

## **General Terms and Conditions of Sale (GTCS)**

**conducted by Geldbach Polska Sp. z o.o. with a registered seat in  
Mysłowice,**

**- version 1.0 effective from 1/06/2011**

### **I. General provisions and definitions**

1. These General Terms and Conditions of Sale determine the rules with respect to the conclusion and performance of contracts of sale of goods concluded between Geldbach Polska Sp. z o.o. as the Seller and entrepreneurs as well as other entities not being consumers.
2. The terms used throughout these Terms and Conditions of Sale shall have the following meaning:
  - the Seller or Sellers - Geldbach Polska Sp. z o.o. with a registered seat in Mysłowice;
  - the Buyer - an entity being the other party to the sale contract;
  - Parties - the Seller and the Buyer;
  - General Terms and Conditions - these "General Terms and Conditions of Sale (GTCS) conducted by Geldbach Polska Sp. z o.o. with a registered seat in Mysłowice";
  - Goods - trade goods sold by - Geldbach Polska Sp. z o.o. as part of the contract with a customer.
3. These General Terms and Conditions of Sale form a complete and sole contractual agreement binding the parties in the scope of the sale of goods. Any other agreements (general terms and conditions, etc.) used by the Buyer shall not apply.
4. The provisions of these General Terms and Conditions can be amended only in writing under the pain of nullity, and each deviation herefrom requires the Seller's consent in writing otherwise shall be null and void. The conclusion of a separate contract excludes the application of these General Terms and Conditions only within the scope regulated therein in a different manner.
5. If the Buyer remains in a permanent trade relationship with the Seller, the receipt of the General Terms and Conditions upon the first transaction or the receipt of the internet address where the same are available by the Buyer shall be regarded as the delivery hereof for all the remaining transactions until the contents hereof is amended or application hereof is cancelled.

### **II. Conclusion of the contract**

1. The conclusion of the contract shall take place upon delivery of the order to the Seller placed by the Buyer in response to the Seller's offer. In the event of any change in the offer or introduction of any reservations thereto in the Buyer's order, or in a situation where the placing of the order by the Buyer was not preceded by the Seller's offer, the contract shall be concluded only upon the Seller's confirmation of the acceptance of the order. Art. 66<sup>1</sup>§ 2 and 3 of the Civil Code shall not apply.

2. The contract of sale can be concluded through handing the goods over to the Buyer and confirming the receipt of these goods by the Buyer.
3. Any announcements, advertisements, price lists and catalogues of the Seller shall not form an offer and shall be used solely for information-related purposes.
4. The Buyer is obliged to familiarize itself with the technical parameters of the ordered goods. The Seller shall not be held responsible for the non-compliance of the goods parameters with the Buyer's needs.
5. The offer shall be binding upon the Seller in the period stipulated therein. If the period in which the offer remains binding was not stipulated therein, the offer shall become void if the Buyer does not accept it promptly after its receipt, i.e. no later than within 5 business days of the date of its receipt. The Seller shall have the right to accept the Buyer's order placed after the deadline stipulated in the sentence above.
6. Any agreements, assurances, covenants and warranties made orally by the Seller's employees in connection with the submission of the offer or the conclusion of the contract shall not be binding.
7. For the validity of the sale contract conclusion or amendment thereof, any and all declarations exchanged between the parties in that scope ought to be delivered to the other party in writing via mail, electronic mail or by means of a fax. This provision shall particularly apply to offers, orders and confirmations of orders.
8. In the event that, by reasons independent of the Seller, in particular, by reasons regarding the goods manufacturer, the Seller will be unable to perform the contract in part or in whole, it shall be entitled to withdraw therefrom in part or in whole. The Seller shall not bear responsibility for any potential damage as a result of this.

### **III. Title and moment of risk transfer**

1. The title to the goods being sold shall pass onto the Buyer only upon the payment of the whole price to the Seller. In the event of combining or confounding things, the parties shall become co-owners of the whole.
2. In the event of a delay in the payment for the goods, the Buyer shall be obliged to hand over any goods for which the whole price was not paid to the Seller upon its request.
3. The risk of losing or damaging the goods shall pass from the Seller onto the Buyer upon giving the goods to the Buyer, and in the event of entrusting the goods to the carrier - upon giving the goods to the carrier, regardless of who shall bear the costs of transport.

### **IV. Price of goods and terms of payment**

1. The price for the goods sold shall be determined each time in the offer, confirmation of the order or in the invoice. Unless the Seller indicated otherwise, the price shall not cover the costs of transport.

2. If the price is indicated in a currency other than the Polish zloty, it shall be assumed that the parties have established the price in the Polish zloty by converting it into zlotys in accordance with the average exchange rate of the National Bank of Poland (NBP) as of the day preceding the date of invoice issuance, and if it is a non-working day – the previous day.
3. The Buyer undertakes to pay the price within the time limit specified in the offer, and, if the time limit was not specified therein, in the VAT invoice issued by the Seller. The payment shall be regarded as effected upon crediting the Seller's bank account with the funds.
4. In the event that after the conclusion of the contract circumstances justifying the increase in the price for the goods occur, such as the increase in the customs duty, introduction of additional customs fees and civil and public charges, the Seller shall have the right to a relevant and unilateral increase in the price for the goods, with indicating the reason for such increase. Such right, stipulated in the section above, shall apply to the Seller also in the event of the increase in the costs of purchasing goods by the Seller in relation to the prices as of the date of contract conclusion.
5. The prices given by the Seller are net prices which shall be increased by the tax on goods and services in accordance with currently effective rates.
6. In the event of the Buyer's delay in the payment of the price under any sale contract binding the parties, the Seller shall have the right to withhold the performance of any and all contracts concluded (including handing over goods) until the payment of any outstanding amounts along with interest has been made by the Buyer. If a delay in any payment due to the Seller exceeds 30 days, the Seller shall have the right to withdraw from the sale contract as well as from other contracts which have not been performed yet and concluded with the Buyer, without setting any additional time limit. The Seller shall not bear responsibility for any damage resulting therefrom.
7. Fees in accordance with rates adopted at the Seller's shall be collected for the issuance of certificates of material.
8. In the event of granting a trade credit (repayment postponed in time) to the Buyer in the contract, the Seller shall have the right to change or revoke it at any time. This right shall apply to all contracts concluded by and between the Seller and the Buyer. In such case, the Buyer shall be obliged to pay for the goods prior to or upon their handing over, and in the event that the goods have already been handed over - immediately after that.
9. Any receivables due to the Seller by reason of the sale of goods cannot be the subject of deduction without the Seller's prior written consent.
10. Any discounts, rebates and reductions granted by the Seller shall only apply to the prices for the goods expressly indicated in the statement on granting such discounts, rebates, or reductions and shall not apply to any other amounts or costs.
11. Any other costs arising under the performance of the sale contract, shall be borne by the Buyer unless the parties have agreed otherwise in writing.

## **V. The collateral**

1. Under special circumstances, in particular, during transactions whose value exceeds PLN 50,000 (say: fifty thousand zlotys), the Seller may request the collateral for such transaction from the Buyer.
2. At the Seller's option, such collateral may have, in particular, the form of a blank bill of the Buyer, warranty of third persons, bank warranty or insurance of the transaction.

## **VI. Receipt of the goods and their properties**

1. The Buyer undertakes to perform a thorough inspection of the goods upon their receipt with respect to their quantity, quality, compliance with the technical specification and potential visible defects. The technical documentation of the goods attached thereto is also subject to inspection. After the inspection, the goods issue document shall be signed. The signing of the said document shall be identical with acknowledging the compliance of the indicated parameters with the contract and the lack of defects which might have been detected during a very thorough inspection of the goods during receipt. The Buyer cannot release itself from the obligations stipulated in this section and from effects of its failure to observe them by referring to the adopted turnover and receipt practice.
2. The parties agree that the cost of loading the goods for transport shall be borne by the Seller, whereas the cost of unloading the goods shall be borne by the Buyer, irrespectively of who shall bear the cost of transport.
3. Any potential attestations, approvals, certificates of compliance or other documents given by the Seller along with the goods, indicating their quality, parameters and technical properties shall not form any confirmation on the part of the Seller as to the data contained therein, and thus shall not form any assurance as to the compliance of the goods with any criteria stated therein. Such documents given each time form only the information on the part of the Seller that the goods, in accordance with the manufacturer's statement, were made in line with the criteria indicated in those documents.
4. If the Seller has undertaken to give the documents referred to in section 3 to the Buyer, it shall be assumed that it can perform this obligation within 10 days of the handing over of goods.
5. If the Seller is the party bound to deliver the goods, it can deliver them in lots.
6. If the Seller is responsible for organization of the transport of goods, it can, at its option, determine the route, means of transport, the forwarder or carrier, irrespectively of who shall bear the costs of transport.

## **VII. Defects of the thing sold**

1. In the event of detecting any defects of the goods with respect to their quantity, quality, compliance with the technical specification or other upon the receipt, the information on such defects ought to be indicated unequivocally in the goods issue document and given to the Seller no later

than within 3 days of the date of goods receipt under the pain of losing the right to claim such defects.

2. The Buyer has the obligation to notify the Seller immediately (no later than 7 days of their detection) of any defects impossible to detect in spite of a very thorough inspection upon the receipt under the pain of losing the right under warranty.
3. Any notification of the goods defects must be submitted in writing with a confirmation of receipt otherwise shall be null and void. In addition, the Buyer undertakes to make the defective goods available for the Seller's inspection upon each request of the Seller to do so under the pain of losing the rights under warranty. If the goods have been processed, the Seller's liability for the defects of the goods shall expire.
4. If, in the Seller's opinion, a technical expertise will be necessary to determine any defects, the Seller shall take a stand on the defectiveness of the goods upon obtaining a relevant expertise.
5. Acknowledgement of any complaint shall take place in writing after the claimed lot of goods has been examined by the Seller or, possibly, after the expertise has been performed. In the event of acknowledging any complaint, the Seller undertakes to replace defective goods with goods free from defects at its own expense within time limit agreed upon by the parties. If the replacement of goods turns out to be impossible or connected with a necessity to bear additional costs by the Seller, the Seller shall have the right to refuse such replacement and return the whole or a relevant part of the price to the Buyer.
6. The Seller shall be released from any responsibility for non-performance or improper performance of the contract if such non-performance or improper performance has been caused by defects of the goods resulting from their poor manufacture by the manufacturer.
7. Any rights under warranty shall expire after a year from the date of the goods issue.
8. The Seller does not ensure fitness of given goods for a particular purpose. The risk connected with the intended use of the goods covered by the contract shall be borne solely by the Buyer. Any potential information given by the Seller within this scope is given out of courtesy and cannot be treated as a basis for a specific use.
9. Starting complaint proceedings shall not release the Buyer from the obligation to pay the price for the goods handed over.

#### **VIII. Delay in payment and issue, liability**

1. In the event of the Buyer's delay in payment of the whole or the part of the price for the goods issued, the Buyer shall pay to the Seller statutory interest for the first 7 days of such delay and contractual interest in the amount of maximum statutory interest for each next day of delay.



2. In the event of the Buyer's delay in effecting any payment, any payments the Buyer is to effect under all contracts concluded between the Buyer and the Seller shall immediately become due.
3. In the event of the Buyer's delay in timely acceptance of the goods by more than 1 week, it shall pay to the Seller liquidated damages in the amount corresponding to 0.2% of the price for the goods not accepted on time for each day of delay counted from the date of the goods issue stipulated in the contract.
4. The Seller shall have the right to withhold the issue of the goods due to circumstances referred to in clause IV section 6 or V section 1 of these General Terms and Conditions.
5. If the obligation to deliver the goods rests on the Seller, any agreements as to the date of delivery of goods shall be for guidance purposes only and shall be subject to change.
6. The Seller shall be free from any responsibility connected with untimely handing over of the goods if such event shall arise from the fact that its supplier has not fulfilled its obligation to deliver on time.
7. If the Buyer fails to collect the goods within 30 days of the date of contract conclusion, the Seller shall, at its option, have the right to withdraw from the contract or send the goods to the Buyer at its expense. The Seller's withdrawal from the contract does not release the Buyer from its obligation to pay stipulated liquidated damages specified in section 3.
8. In the event that the damage exceeds stipulated liquidated damages, the Seller shall have the right to claim damages upon general principles.
9. The Seller's liability due to non-performance or improper performance of the obligation shall be limited to the actual damage in the amount not exceeding the net value of the goods being the subject of the contract as well as to the willful damage, however, the Seller can be liable only for that damage of the Buyer which is possible to foresee or typical.
10. In connection with the fact that all debts of the Seller are subject to insurance, the Seller shall have the right to withdraw from the contract in part or in whole with immediate effect if the insurer revokes the insurance cover for the Seller's debt with respect to the Buyer. In order to avoid the termination of the contract, the Buyer may present the Seller with additional security the acceptance of which shall be or not at the Seller's discretion only.
11. In the event of the Seller performing the contract only in part, the Buyer shall have no right to withdraw from the part already performed.
12. Any amounts given to the Seller by the Buyer can be regarded by the former - regardless of the Buyer's option - as repayment of the most long-standing receivables due, including interest thereon.
13. The parties shall have the right to count liquidated damages and interest which are referred to in this clause.

## **IX. Competence of court, the law.**

1. The court proper for settling any potential disputes shall be the common court of competent subject matter jurisdiction in Katowice.
2. Only the provisions of the Polish law shall apply to the contract.

## **X. Other provisions**

1. The Seller shall not be liable for any damage occurring as a result of force majeure understood as any circumstances independent of the Seller which caused the damage to occur, in particular, natural disasters, acts of legislative and executive authorities, traffic inconveniences, etc.
2. The titles of particular clauses of these General Terms and Conditions of Sale have been introduced for convenience purposes only and do not have any legal meaning, thus, the text of the General Terms and Conditions cannot be interpreted on their basis.
3. Should any particular provisions of these General Terms and Conditions turn out to be void or ineffective, it shall not affect the validity and effectiveness of the remaining provisions. In such case the parties shall undertake to accept such provisions which shall reflect prior provisions in an effective manner.

The Management Board of Geldbach Polska Sp. Z o.o.



Dyrektor Operacyjno-Handlowy  
Prezes Zarządu  
*Ireneusz Czarnecki*