any supplies delivered by the Seller.
7. The trade terms applied by the Seller are those contained in the current Incoterms.

IV. INSURANCE

1. Dispatch purchases will be insured by the Seller only to the extent and for the amount indicated in writing by the Buyer and, if so, for the Buyer's account.
2. All damaged or missing parts of a supply shall be notified in writing to the Seller and the transport operator immediately after they have come to the notice of the Buyer, and in any circumstance immediately upon receipt of the product, accompanied by a declaration thereon from the transport operator.

V. PACKAGING

1. Unless otherwise agreed, the prices stated in quotations and agreements include the expenses of packaging or other protection required for transport in Denmark under normal transport conditions in order to prevent damage to or deterioration of the supply until it reaches the destination specified in the agreement.
2. Should the Buyer request a form of packaging other than that referred to in clause V.1, all associated costs will be invoiced to the Buyer.

VI. TIME AND DATE OF DELIVERY

1. The time of delivery fixed in the purchase agreement shall be reckoned from the latest of the following dates:
 - a) The date when the agreement is made
 - b) The date when the Seller receives the security or payment to be provided before delivery as stipulated in the agreement
 - c) The date when the Seller has received from the Buyer all the information necessary to execute the order.
2. If the Buyer fails to observe its obligation to provide security or effect payment, fails to give the information necessary for the performance of the agreement, changes the order or delays the delivery or execution of the order in any other way, the Seller shall be entitled to extend the time of delivery for as long as it is assessed to be reasonable in the circumstances or to cancel the purchase agreement, whereas

– in the latter case – the Seller shall have a right to claim damages under the general rules of Danish law.

3. In addition, the time of delivery shall be extended by the period required by the Seller or its sub-suppliers, if any, if before or after the purchase agreement was made, the Seller or its sub-suppliers are prevented fully or partly from performing the agreement on time due to industrial disputes and any other circumstance, such as government intervention or measures, fire, war, mobilisation or any unforeseen military call-up on a corresponding scale, requisitioning orders, confiscation, foreign currency or import restrictions, riots or civil unrest, lack of transport, general scarcity of goods, cancellation of major works and restrictions on power and – irrespective of whether due to circumstances as those mentioned above – in case of a shortage of manpower, interruption of operations or difficulties in procuring materials, other products or similar goods from the Seller's suppliers or sub-suppliers, defects in supplies from the Seller's suppliers or sub-suppliers or delays of such supplies, whenever the mentioned circumstances are not due to any fault of the Seller and were unknown to the Seller when the agreement with the Buyer was made.
4. The party who intends to invoke any of the above-mentioned circumstances shall have a duty forthwith to notify the other party in writing of when it arose and ended.
5. If due to any of the circumstances referred to in clause VI.2 the time of delivery is exceeded by more than three months, the Seller shall be entitled to rescind the agreement. In addition, the Seller shall be entitled to claim damages – whether the agreement is rescinded or maintained – according to the general rules of Danish law.
6. In case the Seller exceeds the time of delivery by more than three months – without it being due to any of the circumstances referred to in clause VI.3 – the Buyer shall be entitled to rescind the agreement if, despite a written request issued after the expiry of the mentioned three-month period, the Seller does not subsequently deliver the products before a reasonable time limit. The Buyer shall not, whether it rescinds or maintains the agreement, be entitled to damages for any direct or indirect loss.
7. Where the Seller postpones the time of delivery by more than three months due to any of the circumstances referred to in clause VI.3, both parties shall have the right to rescind the agreement and, if so, shall not be entitled to any other form of damages from the other party, not even for direct or indirect losses.
8. In respect of call orders, the Buyer shall take delivery of all products covered by the sales agreement within the time limit agreed therein. Where a time limit has not been specifically agreed, the time limit shall be one month. After the expiry of the time limit specified or the mentioned one-month limit the Seller shall be entitled to invoice all products covered by the agreement that have not yet been invoiced and – at the Seller's option – dispatch non-delivered products or charge and invoice suitable interest and storage expenses to the Buyer.

VII. RIGHT OF OWNERSHIP, ETC.

1. The ownership in the products delivered as well as all accessories shall be retained by the Seller or anyone to whom the Seller has assigned its right until the full purchase price plus interest and costs have been paid fully and completely to the Seller or anyone to whom the Seller has assigned its right, in so far as the ownership may be thus legally retained.
2. As long as the ownership is thus reserved, the following provisions shall apply:
 - a) The Buyer shall have no right without consent from the Seller to pledge the products delivered or subject them to covenants or dispose of them in any other similar way.
 - b) The Buyer shall be obliged to handle the supplies carefully and keep them in good and safe condition, of which the Seller shall at any time be entitled to obtain assurance.
 - c) If the Buyer changes address, this shall immediately be notified to the Seller in writing.
 - d) From the time of delivery until ownership has been finally transferred, the Buyer agrees to keep the goods supplied and all accessories insured against damage caused by fire, water, theft, vandalism, damage or disappearance, including loss in transit, etc. in an amount that will at all times cover its fair market value, subject to a minimum equal to the sum owed to the Seller at any time.

VIII. PAYMENT

1. **Unless otherwise agreed in each particular case,** the Seller's terms of payment are cash against delivery of the supply to the Buyer. Any payment made later shall be considered overdue payment.
2. Money orders, cheques and bills of exchange shall not be considered payment until they have been fully converted into cash.
3. In any case of late payment – also if an extension of time has been granted – the Seller is entitled to set off default interest from the date of the invoice at the interest rate fixed therefore by the Danish Act on Default Interest at any time.
4. If the Buyer fails to take delivery of supplies that are ready for delivery on the agreed date the Buyer shall nevertheless be liable to effect the payment stipulated as a condition for delivery, as if delivery had taken place. The Seller shall ensure that the

supply is stored for the Buyer's account and risk. Upon written request from the Buyer, the Seller shall insure the supply for the Buyer's account.

5. The Buyer shall have no right to any form of set-off or retention, including retention of any portion of the purchase price as security for the performance of any obligation according to clause IX. A delay of an insignificant part of the supply shall not give the Buyer any right to not effect full payment according to the agreements made.
6. The entire balance outstanding at any time plus any interest and costs, etc. shall immediately fall due for full and complete payment, if the Buyer commits a breach of any its obligations under these Terms of Sale and Delivery, or if the Buyer suspends payments, commences negotiations for a composition, moratorium or other ordinary arrangement with its creditors or files a petition for winding-up proceedings or is adjudged bankrupt, or if the Buyer is deprived of the disposal of its property or enters into solvent liquidation, or if other conditions of the Buyer – irrespective of the cause – are or develop into being of a nature that renders it very likely that the Seller will not receive the agreed security or payment by the due dates agreed.

IX. RIGHT TO REMEDY OF DEFECTS

1. If, within a period of 12 months from the date of delivery, defects caused by faulty materials or manufacture are found in products supplied, the Seller shall undertake – exclusively at the Seller's option – to either grant a proportionate reduction of the purchase price or, possibly at the Seller's premises or the manufacturing site of its supplier, remedy the defect for the Buyer as soon as possible. This may be done – exclusively at the Seller's option – by either supplying a new component, having the defect repaired or replacing the supply.
2. Apart from the right to a proportionate price reduction, in case the Seller prefers this option, or the said right to repair or replacement, the Buyer shall in connection with the circumstances referred to in clause IX.1 have no other claims nor remedies for breach. The Buyer may thus at no time cancel the purchase or demand any additional proportionate price reduction or damages for direct or indirect losses due to defects in the product supplied. Thus, nor shall the Seller be liable for any consequential loss, loss of profit or any other indirect loss.
3. The Seller's obligation to offer a proportionate price reduction or remedy defects shall only cover defects that arise while the product supplied is operated on the conditions assumed in the agreement and if the product is assembled and used correctly, and thus shall not cover defects caused by wrong or inappropriate use, overloading, fire, overheating, frost, strikes of lightning or the consequences thereof, insufficient maintenance, damage from water or damp penetration, for example in connection with cleaning, incorrect mounting or changes, intervention, normal wear or impairment, natural disasters and any other defect attributable to other causes beyond the control of the Seller or otherwise attributable to conditions which cannot reasonably be ascribed to any fault on the part of the Seller. In addition, the Seller's obligation to provide a proportionate price reduction and to repair or replace the product shall finally lapse in case the Buyer fails to perform its obligations, including the obligation to effect payment in due time.
4. Immediately when ascertaining any defect, for which the Buyer intends to claim remedial action by the Seller, the Buyer shall notify the Seller thereof in writing. If the complaint has not been received by the Seller within 14 days from the time when it was possible for the Buyer to ascertain the defect, the Buyer shall forfeit all its remedies set out in clause IX and any right whatsoever to hold the Seller liable for the defect.
5. If for practical reasons it will not be reasonable – at the sole discretion of the Seller – to demand return to the Seller of the product supplied for the purpose of the remedy of defects, the remedial action will take place in the premises where the product is used.
6. In respect of supplies delivered by the Seller according to the Buyer's right to claim remedial action, the original defects liability period shall apply, irrespective of the time when the defect is remedied during this period.

X. PRODUCT LIABILITY

1. Personal injuries shall be governed by existing Danish statutory provisions.
2. For damage to property, the following shall apply:
 - a) The restrictions on the Seller's product liability set out in this clause X.2 shall apply to the extent that they may be lawfully agreed. If one or several of the restrictions referred to above cannot be lawfully adopted, this shall not affect the validity of the other provisions. In case one or several of the restrictions are too extensive in favour of the Seller but could have been lawfully agreed with a less far-reaching content, then the restriction in question shall be reduced to the content that could have been lawfully agreed.
 - b) The Seller shall be liable – within a period of 12 months from the actual time of delivery – for any injury or damage shown to be caused by the products supplied to a Buyer's property, provided that the Buyer provides documentation that the injury or damage was caused by gross negligence on the part of the Seller. The total liability of the Seller during the 12-month period shall never exceed the invoiced price of the product.

c) However, the Seller shall never be liable for any consequential loss, loss of profit or other indirect loss.

3. To the extent that any other liability may be imposed on the Seller, including liability in connection with the use by the Buyer or any customers of the Buyer of the product(s) supplied – including products that have been resold – the Buyer shall undertake to keep the Seller indemnified for any liability that might be imposed on the Seller.
4. The Buyer shall always accept to be sued at the same court that tries a claim for damages against the Seller.

XI. ADVICE, GUIDANCE AND SERVICE

1. In the event that the Seller provides technical or other advice, guidance or service of any nature whatsoever to the Buyer – whether or not the Seller is paid a separate fee for this – the Seller shall be without any liability for any such advice, guidance and service and any consequence thereof.
2. The provision above shall likewise apply if the advice, guidance or service is provided in relation to circumstances such as disruptions of operation, errors or defects, and if the Purchaser consequently purchases other products, spare parts, equipment and/or accessories from the Seller or a third party and has such products etc. fitted, or in case the Buyer has certain repairs carried out.

XII. ASSIGNMENT OF RIGHTS

1. The Seller shall be entitled to assign all of its rights under these Terms of Sale and Delivery to a third party for ownership or as security.

XIII. OTHER PROVISIONS

1. The Seller has no knowledge that, when the product is sold to the Buyer, the Seller or the product sold infringes the patent, trademark, design, utility model or other rights of any third party. The Seller shall, however, not be held liable even if this might nevertheless be the case or if such infringement is assumed to exist at the time of the Buyer's purchase or reselling of the product sold or due to the intended use by the Buyer or its customers of the product sold. In case the Seller should nevertheless be held liable for any such infringement, the Buyer shall be obliged immediately upon demand to indemnify the Seller for any consequence thereof, including all costs of litigation.
2. The conditions set out in these Terms of Sale and Delivery shall apply to each and any sale made by the Seller. This provision shall apply even if, during the purchase negotiations or in the Buyer's contract documents or confirmation of the purchase given to the Seller, the Buyer has stipulated other terms for the purchase. All such terms shall be considered to be extinguished by the Seller's final acceptance of the purchase, unless therein the Seller has expressly reproduced the particular terms of the Buyer that make the Seller subject to other conditions or conditions that are worded differently, which in the specific case put the Seller in a less favourable position than the terms contained in these Terms of Sale and Delivery.
3. Any errors, including typing and printing errors, in the Seller's written material, such as correspondence, order confirmations, invoices and the material referred to in clause II.1 shall not be binding on or invoked against the Seller.
4. Irrespective of the provisions of the purchase agreement the following rules shall apply:
 - a) Minor variations in material, colour, etc. shall not make the Buyer entitled to any claims against the Seller, as well as the Buyer shall have no claim in case the product or its packaging may have been scratched, dented or similar – for instance while being handled at the Seller's premises or during transport.
 - b) It shall not be the Seller's responsibility whether the product purchased – irrespective of the type of product – is fit for the purpose for which the Buyer intends to use it, including whether the product purchased can be fitted into or used with machines or, generally, other products, goods, systems or technical equipment that do not originate from the Seller, **unless otherwise specifically warranted** by the Seller in the purchase agreement.
5. Unless the Seller has expressly issued a separate declaration in the individual order confirmations to the effect that the products covered by the supply will be original products, the Seller shall be entitled to perform the purchase agreement by delivering equal non-original products. The part number in the Seller's written material serves exclusively as the Seller's in-house identification.

XIV. FORUM AND GOVERNING LAW

1. Any dispute arising out of the purchase agreement and any provisions added thereto as well as disputes involving the legal relationship referred to therein or following therefrom with all consequences thereof shall be settled, at the Seller's option, by either the Maritime and Commercial Court of Copenhagen or in the Seller's venue.
2. The Seller shall, however, always have the right to bring an action in the Buyer's ordinary venue.
3. Danish law shall apply exclusively, though not the rules of CISG, the international sale of goods act.

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