I. Scope of application, conflicting terms of business, written form
1. The legal relations between Supplier and Kinoton GmbH i.L. (“Kinoton”) are governed exclusively by these General Terms and Conditions of Purchasing (“GTC”). Any general terms and conditions of sale of Supplier conflicting with or diverging from these GTC will not be accepted unless approved in writing by Kinoton in the particular case. In the case of continuous business relations, these GTC shall also apply to all future transactions.
2. All quotes of Supplier, orders of Kinoton, order confirmations and agreements made in connection with the conclusion of a contract must be set out in writing to become legally effective, transmission by fax shall be considered sufficient for this purpose (“in writing”). Any post-contractual agreements shall be laid down in writing.

II. Orders, acceptance period, modifications
1. All orders will be confirmed by Supplier in writing without delay, stating the order and contract number. Any orders not confirmed by Supplier within three business days after receipt may be revoked by Kinoton.
2. Supplier will not modify any goods ordered (e.g. in their design or composition), except with the consent of Kinoton. If any starting materials change during the performance of a contract or compared to previous deliveries of the same goods, Supplier shall so advise Kinoton without delay where such change may affect Kinoton.

III. Delivery dates/delivery periods, advance/partial delivery, duty of information, liquidated damages, Supplier’s rights of retention/setoff
1. Unless agreed otherwise, all agreed delivery dates and delivery periods are binding. Advance or partial deliveries are subject to the consent of Kinoton or to separate agreement.
2. Where delivery “CPT place of performance” according to sec. IV.1 below has been agreed, compliance with the delivery date or delivery period is determined by the date of receipt of the goods by Kinoton; in all other cases Supplier shall make the goods available in good time allowing for the normal time of loading and dispatch.
3. Notwithstanding Supplier’s possible liability for non-compliance with an agreed delivery date or delivery period, Supplier will notify Kinoton in writing without delay of any circumstances which indicate that the agreed delivery date or delivery period cannot be met. In the event of failure or delay in the service of such notice, Supplier will be liable for any loss sustained by Kinoton unless Supplier is not responsible for the failed or late notice.
4. In the event of delay in delivery, Kinoton will have the right to claim liquidated damages for each full week of delay in the amount of 0.3% but no more than 5% of the purchase price of the delayed goods. Supplier has the right to prove a lower loss to Kinoton; Kinoton has the right to prove a higher loss to Supplier.
5. Supplier may assert rights of retention only if they are based on claims from the same contractual relationship which are uncontested, ready for a decision or established by final enforceable judgment. Rights of setoff may be asserted only on the basis of claims of Supplier which are uncontested, ready for a decision or established by final enforceable judgment.

IV. Place of performance, pricing, price increases, risk, shipping papers/ invoices, international deliveries
1. Unless agreed otherwise or stated in the order, the place of performance shall be the domicile of Kinoton.
2. Unless agreed otherwise, all prices are deemed fixed prices “CPT place of performance” according to sec. IV.1 above, including packaging, shipping, customs duties, insurance and plus statutory value-added tax. Supplier may not increase the prices after the conclusion of a contract. Sliding price scales or similar terms will not be accepted.
3. Except as agreed otherwise and unless Kinoton has designated the carrier or Kinoton itself carries out the shipping, the risk of transport shall be borne by Supplier.
4. The Kinoton order and contract number, the product number and the destination of the goods must be stated on the shipping papers and each invoice. Value-added tax must be indicated separately. Any costs incurred through a culpable breach of the above provisions will be refunded to Kinoton by Supplier.
5. Supplier agrees to forward to Kinoton in good time the declarations of the origin and the goods required for customs purposes. If Supplier is domiciled outside Germany or imports goods, Supplier will be responsible for the accuracy of the declaration of the goods. If necessary, Supplier will substantiate its information about the origin of the goods by way of a written confirmation certified by the relevant customs authority. Supplier will be liable for any and all disadvantages sustained by Kinoton as a result of an incorrect or late Supplier declaration for which Supplier is at fault.

V. Compliance, environmental protection, safety, quality
1. The goods delivered must comply with the state of the art, the EU and national standards and technical specifications applicable in Europe (EN, VDE, DIN etc.) and with the agreed technical data.
2. Supplier agrees to comply with the safety laws and other safety regulations applicable to the goods. Machinery and technical work equipment must be accompanied by instructions and an EC declaration of conformity in accordance with the Machinery Directive. Supplier will indemnify Kinoton against all claims under public law arising from a breach of these provisions, except where Supplier is not responsible for such breach. Supplier shall supply all required test certificates and attestations irrespective of whether or not they have been requested.
3. Supplier will comply with all applicable national and European regulations concerning the handling of hazardous materials, in particular but not limited to the German Hazardous Materials Regulation (Gefahrstoffverordnung) and the EU Directives set out in Annex 1 to such Regulation. Where any hazardous materials are delivered, Kinoton must be provided with product information, especially safety datasheets, in good time prior to the delivery. Supplier is not permitted to use any carcinogenic substances.

VI. Invoices, payment, discounts, passing of title, processing
1. Invoices shall be sent in duplicate to the invoicing address indicated on the order. Unless otherwise agreed in writing, payment shall be made net within 30 days after delivery of the goods and receipt of a due and proper, verifiable invoice (see sec. IV. 4); if payment is made within 14 days after delivery of the goods and receipt of a due and proper, verifiable invoice (see sec. IV. 4), Supplier will grant Kinoton a 3% cash discount.
2. Any invoices failing to meet the requirements of sec. IV. 4 or sec. VI. 1 may be rejected by Kinoton. In any such case the beginning of the payment period and cash discount period will be determined by the date of receipt of the new, correct invoice.
3. To the extent that the delivered goods have been paid, the title shall pass to Kinoton upon payment. Kinoton does not accept any expanded or extended reservation of title.
4. Kinoton has the right to process, sell or otherwise dispose of the delivered goods in the ordinary course of business, including before the passing of title.

VII. Notice of defects
Kinoton will report any obvious defects within no later than 14 days after delivery, and any hidden defects within no later than 14 days after their discovery.

VIII. Warranty
Any warranty claims of Kinoton shall be governed by the applicable legal provisions as amended by the terms and conditions below.
1. Supplier will bear all expenses incurred in connection with the identification and repair of defects, including expenses incurred by Kinoton.
2. Unless agreed otherwise in writing and notwithstanding sec. VIII. 3 below, warranty claims shall become time-barred 36 months after delivery of the goods to Kinoton.
3. In the case of replacement deliveries in connection with subsequent performance, the limitation period for warranty claims shall be 36 months from the fulfilment of subsequent performance, provided that the replacement delivery is made with an express or implied acknowledgment of the duty to remedy defects and not, for example, out of goodwill or in the interest of continued business relations. In the case of repair in connection with subsequent performance, the limitation period for warranty claims for repaired parts shall be 36 months from the fulfilment of subsequent performance, provided it is question of the defect which has already been repaired or defects in the repair work, and provided that repair is made with an express or implied acknowledgment of the duty to remedy defects and not, for example, out of goodwill or in the interest of continued business relations.

IX. Liability, limitation of claims, product liability
1. Supplier’s liability shall be governed by the applicable statutory provisions. Limitations and exclusions of liability will not be accepted. The limitation periods are determined by the relevant statutory provisions and the terms laid down in these GTC.
2. In any event of product liability and without prejudice to any further rights, Supplier will indemnify Kinoton against all third party claims to the extent that the cause of such claim lies within Supplier’s control and organisation and Supplier is liable to the third party. Such indemnification also extends to any expenses incurred by Kinoton to avoid and/or reduce the product liability risk.
X. Grant and transfer of rights of use

1. Where the delivered goods are protected by any intellectual property rights of whichever scope and extent, Supplier agrees to grant Kinoton a non-exclusive, irrevocable right with no limit as to subject matter, time or territory, to use such goods for all known types of exploitation. In particular, this includes the right to modify, edit, translate or otherwise redesign the goods, to reproduce, disseminate, make publicly available, broadcast and communicate in private or in public, the goods in the original or in a modified, edited, translated or redesigned form, on any medium or other technical system, digitally or otherwise. However, Kinoton shall be under no obligation to exercise the rights of use granted herein.

2. Kinoton has the right to exercise its rights according to sec. X. 1 without obtaining any further consent from Supplier, itself and/or jointly with third parties, or to assign such rights or parts thereof to third parties, or to grant corresponding rights of use to third parties.

3. Unless agreed otherwise, all property rights created by developments arising from special orders of Kinoton or by joint developments with Supplier, shall be exclusively vested in Kinoton if they are exclusively based on Kinoton know-how or if Kinoton bears all costs of the development. If an assignment of property rights created as described above to Kinoton is impossible, Kinoton.

XI. Property rights

1. Supplier will deliver the goods free of any third party rights. In the event of a breach of the foregoing sentence 1, Supplier will indemnify Kinoton against all claims of third parties arising from the use of such property rights, except where Supplier is not responsible for the breach. Supplier’s indemnification covers all expenses necessarily incurred by Kinoton as a result of or in connection with such third party claims, in particular but not limited to the costs of legal defence. If claims are asserted against Kinoton on grounds of property right infringements Supplier is responsible for, Supplier will be obliged to support Kinoton at Supplier’s expense in the defence against such claims.

2. Supplier’s liability in accordance with sec. XI. 1 above shall be excluded to the extent that Supplier manufactured the delivered goods exclusively on the basis of drawings and models provided by Kinoton and Supplier was not aware and/or ought not have been aware that the manufacture constitutes an infringement in the above sense.

3. On request, Supplier will provide Kinoton with a list of all applications for property rights as used by Supplier in connection with the goods delivered and to be delivered. If Supplier becomes aware of any infringement of property rights, Supplier shall notify Kinoton without delay.

XII. Confidentiality, data protection, advertising

1. Supplier will treat with strict confidentiality all images, drawings, calculations as well as other documents and information provided, which are marked confidential or obviously are confidential. They may be disclosed to third parties only with Kinoton’s express consent. This confidentiality undertaking remains valid after the completion of the orders; it will expire if and as far as the manufacturing know-how incorporated in the images, drawings, calculations and other documents provided (i) becomes public domain, (ii) is disclosed to Supplier on an expressly non-confidential basis, (iii) was in Supplier’s lawful possession prior to its disclosure, or (iv) is subsequently disclosed to Supplier by a third party without breach of any confidentiality undertaking.

2. Any exploitation or publicising of the business relations with Kinoton in publications or for advertising purposes requires the express prior written consent of Kinoton.

XIII. Spare parts

Supplier will supply spare parts for the period of regular technical use of the delivered goods, but for a minimum period of ten years following the last delivery, at reasonable terms. If, following expiry of the period set out in sentence 1 of this clause, Supplier ceases to supply the spare parts, or ceases to supply the goods before the expiry of this period, Supplier must give Kinoton the opportunity to place a final order.

XIV. Place of jurisdiction, arbitration, contractual language, governing law, severability

1. Unless Kinoton exercises the right to initiate arbitration proceedings set out in sec. XIV. 2 and provided that Supplier is a business or legal person under public law, the courts at the domicile of Kinoton shall have exclusive jurisdiction for any and all disputes arising out of the contractual relations, whether directly or indirectly. Further, Kinoton shall have the right to sue at the court having jurisdiction for Supplier’s domicile.

2. Instead of taking recourse to an ordinary court of law in accordance with sec. XIV. 1 above, Kinoton may as an alternative initiate an arbitration proceeding in compliance with the terms laid down in the next paragraph, in which case recourse to the ordinary courts of law will be excluded. If Supplier raises claims against Kinoton and intends to litigate in court, Kinoton will have the right to choose between ordinary court proceedings and arbitration within a period of 21 days after a written notice from Supplier. If Kinoton fails to exercise this option or to exercise it in due time, Supplier will have the right to choose between ordinary court proceedings and arbitration. In the event of an arbitration proceeding all disputes will be finally decided in accordance with the Arbitration Rules of the German Institution of Arbitration (Deutsche Institution für Schiedsgerichtsbarkeit e.V. - DIS), recourse to the ordinary courts of law being excluded. The forum of arbitration shall be at the domicile of Kinoton. The arbitration panel will be composed of three arbitrators if the value in dispute is higher than EUR 50,000.00, and of one arbitrator in all other cases. The language of arbitration shall be German.

3. Unless agreed otherwise, German shall be the contractual language.

4. These GTC shall be governed by German law to the exclusion of the UN Sales Convention.

5. If any provision of these GTC is or becomes invalid or unenforceable, nothing in this shall prejudice the validity of the contract as a whole and of the remaining provisions of these GTC.

April 2014