



**PLASTIC VERPAKKINGEN**

*Innovation is our motivation*

## **General terms and conditions for sale, delivery and payment**

### **1) Applicability.**

These terms apply to all our offers, order confirmations and commercial agreements where we act as vendor/supplier. The Dutch text is binding. Supplements or deviations of these terms shall only be valid if confirmed by us in writing. General Terms and Conditions of buyers shall only apply when accepted by us in writing. The applicability of the Vienna Sales Convention is excluded.

### **2) Definitions.**

Where in these terms “buyer” is mentioned this also includes “giver of order”. Where in these terms “written” is mentioned this also includes messages forwarded by fax or e-mail, also when because of the machine transmission these have not been signed.

### **3) Offers, bringing about agreements, time of delivery and delivery on call.**

- a. All our offers and promises by word of mouth do never engage us. An agreement entered into with us is exclusively brought about by our having confirmed the order given in writing, or if by acts and deeds we started to carry out an order given by us.
- b. The time of delivery shall only start if and after an order has been accepted by us in writing and all particulars and materials for carrying out same have been received by us from the buyer. Each time of delivery is given by us to the best of our knowledge and belief, but is not binding on us. The time of delivery is prolonged each time because of force majeure we are not able to deliver because of exceptional circumstances, even those that are generally held to be for our account, even if those circumstances could be foreseen at the time of entering into the agreement or obtaining the order. Surpassing the time of delivery for whatever reason shall never give the buyer any right to any damages, except in the case of wilfulness or gross negligence on our side.
- c. If in case of delivery on call, no other term has been agreed upon, the maximum shall be the time within which a call is to be placed, shall be three months after the goods have been reported to be ready as so much shorter as is held to be reasonable in the circumstances. In case of delivery on call the buyer is deemed to have consented that the delivery took place at the time agreed for the call. In case factual delivery did not take place at that time, as from that moment we shall hold the goods for the buyer. In that case we shall be entitled to charge storage costs.

#### **4) Rescission.**

If carrying out an agreement entered into by us would be cumbersome due to exceptional circumstances as defined hereinbefore under 3, we shall be entitled, in stead of performing, to rescind the agreement either wholly or partly. A buyer who wishes to exercise rights against us because of ill performance on our part, should start the complaint with a letter sent under registered cover giving us the opportunity to avail of our right to invoke rescission.

#### **5) Payment.**

- a. All payments are to be effected, without any deduction, rebate or compensation at our offices or into our bank account. Payments to a salesman or to (other) staff shall only be valid if a receipt is signed by a director or a procurist of our company. We are entitled to add a credit restriction surcharge on our invoices of 2%.
- b. Unless expressly differently agreed upon, payment is to be made within 14 days after date of invoice. In case of timely payment, the credit restriction can be deducted from the amount of the invoice.
- c. In case payment has not been made within the term set, the buyer, and this without notice to that effect will owe to us an interest of 1% per month or the delay interest defined in article 6:119a of the Civil Code of The Netherlands if this would be higher.
- d. In case of non-timely payment the buyer is to provide us security at our first request to live up to his debts to us.
- e. If in case of not timely payment we feel the necessity to instruct thirds to collect the claim, the buyer will owe to us all costs resulting from same, including the costs for extra judicial collection - not included the costs of enforcement of a judgement, allowing enforcement, which are not comprised in the Award of costs - which costs are fixed at 15% of the amount of invoice and this with a minimum of € 100,00. All payments by or in behalf of buyer are first used to reduce the interests and costs due, and only thereafter to reduce the capital.
- f. In case the time of payment has been surpassed we shall be entitled to suspend all running orders until such time that payment has been made within the term set by us. If payment remains outstanding within this subsequent period, then we shall be entitled to rescind all running contracts, without prejudice to our right to damages.

**6) Retention of title and use.**

“Kivo Plastic Verpakkingen remain the owner of all goods supplied to the customer until such time payment has been received in full from the purchaser. The goods shall remain the property of Kivo Plastic Verpakkingen and the buyer shall store them so that they are readily identifiable as Kivo Plastic Verpakkingen goods, until such time as payment for them and for all other goods agreed to be sold to the company had been received in full. If the goods have been resold, Kivo Plastic Verpakkingen beneficial entitlement shall be attached to the proceeds of the re-sale and will be able to claim the full purchase price of the proceeds received. Where ownership of any goods remains vested in the Company the Company shall be entitled to repossess any goods supplied at any time. Kivo Plastic Verpakkingen may for the purpose of recovering its goods enter upon any premises where they are stored or where they are reasonably thought to be stored and may repossess the same. It is the sole responsibility of the purchaser to ensure that all goods received from the Company are fully insured against any eventually including, but not limited to, fire, theft, flooding, etc, until such time ownership of said goods has passed to the purchaser. Should goods become damaged in any way after they have been received by the purchaser, the purchaser will be liable to pay to the Company the full purchase price of the goods.”

**7) Guaranty buyer.**

The buyer guarantees us to be entitled to multiply and have had multiplied and use and have had used the designs, representations and texts supplied by or in behalf of the buyer and to hold us harmless in case of claims by third parties because they own the Trade Marks and/or Copyrights with regard to these designs, representations and texts.

**8) Culpable shortcoming.**

If there is culpable shortcoming on the part of the buyer in his obligation vis à vis us, as well as in the case of bankruptcy, winding up, creditor protection we shall be entitled and this without notice to that effect or taking the matter to the courts, to suspend the performance under the agreement or to rescind same wholly or partly and this at our option, without that we are to pay damages and this without prejudice to our claim for damages on the buyer. At our request the buyer shall provide security for the performance of his obligation.

**9) Transport.**

We are entitled to charge transport cost, unless delivery free at domicile has been agreed upon. As of the time that the goods or a part of same for delivery are being loaded, the buyer shall run the risk for all direct and indirect damages, which these may suffer or for which these may harm third parties.

## **10) Prices.**

We are entitled to increase the price agreed upon when accepting the order and this whilst observing the legislation, if any, in force in this regard, if after the date the agreement was entered into the raw materials, auxiliary goods, the prices of parts and components, which we buy at third parties, wages, salaries, social security costs, taxes, duties and levies, transport and the like are being increased, also when these are the result of a change in the rate of exchange, as well as in the case of the introduction of new or the augmentation of existing levies and taxes on the part of Government.

## **11) Complaints, tolerances, restriction of liabilities.**

- a. The buyer is under obligation to check the goods delivered at the time of delivery.
- b. Complaints, in order to be valid, must be made to us within 8 days upon receipt of the goods and this by letter sent under registered cover or per fax. Complaints for lacking goods, deviation of the specification given or damages, which can be seen with the naked eye, must in order to be valid, have been noted down by the buyer on the receipt form.
- c. We use our best efforts to deliver in accordance with the order agreed upon. Deviations with regard to the weight measurements, colours, print and/or other indications of the execution do not give rise to the right not to accept the delivery, unless the deviation is such that same is unacceptable.
- d. Deviations of the thickness, length or width agreed upon of the goods delivered shall be appraised using a standard sample of the products supplied and not using some exceptional products.
- e. The deviation allowed for the format agreed upon (length and/or width) amounts for synthetic films on rolls and for bags of synthetic films is 5%.
- f. The deviation allowed for a single measurement with regard to the thickness agreed upon amounts for:
  - Synthetic Film up to 10 micron : 30 %
  - Synthetic Film from 10 up to 15 micron : 25 %
  - Synthetic Film from 15 up to 20 micron : 20 %
  - Synthetic Film from 20 up to 50 micron : 15 %
  - Synthetic Film over 50 micron : 10 %
- g. Supply in excess or less is deemed to be in conformity with the quantities and/or numbers agreed upon, if the deviations in quantities or in numbers are not over:
  - 30% over or under the quantities stated for orders of a net weight up to 500 KG.
  - 20% over or under the quantities for orders with a net weight of 500 up to 1000 KG.
  - 10% over or under the quantities stated for orders with a net weight of 1000 up to 5000 KG.
  - 5% over or under the quantities stated for orders with a net weight over 5000 KG.
- h. When we mark the wrapping with any code, including the EAN code, we decline all liability as regards the usefulness, as well as for the consequences of not being able to read or for incorrect reading of any such code by the machines for that purpose.

- i. The buyer is not entitled to refuse the acceptance the goods sold or to return these, unless we specifically agree thereto in writing. In case the buyer believes that what we delivered does not conform to what we have sold, he is to inform us promptly and to give the opportunity to inspect the goods. Goods that have been processed are deemed to have been approved. In all cases where there is no delivery free of charge, the buyer is entitled to inspect the goods at his cost before these are being forwarded, on condition that he timely informs us of his intended inspection.
- j. Complaints do not entitle the buyer to suspend the payment of what he owes to us. If the claim is justified we have the option either to pay reasonable damages to the utmost for the amount of the value of the invoice on which the complaint has bearing, or to replace the goods supplied free of charge against exchange of the goods originally supplied. We are under no obligation to pay further damages and to compensate indirect damages.
- k. Each partial delivery is held to constitute a separate delivery and is to be paid for by the buyer.
- l. Apart from deviating clauses in the present conditions we are not liable for direct or indirect damages suffered by the buyer and/or his customers because of non performance on our part, unless this would be the consequence of wilfulness or gross negligence on our part

## **12) Litigation.**

All agreements are governed by the laws of The Netherlands. In as much as deviation of the local rules of competence (*ratione loci*) is allowed the judge competent at the place of our situs shall take cognisance of all litigation, which might arise between us and the buyer, unless we prefer to present the case to the judge competent according to the law.

## **13) General clause.**

- a. These general terms and conditions do not prevent us from the exercise of our legal rights.
- b. These general terms and conditions are listed on November 12<sup>th</sup> 2013 with the court office in the Netherlands, number 102/2013