



General Terms & Conditions of Sale and Delivery

1. Sales Agreement

The sale of products by Kirkmayer Industries OÜ ("Company") is governed by these terms and conditions ("Terms and Conditions"). Company's offer to sell products to the buyer ("Buyer") is expressly limited by Buyer's acceptance of these Terms and Conditions, as evidenced by Buyer's issuance of a purchase order for product(s), or Buyer's acceptance of any product under the purchase order, or Buyer's payment for any product under the purchase order. Terms, if any, included on any Buyer's purchase orders, acknowledgment forms or other documents shall not apply and are hereby voided, except any such terms that are expressly agreed to in writing by Company.

Any offers to sell products by Company must be in writing to be valid, and all such offers shall be valid for thirty (30) days from issuance, unless otherwise set forth in such offer. Such offers shall be deemed accepted only upon Company's receipt of Buyer's written acceptance, provided that Company receives such acceptance prior to the expiration of such time limit (such accepted offer, an "Order").

Company shall not be liable for any errors or miscalculations in Buyer's purchase order.

Buyer may not cancel any Order without Company's prior written approval, such approval at Company's sole discretion. In the event Company expressly agrees in writing to permit Buyer to cancel an Order, Buyer will compensate Company for all costs and losses attributable to the cancellation. Subject to the warranty set forth in Section 9, products purchased under these Terms and Conditions are not returnable.

2. Prices

All prices exclude (and Buyer shall be solely responsible for) costs of handling & packaging, loading, shipping, delivery, insurance, installation, and commissioning. Prices do not include any fees, taxes, certificate of origin or duties relating to the shipment and delivery of any of the products, including without limitation value-added tax (VAT), duty, import and export tariffs and other forms of taxes and excise duties in the Canada & USA or the recipient country.

Unless otherwise expressly agreed by the parties, all Orders are accepted on the basis that: (a) the price stated is the net price of the products (after deduction of any discounts) for delivery in accordance with the contract and overrides all previous oral and written representations; and (b) Company may without prior notice adjust the price stated to take account of any change in specification made at Buyer's request that directly affect the cost to Company of supplying the products.

3. Time of Delivery

The estimated date of delivery shall be stated in Company's initial offer to sell products to Buyer or specified in a written acknowledgement given to Buyer within fifteen days after receipt of Buyer's purchase order, as the case may be. Company will use commercially reasonable efforts to deliver the products within the estimated time to the extent possible. Delivery dates are estimates only and Company does not guarantee delivery of products on or by any estimated delivery date. In no event shall Company be liable to Buyer for any costs, fees, penalties or price reductions as a result of any failure to deliver products in accordance with any estimated delivery dates save that in accordance with any guaranteed delivery program that may be in force from time to time. Partial deliveries by Company are permitted unless otherwise upon agreed in writing by the parties.

4. Delivery

Delivery shall be made Ex Works (EXW) (Incoterms 2010), Company's shipping point. Unless otherwise agreed upon by the parties in writing, Buyer shall arrange for transportation and transport insurance. If Buyer fails to arrange for transportation, Company will choose a method of transportation that it deems appropriate. In all cases Buyer is responsible for all expenses involved in the shipment and delivery of products (including without limitation loading, freight, shipping, insurance, forwarding and handling charges).

5. Passage of Title and Risk

The title to the Products purchased by the Distributor shall only pass to the Distributor when and only when Company has received the full payment of all amounts owed in connection with the same. All risk of damage to or loss or delay of the Products shall pass to Distributor when products are delivered to the Company's warehouse in Tallinn, Estonia.

6. Drawings

Descriptive Documents, etc. Company reserves the right to alter measurements and dimensions as well as the design and description of any products. All data included in catalogues, prospects, circulars, advertisements, illustrated matter and price lists are approximate and shall not be binding unless otherwise agreed upon in writing by the parties. Drawings, descriptive documents, parts lists, and other documentation (collectively, "Documentation") provided or made available to Buyer by Company are confidential information of Company and may be used by Buyer only in connection with the use of the products. Buyer may not copy Documentation or disclose Documentation to any third party.

7. Use of Company's Products

Buyer acknowledges and agrees that the products must be used in accordance with all instructions provided by Company and, where stated, products must be operated only by personnel who have received the appropriate training. Company shall not be held responsible for any injury, damages or loss caused to the Buyer due to the use and operation of the products not in accordance with the instructions provided by Company or where applicable by any person who has not received any appropriate training.

8. Rights

Notwithstanding that title to the products may pass to Buyer, Company shall remain the exclusive owner of all intellectual property rights of whatever nature including, without limitation, copyrights, patents and patentable inventions, know-how, trade secrets, trademarks and design rights (whether registered, registrable or otherwise) embodied in or otherwise relating to the products (including any software contained therein). Other than as permitted by applicable law, Buyer shall not reverse engineer the products or any part thereof. Buyer shall not remove any proprietary notices and/or branding contained in or otherwise affixed to the products.

9. Warranty, Remedying Defects and Shortcomings, Complaints

a. Save as otherwise set out herein, Company warrants that:

(i) all electrolytic cells manufactured by the Company and supplied to the Buyer by or on behalf of the Company, will be free from material defects in workmanship and materials on the date of their first shipment from the Company for a period of 12 months from such date. All warranty conditions will lapse if the cell is returned without the security seal (equipped with a unique code) No breakage is covered by warranty;

all other components not covered by the warranty at clause (a)(i) above and supplied to the Buyer by or on behalf of the Company, will be free from material defects in workmanship and materials on the date of their first shipment from the Company for a period of 12 months from such date. No breakage is covered by warranty.

b. Subject to clause (c) below, if:

the Buyer gives notice in writing to the Company during the relevant warranty period set out at clause (a) within twenty days, from receipt of the goods, of discovery that some or all of the products do not comply with the warranty set out in clause (a), or within 6 month in the case of hidden faults;

- (i) the Company is given a reasonable opportunity of examining such products;
- (ii) the Buyer (if asked to do so by the Company) returns such products to the Company's place of business at the Buyer's cost. The Buyer shall contact the Company for a Return Material Authorization (RMA) number prior to returning any products to the Company; and
- (iii) proof of purchase is provided (where requested by the Company)

the Company shall, at its option, repair or replace any product (with new or reconditioned products) not operating as warranted with a similar or functionally equivalent product or refund the price of the defective products in full. Where the Company supplies the Buyer with products manufactured by third parties, the Company will use commercially reasonable efforts to pass on to the Buyer the benefit of any warranty issued by the third-party manufacturer.

c. The Company shall not be liable for products' failure to comply with the warranty set out in clause (a) in any of the following events:

- (i) the Buyer makes any further use of such products after giving notice in accordance with clause (b);
- (ii) the defect arises because the Buyer failed to follow the Company's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the products or (if there are none) good trade practice regarding the same;
- (iii) the defect arises as a result of the Company following any drawing, design or specification supplied by the Buyer;
- (iv) the Buyer alters or repairs such products without the written consent of the Company;
- (v) the defect arises as a result of fair wear and tear, improper use, willful damage, negligence, or abnormal storage or working conditions; or
- (vi) the products differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory requirements and the Company reserves the right to charge reasonable fees for examining and testing products for which no defect can be found and/or where the Company is not responsible for the defect.

d. Any products replaced or repaired by the Company carry either a 90-day limited warranty commencing on the date of delivery of the repaired or replaced product or the remainder of the initial warranty, whichever is longer. Products returned to the Company should have any Buyer-installed accessories or add-on components removed prior to returning the product. The Company is not responsible for these items if they are returned with the product.

e. The Buyer is responsible for all shipping charges.

f. If the product does not operate as warranted above, the Buyer's sole remedy shall be the repair or replacement of the product in question or refund the price of the defective products in full, at the Company's option. The foregoing warranties and remedies are exclusive and are in lieu of all other warranties or conditions, express or implied, either in fact or by operation of law, statutory or otherwise, including warranties or conditions of merchantability and fitness for a particular purpose. The Company neither assumes nor authorizes any other person to assume for it any other liability in connection with the sale, installation, maintenance or use of its products.

g. Where products that are no longer covered by the warranty set out at clause (a) above are returned to the Company for repair, the Company warrants that such products once repaired will be free from material defects in workmanship and materials for ninety (90) days from the date of return shipment from the Company.

- h. In the event that a Company product requires service outside of the warranty period it should be returned using the RMA procedure.** The company will examine and test the product to determine the fault and the required remedy; a charge may be made if the product is found not to be faulty. A quotation will be supplied for the necessary repair. In the event that the cost of repair exceeds 60% of the cost of a new product, the product will be deemed "beyond economic repair" and a quotation will be supplied for the replacement of the defective product with a replacement product. The Company will use commercially reasonable efforts to support the products throughout their design life in respect of repair, maintenance, and replacement of the specified product. This period will be no less than 5 years from the date of the first delivery of product to the Buyer.

10. Limitation of Liability

The Company's maximum liability for any loss or damage suffered by the Buyer in contract, common law, tort (including negligence) or otherwise howsoever arising in relation to this agreement or otherwise relating to the products manufactured and supplied by the Company to the Buyer shall not exceed the sums actually paid by the Buyer to the Company for the product and/or products giving rise to such liability. In no event, whether based in contract or tort (including negligence), shall the Company be liable for incidental, consequential, indirect, special, or punitive damages of any kind, or for loss of revenue, loss of business, or other financial loss arising out of or in connection with the sale, installation, maintenance, use, performance, failure, or interruption of its products, even if the Company or its authorized reseller has been advised of the possibility of such damages. Nothing in this or any other provision of these terms and conditions shall limit the liability of the company in relation to death or personal injury caused solely by the Company's negligence or for fraud or for fraudulent misrepresentation or any other liability, which may not lawfully be excluded. Nothing in these warranty conditions shall be taken to affect any applicable statutory rights of the Buyer. The Buyer shall be liable in relation to any death or injury caused by any person operating the Product purchased by the Buyer if the person operating the same lacks adequate training and does not comply to the instructions of use provided by the Company.

The Buyer agrees and represents that the Seller shall not be responsible or liable for compliance to the local rules, certification standard and or approval from local authorities in regard to the generators sold by the Seller. The Buyer shall be solely responsible to ensure that the generators sold by the Seller are compliant to the various laws of the country of the Buyer.

11. Payment

Payment shall be due on the date and in the currency indicated in Company's invoice; provided, however, in the absence of such specified due date and currency indicated, prices are due and payable without set-off or counterclaim, in Euro, in immediately available funds fifteen (15) days from the invoice's date. Payment by cheque or another negotiable instrument is ineffective until it is honored, and Company's bank account is credited with the amount due. Time of payment is of the essence for each Order. For late payments, Company may, at its sole discretion, charge 3% (three percent) per annum above the base rate from time to time of LHV Bank accruing from the date the payment was due until payment thereof in full together with such interest. Buyer may not withhold or set off any payment as a consequence of any counterclaims of Buyer.

Any carriage, packing and other charges stated separately from the price are payable by Buyer at the same time and shall be treated as part of the price. If Buyer pays an amount without apportioning it between specific debts or liabilities it shall be apportioned as Company thinks fit. Company may attribute a partial payment to one or more specific items, rather than to all the items, which are the subject of a particular contract.

In the event that the Buyer fails to make the outstanding payment to the company when the company communicates them that the products are ready or within the designated date for making payment as agreed by the parties, the Company shall give the Buyer a period of thirty (30) days to further make the outstanding payments to the Company. In the event the Buyer fails to make the outstanding payment to the Company within additional thirty (30) days provided by the Company, the Company shall be entitled to terminate the agreement and resell the products ordered by the Buyer to any third party and the Buyer will forfeit all right to the partial payment made by the Buyer at the time of placing the order with the

Company. In such event, Buyer shall indemnify Company against any loss, damage or claim resulting from any purported cancellation or failure to take delivery, including the payment of license fees or other fees incurred by it in the course of its business together with the cost of any material, plant or tools used, or intended to be used, for Buyer's Order(s), the cost of labor and other overheads, and redundancy payments primarily attributed to such purported cancellation. Company's rights shall not be prejudices or restricted by any indulgence or forbearance extended to Buyer and no waiver by such party in respect of any breach shall operate as a waiver in respect of any subsequent breach.

12. Force Majeure

Company shall not be liable for failure to perform or for delay in performance due to fire, flood, strike, or other labor difficulty, act of God, act of any governmental authority, riot, embargo, fuel or energy shortage, wrecks or delays in transportation, inability to obtain necessary labor, materials, or manufacturing facilities from usual sources, or due to any cause beyond Company's reasonable control. In the event of a delay in performance due to any such cause, the estimated date of delivery or time for completion of performance will be extended by a period of time reasonably necessary to overcome the effect of such delay. If Company reasonably determines that any such delay in performance is likely to extend for a period of ninety (90) days or more, Company shall have the right to cancel the applicable Order upon notice to Buyer with no liability or further obligation to Buyer with respect to such Order.

13. Venue

These terms and Conditions, including any dispute concerning its existence and validity and including disputes concerning any sales to which they apply, is governed by the laws of Estonia, excluding its conflict of laws rules. The parties irrevocably agree that the courts of Estonia shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims). The application of the Uniform Laws on International Sales shall be excluded.

14. Other Agreements

These Terms and Conditions shall apply to all sales of products by Company to Buyer and may only be modified or amended by a writing executed by an authorized officer of Company and Buyer.

Ordering our products, Buyer agrees to these Terms & Conditions.

KIRKMAYER INDUSTRIES OÜ
TÖÖTUSE TN. 86, TALLINN, ESTONIA
10476 HARJU MAAKOND
REG. NR. 14130692
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Your Leader in On-Site HOCl Hypochlorous Acid Generators

KIRKMAYER is a leading global provider of electrochemically activated solution (ECA) generators, delivering first-rate HOCl systems. Our mission is to design and build electrolytic cells that are more reliable, efficient, and durable than conventional ECA and HOCl generators available on the market today.



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