

KYERON;

Registered VAT number: NL1282.52.005.B01

Registered Chamber of Commerce number: 08163378

TERMS AND CONDITIONS OF SALE

1. Definitions:

- 1.1 "the Buyer" means the person(s), firm or company who buys or offers to buy the Products from KYERON
- 1.2 "the Conditions" means the terms and conditions set out in this document and any special terms and conditions agreed in writing by KYERON
- 1.3 "a Consumer" means an individual who is purchasing the Products as a consumer within the meaning of the Regulations and who is not purchasing the Products in the capacity of or for the purposes of his or her business or profession
- 1.4 "Delivery Date" means the date specified by KYERON on which the Products are to be delivered
- 1.5 "the Products" means the goods which KYERON agrees to sell to the Buyer
- 1.6 "the Price" means the cost of the Products excluding VAT
- 1.7 "a Purchase Order" means an order for the Products placed by the Buyer
- 1.8 "the Regulations" means The Consumer Protection (Distance Selling) Regulations 2000

2. Terms and Conditions applicable:

- 2.1 The Conditions apply to all Purchase Orders and contracts for the sale of Products between the Buyer and KYERON to the exclusion of all other terms and conditions which shall include any terms and conditions which the Buyer may purport to apply under any purchase order confirmation of order or similar document
- 2.2 Any variation to these Conditions (including any special terms and conditions agreed between the parties) shall be inapplicable unless agreed in writing by KYERON
- 2.3 All Purchase Orders shall be deemed to be an offer by the Buyer to purchase the Products from KYERON pursuant to the Conditions. KYERON is entitled to refuse to supply any Purchase Order for Product placed by the Buyer.
- 2.4 The contract shall be formed at the time of KYERON's acceptance of a Purchase Order placed by the Buyer which shall be deemed to occur at the earlier of KYERON's written acceptance which shall include E-mail or delivery
- 2.5 No representation or warranty is made or given by KYERON except as stated herein
- 2.6 No addition to the Products ordered can be undertaken unless agreed in writing and signed by an authorised representative of KYERON.
- 2.7 In the event of any breach of this contract by KYERON the remedies of the Buyer shall be limited to damages. Under no circumstances shall the liability of KYERON to any Buyer who is not acting as a Consumer exceed the Price of the Products provided that nothing in this contract shall restrict or exclude liability for death or personal injury caused by the negligence of KYERON.
- 2.8 KYERON shall be under no liability whatsoever to any Buyer who is not acting as a Consumer for any indirect or consequential damage or loss and/or expense howsoever cause (including but not restricted to loss of business or profit, loss for goodwill, damage to trading relationships loss of data or other financial loss) suffered by the Buyer arising out of a breach by KYERON of this contract save that "financial loss" in this sense does not refer to the Price which KYERON may be liable to refund to the Buyer in part or whole if the Products are faulty or do not comply with their description subject to the terms and conditions contained herein.
- 2.9 KYERON may cancel this contract at any time before the Products are delivered by giving written notice to the Buyer. On giving such notice KYERON shall promptly repay to the Buyer any sums paid in respect of the Price. KYERON shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 2.10 The Buyer undertakes that all details provided to KYERON for in connection with the purchase of the Products shall be correct and that the credit or debit card used to make any such purchase is the Buyer's own card or the Buyer's company card which the Buyer has authority to use and further that there are sufficient funds or credit facilities to cover the cost of the Products ordered. KYERON reserves the right to obtain validation of any credit or debit card details provided by the Buyer without notice to the Buyer.
- 2.11 KYERON reserves the right to record and/or monitor inbound and outbound calls and electronic traffic for staff training and quality control purposes.
- 2.12 None of the provisions of this agreement are intended to or will operate to confer any benefit on a person who is not named as a party to the contract of sale.

3 The Products

- 3.1 The Buyer shall take delivery of the Products tendered notwithstanding that the quantity so delivered shall be either greater or less than the quantity ordered provided that the quantity delivered is determined only by the manufacturer's pack size.
- 3.2 KYERON may from time to time make changes in the specification of the Products which are required to comply with any applicable safety or statutory requirements or which do not materially affect the quality or fitness for purpose of the Products
- 3.3 KYERON shall make all reasonable effort to ensure the accuracy of the technical data and literature supplied with

the Products but shall not be liable for any loss or damage directly or indirectly arising from any error or omission in such technical data and literature.

3.4 The application of the Products lies outside the scope of KYERON's control and the instructions for use, cautionary notices and other technical notices and information as supplied to the Buyer with the Products must be observed. The Buyer is fully responsible for carrying out their own tests to determine the suitability of the Products for the Buyer's intended use. KYERON does not sell Products on a trial basis and the Buyer is fully responsible for carrying out all tests and checks to determine the suitability of the Products for the Buyer's intended use before placing a Purchase Order.

4 Delivery

4.1 The Buyer shall notify KYERON of the address for delivery and shall make all arrangements necessary to take delivery of the Products whenever they are tendered for delivery.

4.2 The Delivery Date is not of the essence of the contract and KYERON shall not be liable for any loss or damage whatsoever due to failure by KYERON to deliver the Products (or any of them) promptly or at all.

4.3 A Buyer who is a Consumer shall be entitled to cancel a Purchase Order if when advised by KYERON of a delay the revised delivery date is not acceptable.

4.4 Notwithstanding that KYERON may have delayed or failed to deliver the Products (or any of them) promptly to any Buyer who is not a Consumer that Buyer shall be bound to accept delivery and to pay for the Products in full provided that delivery shall be tendered at any time within 30 days of the Delivery Date. In the event that KYERON is unable for whatever reason to deliver the Products within 30 days of the Delivery Date the Buyer will as its sole remedy be entitled to cancel the Purchase Order and any monies paid to KYERON in respect of that Purchase Order shall be refunded strictly provided that KYERON has received written notice of cancellation of the said Purchase Order from the Buyer

during the period which is 30 days following the Delivery Date but before delivery of the Products or notification from KYERON that the Products are ready for delivery.

4.5 If the Buyer cannot accept delivery KYERON may at its sole option: (a) store and insure the Products at the Buyer's expense and risk; or (b) sell the Products at the best price reasonably obtainable and (after deducting reasonable storage insurance and selling costs) pay to the Buyer any excess over the Price or charge the Buyer for any shortfall; or (c) re-arrange delivery provided that KYERON may charge the Buyer for any additional delivery costs incurred.

4.6 KYERON reserves the right to deliver the Products by separate installments. Each such installment shall be invoiced and paid for in accordance with the provisions in the contract of sale.

4.7 The failure of KYERON to deliver one or more of the said installments of the Products on the due date shall not entitle the Buyer to treat the contract of sale as repudiate.

4.8 The failure of the Buyer to pay for any one or more of the said installments of the Products on the due dates shall entitle KYERON (at the sole option of KYERON) without notice to suspend further deliveries of the Products pending payment by the Buyer

5 Acceptance and Returns

5.1 The Buyer shall be deemed to have accepted the Products 24 hours after delivery to the Buyer and KYERON does not accept liability for shortages or damage to Products unless the Buyer notifies KYERON of the shortage or damage in writing within 7 days of delivery taking place save that in the case of Consumers notification should be given in writing to KYERON of shortages or damage within a reasonable period of the Consumer becoming aware of such shortage or damage.

5.2 After acceptance the Buyer shall not be entitled to reject the Products which are not in accordance with the contract save that where the Buyer is purchasing as a Consumer cancellation will be accepted in accordance with the Regulations. Nothing in this contract is intended to restrict a Consumer's statutory or contractual right to reject Products which are faulty

5.3 Subject to clause 5.5 below if the Buyer properly rejects any of the Products which are not in accordance with the contract the Buyer shall nonetheless pay the full Price for such Products unless the Buyer promptly gives notice of rejection to KYERON and at the Buyer's cost returns such Products in accordance with the provisions set out in this sub-clause to KYERON subject to the provisions of clause 5.4 below, before the date when payment of the Price is due:

5.3.1 Following receipt of notice of rejection from the Buyer KYERON will advise the Buyer of the method of delivery to use to return the Products. In the event that KYERON finds on inspection that the returned Product is defective the costs of returning the defective Product will be refunded to the Buyer;

5.3.2 Subject to clause 5.5 below all returned Products must be accompanied by KYERON's Returns Authorisation Number ("RA Number"). The Buyer must obtain the RA Number from KYERON's Customer Support Department by telephone on +31 (0)53 851 0417.

KYERON will not accept any returned Products which are returned without the RA Number;

5.3.3 The Buyer must when returning Products ensure that the Products are adequately wrapped to prevent damage during transit. KYERON will not accept liability for Products or packages damaged in transit;

5.3.4 Proof of posting is not proof of delivery and the Buyer is advised to when returning Products to KYERON to use recorded delivery, registered post or courier and to insure the Products for their full value;

5.3.5 If following KYERON's testing of the returned Product no defect is found KYERON will return the Product to the

Buyer at the Buyer's cost and in the event that KYERON

have at the Buyer's request provided replacement Product before completion of the testing of the returned Product the Buyer will pay the Price of the Replacement Product in addition to the Price of the returned Product.

5.4 Subject to the provisions of clause 5.5 below Products returned without the prior written approval of KYERON may at KYERON's absolute discretion be returned to the Buyer or stored at the Buyer's cost without prejudice to any rights or remedies KYERON may have.

5.5 Purchase Orders and contracts for sale of Products to Consumers made over the telephone, website or by mail order are, with the exception of certain excepted contracts, subject to the Regulations. If the Regulations apply then the Buyer may cancel the Purchase Order or contract for sale of the Products by:

5.5.1 sending written notice of cancellation to KYERON by post or hand delivery addressed to Customer Services, KYERON PO Box 1069, 7500 BB, Enschede, The Netherlands or by e-mail to customer@kyeron.nl and such notice must be delivered to KYERON within 7 working days of the day after the date of delivery of the Products; and

5.5.2 the Consumer will be responsible for the cost of returning the Products if he or she exercises this right of cancellation under the Regulations. If the Consumer does not actually return the Products to KYERON the Consumer is under a duty to make the Products available for collection at the Consumer's expense from the address to which they were delivered; and

5.5.3 the Consumer is under a duty to retain possession of the Products whilst awaiting return to KYERON and to take reasonable care of the Products pending their return and the Consumer will be liable for any loss of or damage to the Products if he or she fails to comply with this obligation

6. Price and Payment

6.1 Subject to clause 6.2 below the Price of the Products shall be KYERON's quoted price which shall be binding on KYERON provided that the Buyer places the order based on such quotation within 3 months of the date of such quotation. The Price is exclusive of VAT which shall be due at the rate ruling on the date of the VAT invoice.

6.2 KYERON makes every effort to ensure that all prices and descriptions quoted in its literature and on its website are correct

and accurate. However in the event of a manifest error or omission KYERON will be entitled to rescind the contract notwithstanding that it has already accepted the Buyer's Purchase Order and/or received payment from the Buyer. KYERON's liability in that event will be limited to the return of any money the Buyer has paid in respect of the relevant Purchase Order. In the case of a manifest error in relation to the Price, the Buyer will be entitled to purchase the Products by paying the difference between the quoted price and the correct price as confirmed in writing by KYERON after the manifest error has been discovered. A "manifest error" means in relation to an incorrect price, a price quoted in error by KYERON which is more than 10% less than the price that would have been quoted had the mistake not been made.

6.3 KYERON may by giving notice to the Buyer at any time up to 7 days before but not including the date of delivery increase the Price of the Products to reflect any increase in the cost to KYERON which is due to factors occurring after the making of the contract which are beyond the reasonable control of KYERON (including, without limitation, foreign exchange fluctuations, taxes and duties and the cost of labour, materials and other manufacturing costs). Provided that the Buyer may by notice in writing to KYERON cancel the contract within 7 days of any such notice from KYERON. The Price is exclusive of VAT which is payable in addition at the rate ruling at the date of KYERON's invoice.

6.4 Payment of the Price and VAT is due on the date specified in KYERON's invoice. Time for payment shall be of the essence.

6.5 All guarantees given by KYERON shall be null and void where payment is received by KYERON after the due date.

6.6 Interest on overdue amounts will accrue at a daily rate on the amount overdue from the date when payment becomes due until

the date of payment at the rate of 4% above Rabobank base rate from time to time in force and will accrue at such a rate after as well as before judgement.

6.7 The Buyer may not withhold payment of any invoice or other amount due to KYERON by reason of any right of set-off or

counterclaim which the Buyer may have or allege to have or for any reason whatever

6.8 If the Buyer fails to make payment for the Products on the due date or commits any other breach of the contract or if any distress or execution shall be levied upon any of the Buyer's goods or if the Buyer offers to make any arrangement with its creditors or commits an act of bankruptcy or if any petition in bankruptcy is presented against the Buyer or the Buyer is unable to pay its debts as they fall due or if being a limited company any resolution or petition to wind up the Buyer (other than for the purposes of amalgamation or reconstruction without insolvency) shall be passed or presented or if a receiver administrator administrative receiver or manager shall be appointed over the whole or any part of the Buyer's business or assets or if the Buyer shall suffer any analogous proceedings under foreign law all sums outstanding in respect of the Products shall become payable immediately. KYERON may in its absolute discretion and without prejudice to any other rights which it may have:

6.8.1 suspend all future deliveries of Products to the Buyer and/or terminate the contract without liability upon its part; and/or

6.8.2 exercise any of its rights pursuant to clause 7

7 Title and Risk

7.1 The Products shall be at the Buyer's risk as from delivery whereupon risks of loss, breakage and all damage and all other risks shall pass to the Buyer. In spite of delivery having been made Title and property in the Products shall not pass from KYERON until:-

7.1.1 the Buyer shall have paid the Price plus VAT in full and

7.1.2 no other sums whatever shall be due from the Buyer to KYERON

7.2 Until property in the Products passes to the Buyer in accordance with clause 7.1 the Buyer shall hold the Products and each of them on a fiduciary basis as bailed for KYERON. The Buyer shall store the Products (at no cost to KYERON) in premises and under conditions suitable for such storage and being supervised and protected from loss damage theft fire or other perils. The Buyer shall store the Products separately from all other goods in its possession and marked in such a way that they are clearly identified as KYERON's property.

7.3 Notwithstanding that the Products (or any of them) remain the property of KYERON the Buyer may sell or use the Products in the ordinary course of the Buyer's business at full market value for the account of KYERON. Any such Sale or dealing shall be a sale or use of KYERON's property by the Buyer on the Buyer's own behalf and the Buyer shall deal as principal when making such sales or dealings. Until property in the Products passes from KYERON the entire proceeds of sale or otherwise of the Products shall be held

in trust for KYERON and shall not be mixed with other money or paid into any overdrawn bank account and shall be at all material times identified as KYERON's money.

7.4 KYERON shall be entitled to recover the Price (plus VAT) notwithstanding that the property in the Products has not passed from KYERON.

7.5 Until such time as property in the Products passes from KYERON the Buyer shall upon request deliver up such of the Products as have not ceased to be in existence or resold to KYERON. If the Buyer fails to do so KYERON or its authorised agents may enter upon any premises owned occupied or controlled by the Buyer where the Products are situated and repossess the Products. On the making of such request the rights of the Buyer under clause 7.3 shall cease

7.6 The Buyer shall not pledge or in any way charge by way of security for any indebtedness any of the Products which are the property of KYERON. Without prejudice to the other rights of KYERON, if the Buyer does so all sums whatsoever owing by the Buyer to KYERON shall forthwith become due and payable.

7.7 If the Buyer is a registered company it shall promptly deliver the prescribed particulars of this contract to the Registrar in accordance with the Companies Act 1985 Part XII as amended. Without prejudice to the other rights of KYERON, if the Buyer fails to do so all sums whatsoever owing by the Buyer to KYERON shall forthwith become due and payable.

8 Warranties and Limit of KYERON's Liability

8.1 Subject to clause 3 above KYERON warrants that the Products will at the time of delivery correspond to the description given by KYERON. With regard to Products sold to Buyers who are not acting as Consumers all other warranties conditions and terms relating to fitness for purpose merchantability or condition of the Products and whether implied by Statute or common law or otherwise are excluded to the fullest extent permitted by law.

8.2 No right or licence is granted under the contract of sale to the Buyer under any patent, trade mark, copyright, registered design or other intellectual property right except the right to use the Products.

9 Force Majeure

Neither party shall be liable for any default due to any governmental regulations, act of God, war, strike, lockout, industrial action, fire, flood, drought, tempest, disaster or other event beyond the reasonable control of either party.

10 Miscellaneous

10.1 Any notice required to be served pursuant to any contract for the sale of Products between the Buyer and KYERON shall be in writing and served by first class post or by hand on KYERON at PO Box 1069, 7500 BB, Enschede, The Netherlands or such other address as KYERON may from time to time notify to the Buyer and on the Buyer at the Buyer's registered office or principal place of business or in the case of a Consumer their residential address.

10.2 KYERON may licence or sub-contract all or any part of its rights and obligations under this contract without the Buyer's consent

10.3 All headings are for ease of reference only and shall not affect the construction of this contract

10.4 No waiver or forbearance by KYERON (whether express or implied) in enforcing any of its rights under this contract shall prejudice its right to do so in the future.

10.5 Any provision of this contract which is or may be void or unenforceable shall to the extent of such invalidity or unenforceability be deemed severable and shall not affect the validity or enforceability any other provision of this contract.

10.6 Nothing in these terms and conditions affects the statutory rights of a Consumer.

11 Law and Jurisdiction

This Contract shall be governed by Dutch Law and the Buyer consents to the exclusive jurisdiction of the Dutch Courts in all matters