

## General Terms and Condition of Sales/Asia Pacific

### 1.0 Scope of Application

- 1.1 *These Terms and Conditions of Sales contained herein (hereinafter referred to as "Terms") shall apply to all quotations, offers and supplies made by and purchase orders accepted by **KRAIBURG TPE Technology (M) Sdn Bhd, KRAIBURG TPE China Co. Ltd, KRAIBURG TPE Private Limited, KRAIBURG TPE Korea Ltd.** and its subsidiary companies (hereinafter referred to as "Seller") and a buyer (hereinafter referred to as "Buyer), except to the extend the Terms conflict as otherwise provided in writing. The applicability of any general terms and conditions imposed unilaterally by the Buyer is hereby expressly rejected.*

### 2.0 Offer and Price

- 2.1 The prices specified in an offer are exclusive of any value added tax, or equivalent tax types (e.g. GST, sales tax, excise tax, import duty or turnover tax) or other tax applicable to the manufacture or sale of any product (hereinafter referred to as "Tax"), unless otherwise specified.
- 2.2 Tax will be added by Seller to the sales price where Seller invoiced the same to comply with relevant law and regulations and will be paid by Buyer unless Buyer provides Seller with a proper tax exemption certificate.
- 2.3 Seller may revise the price, payment terms or shipping terms at any time by written notice to Buyer. Such changes shall be effective beginning with the next shipment.

### 3.0 Ordering and Delivery

- 3.1 All sales order received are subject to written Order Confirmation of acceptance by Seller. Quantities and goods stated in Order Confirmation (hereinafter referred to as "Goods") are contractual obligation to Buyer and Seller. Adjustment of any confirmed quantities require Sellers' prior agreement in writing unless waived by Seller.
- 3.2 Delivery shall be affected as agreed in the contract. General delivery terms shall be interpreted in accordance with the INCOTERMS in force on the date the contract is concluded.
- 3.3 Any time or date named by the Seller for delivery is given and intended as an estimate only and the Seller shall not liable to make good any damage or loss whether arising directly or indirectly out of delay in delivery of Goods to the Buyer.
- 3.4 Notwithstanding that the Seller may have delayed or failed to deliver the goods promptly, the Buyer shall be bound to accept the delivery and to pay for the Goods in full provided that the delivery shall be affected at a reasonable time.
- 3.5 Any variation in quantities shipped over or under the quantities ordered (not to exceed 10%) shall constitute compliance with Buyer's sales order, and the stated price shall continue to be fully applicable.
- 3.6 The Buyer shall inspect the Goods on delivery and shall within fourteen (14) days of date of receipt notify the Seller of any alleged defect, shortage in quantity, damage or failure to comply with the description or sample.

- 3.7 No Goods delivered to the Buyer which are in accordance with the contract will be accepted for return without the prior written approval of the Seller on such terms to be determined at the absolute discretion of the Seller.
- 3.8 Goods returned without the prior written approval of the Seller may at the Seller's absolute discretion be returned to the Buyer or stored at the Buyer's cost without prejudice to any rights or remedies the Seller may have against the Buyer.

#### **4.0 Payment**

- 4.1 Failure to pay the purchase price by the due date constitutes a fundamental breach of contractual obligation by the Buyer.
- 4.2 In the event of default payment, the Buyer will automatically be in default whereby the Buyer will be charge late payment interest at a rate of 1.5% a month or the statutory interest (whichever higher) for any overdue payment.
- 4.3 If in any event, in Seller's judgment, the Buyer's financial condition does not justify the terms of payment specified, Seller may cancel this Condition of Sales or adjust Buyer's payment and/or credit terms which shall be effective immediately upon written notice to Buyer.
- 4.4 Seller may require payment to be secured by an irrevocable letter of credit or a bank guarantee acceptable to Seller.
- 4.5 In the event Seller is required to bring legal action to collect overdue accounts, Buyer agrees to pay all lawyer fees and cost of suit.
- 4.6 Seller shall retain a security interest and/or ownership in the Goods until receipt of Buyer's full and final payment.

#### **5.0 Nature and Quality of Goods**

- 5.1 The Seller may from time to time make changes in the specification of the Goods, 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 Goods.
- 5.2 The products of the THERMOLAST® H can be used for applications in medical technology up to and including indirect blood contact. Using KRAIBURG TPE materials in direct blood contact is only feasible for applications that have been approved by KRAIBURG TPE and that are in direct blood contact for less than 30 days.

#### **6.0 Liability**

- 6.1 No claim may be made by the Buyer, or any other Person against the Seller for any special, indirect, consequential or punitive damages in respect of any other claim for breach of this Agreement or for liability arising out of or related to the transactions contemplated by this Agreement or any act, omission or event occurring in connection therewith; and the Buyer hereby waives, releases and agrees not to sue upon any claim for any such damages, whether or no accrued and whether or not known or suspected to exist in its favor.
- 6.2 The Buyer is required to limit and/or mitigate as much as possible the damages in respect of which the Buyer submits a complaint to the Seller.
- 6.3 Any potential claim for compensation or complaint based on these Conditions of Sales shall automatically lapse and expire in the event that no claim has been issued by Buyer in writing against Seller within one (1) year from the date of delivery of the Goods

## **7.0 Force majeure**

- 7.1 Seller shall not be liable for any delay in delivery or for non-delivery, in whole or in part, caused by the occurrence of any contingency beyond the control either of Seller or Seller's suppliers, including, but not limited to, war (whether an actual declaration thereof is made or not), sabotage, insurrection, riot or other act of civil disobedience, act of a public enemy, failure or delay in transportation, act of any government or any agency or subdivision thereof, terrorist act, judicial action, labor dispute, any communication or power failure, accident, fire, explosion, flood, storm, earthquake or other act of God, shortage of labor, fuel, raw material or machinery or technical failure or changes to rules in International & Global Trade (including but not exhaustive of WTO, OECD, AFTA Rules) or any other causes beyond the reasonable control of Seller.
- 7.2 The anticipated delivery date shall be deemed extended for a period of time equal to the time lost due to any delay excusable under this provision.
- 7.3 In the event of shortage of Goods, Seller may allocate at its sole discretion production and deliveries among Seller's customers.

## **8.0 Applicable Law**

- 8.1 Unless otherwise agreed in writing, the validity, performance and construction of these Terms shall be governed by the local laws where Seller is incorporated and resides, as shown on the face hereof and such state shall be the only jurisdiction in which any suit may be brought against Seller regarding any dispute arising of this transaction.
- 8.2 This Clause will survive any expiry, cancellation or termination of the Terms for any reason.

## **9.0 Jurisdiction**

- 9.1 Any dispute arising out of or in connection with these Terms shall be heard, at Seller's option, at the court having jurisdiction over Seller's principal place of business, or Seller's place of sales office.

## **10.0 Contractual Language**

- 10.1 If these Terms are made known to Seller in another language, in addition to the language in which the sales contract has been concluded (Contract Language), this is merely done for Buyer's convenience. In case of differences or discrepancies of interpretation, the version in the Contract Language shall be final and binding.

## **11.0 Limited Warranty**

- 11.1 Except as otherwise hereinafter provided, Seller warrants the Goods shall be free from defects in material and workmanship and shall conform to Seller's published specifications or other specifications accepted in writing by Seller for a period of 1 year from the date of shipment or delivery of the Goods.
- 11.2 The foregoing warranty does not apply to any Goods which have been subject to misuse, neglect, accident or modification by Buyer.
- 11.3 Seller will consider adjustment, repair or replacement of defective Goods only if Buyer submits written notice of any claimed defect to Seller within 14 days after Buyer's receipt of such Goods. Failure to give written notice of any claim within fourteen (14) days from the date of delivery shall constitute a waiver by Buyer of all claims regarding such Goods. Seller shall not be responsible for

any defects unless Seller has a full opportunity to investigate any defects claimed. No adjustments or returns will at any time considered, given or permitted as to any Goods designated by Seller, in any invoice or other document, as “distressed”, “off-spec”, or “past shelf life”. This paragraph represents Seller’s sole and exclusive obligations, and Buyer’s sole and exclusive remedies, with respect to or arising out of any defective Goods sold by Seller hereunder. THE WARRANTIES EXPRESSLY PROVIDED IN THESE TERMS ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS AND IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, WHICH WARRANTIES ARE SPECIFICALLY DISCLAIMED. SELLER WARRANTS THAT GOODS WILL CONFORM TO THE PRODUCT SPECIFICATIONS PROVIDED HOWEVER THERE IS NO IMPLIED WARRANTY THAT THE GOODS WILL BE MERCHANTABILITY OR FIT FOR BUYER’S PARTICULAR END-USE PURPOSE.

- 11.4 Seller does not assume or authorize any other person to assume for it any other liability in connection with its Goods.

## **12.0 Indemnification**

- 12.1 Buyer unconditionally agrees to fully indemnify and hold harmless Seller, its affiliates, employees and agents, from and against any and all actual or threatened liabilities, damages, losses, demands, judgments, causes of action, claims (including intellectual property infringement claims), expenses and costs which arise from or relate to Buyer’s actual or intended use of the Goods, or the performance, non-performance or purported performance of any covenant or agreement, or the breach of any representation, warranty, covenant or agreement thereunder.

## **13.0 Confidential Information**

- 13.1 Except as required by law, neither party shall use (except for purposes connected with the performance of its obligations hereunder), divulge or communicate to any third party any information of the other is reasonably known to be confidential.

## **14.0 Waiver**

- 14.1 Failure by Seller to exercise or enforce any rights hereunder shall not be deemed to be a waiver of any such right nor operate so as to bar the exercise or enforcement thereof at any time or times thereafter.

## **15.0 Severability**

- 15.1 If any provision contained in these Terms is held by a court to be unlawful, invalid or unenforceable, the validity and enforceability of the remaining provisions are not affected.

## **16.0 Trademarks & Copyright**

- 16.1 Buyer shall not commit any act which causes or may cause damage or loss to the reputation of Seller or its affiliate or harm any trademarks by Seller or an affiliate of Seller.

## **17.0 Termination and Cancellation**

- 17.1 Seller may terminate these Terms, in whole or in part, at any time upon serving a written notice to the Buyer and Seller shall not be liable to Buyer for any losses, damages or expenses resulting from such termination whatsoever.