

## **GENERAL BUSINESS TERMS AND CONDITIONS**

### **1. General Provisions**

- 1.1 These General Business Terms and Conditions ("Conditions") regulate mutual rights and obligations under Act No 89/2012 Coll., Civil Code as subsequently amended ("NCC") between the business corporation VYVA PLAST, s.r.o., registration number 47780738, based in Sobotecká 836, 511 01 Turnov, registered in the Commercial Register kept by the Regional Court in Hradec Králové, File C, insert 12057 ("Seller") and the buyer ("Buyer"), together with the Seller referred to as ("Parties").
- 1.2 These Conditions regulate all legal relations established by a purchase contract concluded between the Parties ("Purchase contract") regarding delivery of goods as specified in the Purchase contract ("Goods").
- 1.3 By signature, or more precisely by conclusion of the Purchase contract, the Buyer explicitly affirms that it was acquainted with the Conditions, which hereby became binding for it.

### **2. Purchase Contract**

- 2.1 Purchase contract is for the purposes of these Conditions considered as concluded at the moment:
  - a) of signing the written contract, which incorporates description and price of Goods, by both Parties; or
  - b) when the Seller accepts the order of the Buyer in writing, electronically, impliedly or in other similar way, the order contains description and price of Goods and is accepted in a way not raising doubts about the fact that the order terms of the Buyer are acceptable for the Seller. Inactivity of the Seller can on no account be regarded as an acceptance of the order of the Buyer; or
  - c) when the Buyer accepts the offer of the Seller, which was sent, told, transmitted or made available in any other way.
- 2.2 Offer of the Seller is under no circumstances considered as irrevocable, the Seller reserves the right to complete, change or cancel the offer presented to the Buyer at any time, also the Seller reserves the right to set a time limit of the offer, during which the Buyer (in case it is interested in conclusion of the Purchase contract) is obliged to accept the offer.
- 2.3 If the circumstances change after the conclusion of the Purchase contract by reasons on the side of the Seller insomuch that the fulfilment of the Purchase contract becomes onerous for the Seller, it is entitled to adjust the Purchase contract adequately, in particular in the section related to the goods purchase price. As a change of circumstances by reasons on the side of the Seller is for the purposes of the Purchase contract and the Conditions considered particularly the state, when the information contained in the order of the Buyer, on the basis of which the Purchase contract was concluded, turn out to be untrue, inaccurate, incomplete, confusing, deceptive or misleading. If the change of circumstances in the sense of the previous sentence is so significant that the change constitutes particularly serious disproportion under the rights and obligations of the Seller by disadvantaging the Seller by disproportionate increase of costs for the delivery of Goods, the Seller is entitled to claim the reopening of the Purchase contract negotiations towards the Buyer, where it is evident that the Seller could not reasonably presuppose, neither influence the change and it became known to the Seller only after conclusion of the Purchase contract. Application of this right entitles the Seller to postpone the delivery of Goods to the Buyer until the agreement on the change of the Purchase contract is reached and such fact rules out delay on the side of the Seller.
- 2.4 The Buyer is not entitled to transfer any rights and/or obligations resulting from the agreements concluded with the Seller to third parties without a prior written permission of the Seller.
- 2.5 In case that any of the regulations of the Purchase contract prove to be invalid, other regulations of the Purchase contract remain valid and the Parties obligate to conclude a relevant addendum to the Purchase contract corresponding with the sense and purpose of such invalid regulation in accordance with Czech law.
- 2.6 In case that the Purchase contract does not stipulate differently, the Purchase contract is considered as concluded between the businessmen in the exercise of their business activities.
- 2.7 The sellers is entitled to withdraw from the Purchase contract in case that:
  - (a) The Buyer finds itself in a bankruptcy or becomes overindebted;
  - (b) The Buyer significantly breaches this Purchase contract.
- 2.8 Withdrawal from this Purchase contract must be performed in writing and must be delivered to the Buyer. Effects of the withdrawal come about for the Buyer on the day of delivery of the written withdrawal.
- 2.9 Entitlement to damages and/or contractual penalties remain untouched by withdrawal from the Purchase contract.

### **3. Goods**

- 3.1 For the purposes of these Conditions and the Purchase contract, Goods are understood in the amount, quality, rendition and with potential specific features as defined in the Purchase contract.
- 3.2 If the Buyer does not explicitly specify requirements on the attributes of the Goods, the Parties rule out the right of the Buyer to demand any claims on the grounds that the supplied Goods did not correspond with its purpose or requested specifications.
- 3.3 Quality of the supplied Goods will be in accordance with technical conditions, eventually with approved reference samples, provided that these will be agreed in writing by the Buyer and the Seller prior to conclusion of the Purchase contract.
- 3.4 The Buyer is obliged to store the Goods in compliance with the Seller instructions. If such instructions do not exist, the Buyer is obliged to store the Goods in compliance with the CSN 640090 - Plastics Products Storage or in a way appropriate to the nature and specificity of the Goods.
- 3.5 Proprietary right passes to the Buyer at the moment of proper payment of the Goods price.

### **4. Packaging**

- 4.1 Goods are delivered in a package that is fit for arranged type of Goods and for arranged transport conditions so that any damage during transport to agreed place of destination is prevented.
- 4.2 Choice of a type of wrapping and way of its application to protect the Goods is within exclusive authority of the Seller, unless the Purchase contract states differently.

- 4.3 If the Seller stipulates so in the Purchase contract, the Buyer is obliged to return undamaged packages to the Seller that were used during the Goods transportation to place of destination set by the Buyer, unless they were provably damaged in the course of transportation without a fault on the side of the Buyer.

## **5. Purchase Price and its Payment**

- 5.1 Agreement concerning the price of Goods is regarded as a basic condition, the Purchase contract is not concluded without its arrangement (or at least assessment of the way of its additional determination).
- 5.2 Purchase price will be paid by transfer to the Seller's account stated in the Purchase contract or to a different account stated on the tax document issued by the Seller.
- 5.3 The Seller reserves the right to add a VAT, customs duty and alternatively other taxes and charges in the amount set by legal regulations to the payments stated in the Purchase contract at the moment of fulfilment.
- 5.4 Price for Goods is considered paid at the moment, when it is credited to the Seller's account in full.
- 5.5 In case of the Buyer's delay of payment for the price of Goods or alternatively in case of other financial fulfilment delay agreed in the Purchase contract, the Seller is entitled, without sending the Buyer a previous reminder, to claim a contractual penalty from the Buyer of 0.2% of the outstanding (not-paid) amount for each, albeit only commenced, day of delay. This does not affect the entitlement to compensation for damage.
- 5.6 If the Buyer is or finds itself in a delay with fulfilment of any of its obligations towards the Seller following from the Purchase or other contract concluded with the Seller, such actuality excludes delay of the Seller towards the Buyer following from the Purchase or any other contract concluded between the Parties. In this case, the Seller is particularly entitled to suspend any delivery of Goods to the Buyer until the Buyer's obligations, which are the basis for the delay, are fulfilled.

## **6. Deliveries**

- 6.1 Unless stated in a different way in the Purchase contract, the Goods delivery time, possibly stated in the Purchase contract, is considered only as approximate and its breach cannot be regarded as a Purchase contract breach.
- 6.2 If the Seller supplies bigger amount of Goods than ordered by the Buyer, the Purchase contract is concluded also for this redundant amount, unless the Buyer refuses it without undue delay.
- 6.3 The Seller is entitled to supply Goods in partial deliveries, possibly even before set delivery time and the Buyer is obliged to accept such fulfilment.
- 6.4 If the Buyer does not accept the Goods or does not take the Goods within a pre-arranged term, the Seller is entitled to charge the Buyer with contractual penalty of CZK 500 a day for each this way non-taken palette of Goods.
- 6.5 Place of delivery of Goods is determined by the Purchase contract.

## **7. Defects, Warranty and Complaint**

- 7.1 The risk passes to the Buyer as from the time it accepted the Goods. The same implies, if the Buyer does not accept the Goods, even though the Seller enabled it to handle the Goods.
- 7.2 The Buyer is obliged to inspect the Goods with due care and attention right after it is enabled to handle the Goods.
- 7.3 If the Goods do not have the qualities stated in the Purchase contract, they are regarded as defective.
- 7.4 Defective performance right of the Buyer can be conferred only by a defect, which the Goods have during the changeover of the risk to the Buyer, unless the Seller provides the Buyer with warranty.
- 7.5 Warranty is provided only, if the Purchase contract expressly states so and only on conditions and in the extent stated by the Purchase contract.
- 7.6 The Buyer does not have the right of defective performance, provided that it is a case of defect, which the Buyer must have had recognized by making common effort already during the conclusion of the Purchase contract or more precisely during the inspection of Goods performed with due care and attention.
- 7.7 Parties explicitly exclude responsibility of the Seller for defects of Goods, which result from inappropriate instruction of the Buyer or things or samples presented to the Seller from the Buyer's side.
- 7.8 Parties declare that defects are comprehensively regulated within these Conditions and thus exclude the use of § 2099 - 2104 NCC.
- 7.9 Parties agreed to limit the damage, which would originate to the Buyer on the basis of provable breach of the Purchase contract from the side of the Seller by the amount corresponding with the amount of the purchase price agreed in the Purchase contract.

## **8. Information and Confidentiality**

- 8.1 The Buyer is obligated to protect sensitive information, which are for the purposes of the Purchase contract and these Conditions understood as all things, facts and information of business, production, technical and other nature that have real or at least potential material or non-material value, which will be shown, sent, handed over or anyhow made accessible to the Buyer in any form, tangible or intangible, provided that they are not commonly accessible in ordinary business circles or are not well-known facts and should, in accordance with the will of the Seller, remain secret ("Information").
- 8.2 The Buyer is obligated not to use or misuse the Information to its advantage, protect them from making them accessible to third parties, unless an obligation of making them accessible is ordained by an authorised body of the state administration or by a generally binding legal regulation
- 8.3 The Buyer is particularly obliged to:
- use the Information only for the purposes related with the preparation and fulfilment of the Purchase contract;
  - not to disseminate, reproduce, multiply and make the Information accessible to any third party without a written consent from the Seller's side;
  - secure so that the Information are duly safeguarded and registered, the Buyer also adopts effective measures to prevent the leakage of Information;

- d) restrict the amount of employees or other persons, who come into contact with the Information, to necessary minimum.
- 8.4 In case that the Buyer necessarily needs to present any Information to a third party in order to fulfil the obligations of the Purchase contract, it can do so only with a prior written consent of the Seller on condition that the Buyer will conclude a written contract with the third party, which will ensure the protection of Information in at least the same extent as in case of these Conditions and provided that the Buyer will be the intervener of such a contract.
- 8.5 To exclude all doubts, it is stipulated that the provision of Information to the Buyer does not give the Buyer any right to licence, trademark, patent, use or spread of copyright work, nor any other right from the area of intellectual or industrial ownership.
- 8.6 If the Buyer within the fulfilment of the obligations of the Purchase contract upgrades, modifies, derives or anyhow contributes to any improvement of the goods or any other inventions of utilizable or industrial samples, procedures, methods, technologies or methods created by the Seller ("Know-how") and handed to the Buyer from the side of the Seller, the Seller acquires the right to use them without using a special contract on the day of takeover of the materially captured result that has arisen as a consequence of the fulfilment of the obligation of the Purchase contract.
- 8.7 All Information will remain in the possession of the Seller and the Buyer explicitly obligates to return the Information to the Seller (provided that it is possible by definition) without undue delay:
- (c) after the termination of the Purchase contract;
  - (d) after sending a written call from the Seller's side that is directed to request all or part of the Information;
  - (e) after finding out that the Information will not be necessary for the fulfilment of the obligations of the Purchase contract henceforward contract henceforward.
- 8.8 If the Buyer breaches the obligation stated in this article 8, the Seller is entitled to demand payment of the contractual penalty of CZK [300 000,-] from the Buyer for each individual breach of obligations. Entitlement to damage compensation is not affected by the regulation about the contractual penalty

## **9. Regulation on Delivering**

- 9.1 If a document delivery to the other Party is required, this condition is considered as performed by
- (i) sending the document by recorded delivery via postal carrier, while in case of returning of the consignment, the third day after sending the document is regarded as the day of delivery;
  - (ii) personal handover in return for a written receipt of document;
  - (iii) sending via different carrier in return for a written receipt of document;
  - (iv) electronic delivery via data box.
- 9.2 Documents are to be delivered to the addresses of the Parties stated in the business register, unless any of the Parties inform the other Party in writing about a different address.

## **10. Dispute Settlement**

- 10.1 All disputes arisen on the basis of the Purchase contract or in connection with fulfilment in compliance with the Purchase contract will be solved either before the Czech Arbitration Tribunal attached to the Economic Chamber of the Czech Republic and the Agricultural Chamber of the Czech Republic (hereinafter referred to as "Court") by general arbitral rules established for proceedings before this court or ordinary court of the Czech Republic, depending on the choice of the suing Party.
- 10.2 In case of proceedings before the Court, these proceedings will be performed by three (3) adjudicators. Each Party will nominate one adjudicator and these adjudicators will nominate the third presiding adjudicator. If the Parties do not nominate their adjudicator within ten (10) days from the date of delivery of the Court notice or these adjudicators do not nominate the presiding adjudicator, the presiding judge of the Court will nominate the adjudicators or the presiding adjudicator. The place of arbitration proceedings will be in Prague. The decisions of the court will be definitive and binding.
- 10.3 In case of proceedings before Court, in the extent permitted by rules of the Court, the Party, in which favour it will be ruled at any arbitration proceeding on the basis of the Purchase contract, is always entitled to compensation of costs by the side found against, inclusive of all charges for the arbitration proceedings, any special costs of the Court and all costs of the Party, in which favour it was ruled, inclusive of any legal fees spent in relation with the arbitration proceedings in amounts really spent irrespective of the fact, whether all these fees are higher than the fees calculated in accordance with the provision No. 177/1996 Coll. of the Ministry of Justice of the Czech Republic or any other relevant legal provision. In the extent, in which such rules allow, adjudicators will thus arbitrate in compliance with this agreement between The Parties in respect of the payment of costs to the Party, in which favour it was ruled, and the verdict of payment for all these compensations to the Party, in which favour it was ruled, will be stated in the decision of the adjudicator.

## **11. Final Provisions**

- 11.1 These Conditions constitute an integral part of the Purchase contract. In case of discrepancies between provisions of the Purchase contract and these Conditions, provisions of the Purchase contract are decisive.
- 11.2 All terms stated in these Conditions with initial capital letters have the same meaning stated by a relevant definition of such term for the whole contents of these Conditions, unless such use would be univocally contrary to the context of these Conditions.
- 11.3 Unless indicated otherwise in the Purchase contract or these Conditions, this Purchase contract or these Conditions can be changed or complemented only via written, continuously numbered addenda, which must be marked as such and legitimately signed by both contractual Parties. If one of the Parties submits a proposal of such addendum to the Purchase contract, the other Party is obliged to express on the addendum within 14 days from the date of delivery of such addendum. During this period the Party that submitted the addendum is bound by it.
- 11.4 Parties agreed that provisions §§ 558 Art. 2, 1740 Art. 3, 1754, 1765, 1766, 1798 - 1801 of NCC are not to be employed for the purposes of these Conditions and the Purchase contract.
- 11.5 The Purchase contract shall take effect on the date if its signing by both Parties.
- 11.6 The Purchase contract and these conditions are governed by Czech law.
- 11.7 Matters not explicitly regulated by these Conditions or by the Purchase contract are governed by the NCC.