

General Conditions of Sale of Fosfa a.s.

Article 1 Scope of application

These General Conditions of Sale (hereinafter the „GCS“) apply in terms of sec. 1751 of the Act No. 89/2012 Coll., Civil Code (hereinafter referred to as “Civil Code”) exclusively to all purchases and supplies of product and/or services concluded between the customer and Fosfa a.s., a company incorporated under the laws of the Czech Republic, with its registered office at Hraniční 268/120, Břeclav, Czech Republic, entered in the Commercial Register of the Regional Court in Brno, ref.no. B 224, company registration number 00152901, VAT identification number CZ00152901, bank contacts: account no. 182690427/0300, IBAN: CZ94 0300 0000 0001 8269 0427, SWIFT: CEKOCZPP (hereinafter “the vendor”) unless otherwise agreed by both parties in writing. Any general terms and conditions of the customer or any other general terms and conditions developed by professional associations that differ from, are in contradiction to or replace these GCS are valid as an integral part of the every single contract between the customer and the vendor only with the prior written consent of the vendor.

If a provision or a part of these GCS proves to be invalid or unenforceable, the validity and enforceability of the remaining provisions/parts shall not be affected.

Article 2 Validity of contract and conclusion

All rights and obligations of the parties become binding only upon conclusion of a written contract, including contracts in form of the customer’s acceptance of vendor’s quotation, or in form of vendor’s confirmation of customer’s order. These written contracts shall incorporate or supersede all prior agreements, arrangements, representation or warranties between the parties. These GCS shall constitute an integral part of all contracts between the parties. All negotiations on terms of the contract may be terminated by the vendor any time before its execution; sec. 1729 of the Civil Code shall not be applied.

All written contracts shall be executed by the members of the statutory body of the vendor or by persons expressly authorized by these members.

The customer shall provide the vendor with the copy of extract from the Commercial register (or any other official record) that shall not be older than 3 month. If the business relationship between the parties is based on recurrent orders this obligation shall apply only to the first of them or in case of changes. The customer acknowledges liability for damages arising from the breach of this obligation.

In case the contract is concluded in form of acceptance of the vendor’s quotation, the customer shall accept the quotation within 3 working days unless otherwise stated in the vendor’s quotation. The customer acknowledges the vendor is no longer bound by his quotation after the limitation period.

The customer’s order shall be irrevocable in terms of the sec. 1736 of the Civil Code within 20 days after delivery of the order to the vendor.

Article 3 Calculations

Calculations shall be made on the basis of the prices which apply on the day of delivery. In the event of a price increase the customer shall be entitled to dissolve the sale agreement within 14 days, following a written notification of the price increase. This right to dissolve the agreement shall not apply in the case of price increases which arise as a result of an increase of transport or customs rates.

For the calculation of goods which are invoiced on the basis of weight or volume, the weight or volume upon dispatch shall apply.

Article 4 Payment

Unless otherwise agreed in written, the payment shall be done in advance (i.e. before delivery of the goods).

Costs which are incurred as a result of the payment, such as, for example, the costs charged by the bank upon payment of the invoice amount, payments charged to a correspondent bank and the costs incurred when shipping documents are offered, shall be for the account of the customer.

The customer may only invoke a claim based on compensation of debts either if its counter claim is acknowledged by the vendor or if the well-foundedness of that claim can be established in a simple manner.

Article 5 Late payment

The customer shall pay interest at 25 % per annum on delay in paying for the goods from the day following the date or the end of the period for payment fixed in the contract/agreement, due automatically without notice and without prejudice to any claim for damages.

Furthermore, the greater of (i) 40 euros or (ii) the actual costs of the recovery of the original invoice (to the extent reasonably incurred) shall be payable.

If the customer fails to fulfil any payment obligation, such failure is a fundamental breach of the sale agreement.

If:

- a. the customer is in default and/or
- b. the financial standing of the customer constitutes a justifiable cause for concern,
the vendor shall, without being obliged to pay any compensation of damages and without prejudice to its other rights, have the right:
 1. to demand payment in advance prior to delivery of current orders or the provision of security;
 2. to postpone or suspend the performance of the sale agreement in whole or in part;

3. to revoke payment terms which have been agreed upon, whether or not in other agreements, as a result of which all (other) outstanding claims shall be immediately claimable;
4. to postpone or suspend the performance of its obligations under any and all other agreements with the customer.

Article 6 Time of delivery

Agreed terms of delivery shall never be considered as fundamental terms, unless express agreement to the contrary has been made. In the event of late delivery the customer must therefore give the vendor a written notice in default.

Article 7 Force-majeure

The vendor shall not be in breach of any of its obligations under the sale agreement, where failure to perform or delay in performing any obligation is due, wholly or in part, directly or indirectly from any force majeure event (as hereinafter defined). This shall apply even though any such cause exists at the time of the order or occurs after the vendor's performance of its obligations is delayed by another cause. Force majeure events shall mean events such as the following, this enumeration not being exhaustive: lightning, storms, floods, earthquakes, and other natural disasters; epidemics; accidents affecting the manufacture or storage of the products, total or partial interruption of supplies of raw materials or energy, breakdown of machinery; labour difficulties like strikes, slow-downs, lockouts, or labour shortages; war, civil upheavals and disturbances, blockades, vandalism and riots; an act or omission of any governmental or administrative authority, including embargoes, licensing controls or production or distribution restrictions; any cause beyond the vendor's reasonable control.

If the force majeure event subsists for longer than a month each of the parties shall be entitled - to the exclusion of further rights - to terminate the sale agreement.

Article 8 Dispatch

The vendor shall, taking the nature of the goods which are to be transported into account, choose the most usual route and the most usual method of dispatch. The vendor shall take the wishes of the customer into account as far as possible. Extra costs caused as a result of this shall be for the account of the customer. The vendor shall not be liable for delays which arise as a result of this.

Article 9 Claims

The vendor warrants that the quality of the products is exclusively consistent with the technical specifications of the vendor, excluding any other warranty and/or liability.

The weight and measures of the goods at the moment of dispatch will attest to the quantities delivered. The quantitative tolerance of the delivery shall be plus or minus 0,5 % calculated on the number of units mentioned in the order.

The customer must examine the goods and investigate whether the goods which have been delivered are in accordance with the sale agreement.

The customer may not invoke a claim based on the fact that the goods do not conform with the sale agreement if it fails to make this investigation, or does not notify the vendor of the defects within the terms mentioned below. Visible defects must be reported in writing within 14 days after receipt of the goods, and hidden defects immediately after the customer has discovered them, but at the latest six months after delivery of the goods. Complaints must be submitted in writing together with a statement of the order details, invoice and bill of lading numbers and also, if known, the charge numbers. Goods in respect of which a claim has been made may only be returned with the express permission of the vendor.

In case of well-foundedness and properly submitted complaints the vendor shall, as it chooses taking the interest of the customer and the nature of the complaint into account, be obliged to:

- deliver missing goods
- give a price reduction
- repair the goods which have been delivered
- replace the goods which have been delivered
- pay back the purchase price in return for the return of the goods which have been delivered.

The vendor shall make this choice within 14 days after a correct notification of the complaint and then comply with its obligations within a reasonable term; failing this the customer shall be entitled to choose from the above mentioned obligations of the vendor.

Article 10 Special instructions and government regulations

For a number of the goods sold by the vendor written instructions for storage, working or processing, use or application are given to the customers. To the extent that the customer re-sells the goods which have been delivered - whether or not having worked or processed them - it shall provide its contract partners with the said instructions, standards and acceptance regulations, to the extent that they are applicable. The vendor shall not be liable for damages which have arisen as a result of incorrect storage, processing, use or application of the goods which have been delivered. Nor shall the vendor be liable if the customer does not comply with any government regulations.

Article 11 Liability

The liability of the vendor by virtue of non-delivery or non-timeous delivery or defects in the goods which have been delivered shall be limited to the net invoice value of the goods concerned, however up to a maximum of the amount which the vendor is able to recover in that respect from third parties or insurers.

The same limitation of liability shall apply if the vendor is held liable by the customer by virtue of reasons other than under the sale agreement.

Article 12 Reservation of title

The vendor reserves title to the goods until payment in full of the purchase price is made and until the customer has complied with everything which the vendor has or may in future have to claim from the customer by virtue of all (earlier or later) sale agreements with the customer and/or services or work provided by the vendor within that framework. Consequently, in a case of late payment or non-payment (in whole or in part) the vendor reserves the right to require on first demand and without prior formal notice, the delivered goods to be returned to it. The customer shall therefore not grant any rights to third parties that might limit the exercise of the provisions of this condition. If third parties wish to vest or invoke any right in the goods which fall under a reservation of title, the customer shall be obliged to immediately notify the vendor of this in writing.

All costs of returning the goods will be borne by the customer.

The customer shall be obliged to provide its cooperation within reasonable limits for all measures which the vendor wishes to take in order to protect the goods which have been delivered and/or its reservation of title to those goods.

As long as the reservation of title applies the customer shall only be entitled to work or process or re-sell the goods which have been delivered itself within the normal operation of its business.

After working or procession of the said goods the vendor shall become a (co-)owner of the goods which have been formed or partly formed therefrom and the customer shall automatically proceed to hold these on behalf of the vendor. If, notwithstanding the provisions in the preceding paragraph, the vendor does not acquire the title to the goods which have been formed by the customer, the customer shall, upon the first request of the vendor, provide all necessary cooperation which is required to vest a lien, whether or not without possession, (which also accrues to other entitled parties in applicable cases) in the goods concerned for the benefit of the vendor.

If the customer does not, or does not timeously, comply with its payment obligations, or if there is a well-founded fear that this will occur, the vendor shall be entitled to remove goods which have been delivered which are encumbered by the reservation of title referred to in paragraph 1, the goods referred to in paragraph 5 and also the goods referred to in paragraph 6 which are encumbered by a lien without possession, or to have these removed. The customer shall be obliged to provide all cooperation for this, failing which it shall be obliged to pay to the vendor a contractual penalty of 10 % of the amount which it owes to the vendor.

The risk in the goods shall however pass to the customer upon delivery.

Article 13 Marks

If the goods which have been delivered have been equipped with a mark the customer shall only be permitted to use this mark in connection with the Product filled therewith or manufactured therefrom with the express written permission of the party which has the rights to this mark.

Article 14 Transport material and packaging

Borrowed packaging must be returned in proper condition and without Product remnants at the latest six months after delivery, carriage paid. If the packaging is not returned within the term

laid down or is damaged and/or has Product remnants, the costs of replacement or repair and/or cleaning and removal respectively shall be charged to the customer.

Packaging which has passed over to the ownership of the customer may only be used for purpose other than that for which it was intended if the company name and the logo of the vendor, its trademarks and other references to the vendor have been made unrecognizable.

Tanker vehicles, which are the property of or which have been made available by the vendor, must be emptied immediately after arrival.

In the event of delivery in a tanker vehicle of the customer this must be made available in a ready-to-fill condition.

The customer is responsible for compliance of the transport material and packaging which it has provided with the statutory requirements and standards for safe and proper transport. The vendor is entitled to refuse to load or fill material and packaging which has been made available by the customer if this material or this packaging does not comply with the said requirements and standards. In the event of such a refusal the vendor shall not be liable for the consequences which arise from the delay.

Article 15 Incoterms

Unless the parties agreed on other terms, the INCOTERMS published by the International Chamber of Commerce in Paris, latest edition at the time of the sale, shall be applicable.

Article 16 Applicable law and competent court

The law of the Czech Republic shall be applicable to all sale agreements. All disputes arising from the a sale contract and/or in connection with it shall be finally decided by the Arbitration Court attached to the Czech Chamber of Commerce and the Agricultural Chamber of the Czech Republic according to its Rules by three arbitrators in accordance with the Rules of that Arbitration Court.

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