

# TERMS AND CONDITIONS

## 1. INTRODUCTORY PROVISIONS

- 1.1 These Terms and Conditions shall apply to all legal relations arising from any sale or purchase of goods by TESCOAN Brno, s.r.o. (hereinafter referred to as "Terms and Conditions") if expressly agreed between the parties in the Purchase Agreement or Framework Purchase Agreement (hereinafter referred to as the "Agreement"). Terms and Conditions are available at the website [www.tescan.com](http://www.tescan.com). Such terms and Conditions shall be applied in their entirety unless otherwise agreed.
- 1.2 Divergent provisions in the Agreement shall prevail over these provisions. The Terms and Conditions shall prevail over legal provisions of a non-compulsory nature.

## 2. FORMATION OF AGREEMENT

- 2.1 Agreement arises on the basis of a written order placed by the buyer and unreserved confirmation of the order by the seller delivered to the buyer within the period specified in the order, or in the alternative, within one (1) working day of seller's receipt of order unless agreed otherwise. Any change in the order made by the seller does not constitute an Agreement. In such a case it is only a proposal for conclusion of the Agreement submitted by a seller to the buyer and the Agreement only arises by the day of delivery of buyer's consent regarding this proposal to the seller.
- 2.2 Contractual parties, once the contract is concluded, agree to exclude section 1740 (3) and section 1751 (2) of the Civil Code, and stipulate that Agreement is concluded even where the expression of the will of the contractual parties is not fully consistent.
- 2.3 Contractual parties are obligated to ensure that all correspondence, invoices, bills of delivery and documents related to the order bears the Order reference number.
- 2.4 Buyer shall provide data relevant to the order, at least:
  - 2.4.1 Seller's and buyer's details, i.e. name of the company, its location and identification number,
  - 2.4.2 specification for required goods,
  - 2.4.3 quantity of good required,
  - 2.4.4 unit price or the total item price.
  - 2.4.5 Requested delivery date.
- 2.5 Only after written confirmation of order receipt, the buyer can seek, without charge, withdrawal of the order, in writing or by telephone, with subsequent written confirmation.
- 2.6 Deviations from, and additions to the order shall be valid only if, and to the extent that, they are expressly confirmed in writing by the buyer.
- 2.7 Subsequent amendments of, or additions to, the order shall be subject to written confirmation by both parties.
- 2.8 An order or order confirmation sent by email or fax is to be regarded as being valid, in the same manner as such an order or confirmation sent in hard copy.

## 3. PAYMENT

- 3.1 Seller issues an invoice, which complies with the requirements of an accountable receipt, and contains elements of a tax document
- 3.2 The invoice will be due for payment within 30 days from the invoice date specified.
- 3.3 If an invoice is issued in a foreign currency, and the buyer is a natural person who is a Czech resident or a Czech domiciled legal entity, the invoice shall be issued in a foreign currency including VAT calculation. VAT shall be calculated also in CZK using the exchange rate declared by the Czech National Bank in force as at the date of the tax liability. Buyer shall pay VAT in CZK to the bank account stated on the invoice. Pro-forma invoice VAT vice-versa shall be paid in foreign currency.
- 3.4 The invoice shall be considered fully paid when the full amount is credited to the bank account of the seller.

- 3.5 The seller is entitled to charge interest on any late payment and the buyer is obliged to pay such an interest; the level of interest is established by the Government's regulation fixing the rate of interest under the Civil Code, as amended, or under the applicable law to substitute the aforementioned rate in a relevant range.
- 3.6 Seller is entitled after prior written notice to stop further deliveries or withdraw from the contract in case the Buyer is in default of payment. In such a case the seller shall not be rendered liable for damages for breach of contract.
- 3.7 One invoice may refer to five purchase orders.

## 4. TOLERANCE AND CONTRACTUAL PENALTY

- 4.1 Obligation of seller to deliver agreed amount of goods to the buyer and obligation of buyer to take over agreed amount of goods is considered fulfilled only if the actual amount of delivered / take over goods differs not more than 5% as agreed previously.
- 4.2 Purchase price means total price for complete products including accessories, packaging, palletization and packaging and labelling costs, transportation fees and cost of documentation unless otherwise agreed for every single case.
- 4.3 If seller delivers a smaller amount of goods than agreed by the purchase agreement reduced of tolerance according to article 1.4 hereof seller undertakes to pay, upon writer notice by the buyer, contractual penalty of 2% of the total value of the order reduced of tolerance according to article 4.1 of this Terms and Conditions.
- 4.4 If the buyer take over a smaller amount of goods than agreed by the purchase agreement reduced of tolerance according to article 4.1 hereof buyer undertakes to pay, upon writer notice by the seller, contractual penalty of 2% of the total value of the order reduced of tolerance according to article 4.1 of this Terms and Conditions. a smaller amount of goods than agreed by the purchase agreement.
- 4.5 Buyer is not obliged to take over the goods if not delivered in a timely and due manner. Buyer is entitled to take over whole delivery or to take over such delivery partially or have right to refuse completely. The costs of (repacking, storage, etc.) will be borne in such circumstances by the seller.
- 4.6 By settlement of contractual penalty according to prior provisions, the obligation to deliver / take over remaining above mentioned goods is not terminated unless agreed otherwise in written between seller and buyer.
- 4.7 Obligation to pay penalty upon the prior provisions does not arise if the breach of obligations of any contractual party resulted from breach of obligations of the other party or the breach was due to a circumstances excluding liability, i.e. extraordinary, unpredictable and unavoidable external circumstances arising independently of the will of the infringing party.

## 5. POSSESSORY TITLE TO GOODS AND DANGER OF DAMAGE TO GOODS

- 5.1 Buyer acquires possessory title to goods by (i) takeover of the purchase, or, if not timely (ii) although it is for the buyer to take possession of the goods fails to do so.
- 5.2 Should the buyer process the goods prior to passage of title to the buyer, or prior to full payment of the purchase price of the goods to the seller, as the case may be, the seller shall become the owner of the buyer's products manufactured from the seller's goods. In a case that goods of other owners or goods owned by the buyer is involved in the processing of the buyer's goods resulting in a product, the seller shall not become the joint owner of the finished products.
- 5.3 Should the buyer be in default of payment of any obligations towards the seller, the seller may request surrendering of goods or products, to which he holds title hereunder, without such an act constituting withdrawal from the Agreement.

- 5.4 The buyer may not pledge the goods or products, the owner or joint owner of which is the seller, for the benefit of third persons or create any other right with respect to such goods or products which would in any way whatsoever restrict or exclude the seller's title, or to permit the creation of a charging lien to such goods or products, until the moment of full payment of the buyer's obligation to the seller. Buyer shall also not be entitled to pledge or encumber in any other way whatsoever the claims for payment of the purchase price, if any, towards third persons if the seller is the owner or a joint owner of the goods or products hereunder.
- 5.5 If seller is, according to sales agreement, obliged to pass goods over to a carrier at a certain place for transporting goods to buyer, any risk of damage to goods passes to buyer by passing goods over to the carrier at agreed place.
- 5.6 If seller is, according to sales agreement, obliged to send goods, but not obliged to pass goods over to a carrier at a certain place, any risk of damage to goods passes to buyer by the moment of passing goods over to the first carrier for transporting goods at a destination place.
- 5.7 Damage to goods, caused after passing risk of damage to goods to buyer, does not release buyer from liability to pay the purchase price to seller.

## 6. SHIPPING TERMS AND CONDITIONS

- 6.1 Deliveries before the agreed delivery date or partial deliveries shall require buyer's prior written consent. Where preterm deliveries occur without buyer's prior written consent, buyer shall be entitled to charge seller for storage of the goods. Seller is obliged to at its own expense ensure compliance with all quality measures, and delivery date.
- 6.2 Seller is obliged to deliver the goods at the place specified in the order with a corresponding delivery note. If a place of delivery is not specified in the order, it is agreed that the delivery term CPT buyer's enterprise INCOTERMS 2010 shall be applied.
- 6.3 In instances where there is a delay in delivering, buyer is entitled to charge a contractual penalty for undelivered goods according to the purchase agreement, in the amount of 0,05% of the purchase price including VAT for each day of the delay, or part thereof. The contractual penalty provision does not deprive consumers of compensation for damages due to failure to deliver agreed amount of goods. Delays in delivery periods longer than 30 days constitute a fundamental breach of contract. The application of the contractual penalty does not relieve the Purchaser of the right to compensation for all ancillary expense incurred by the Purchaser as a result of the delay of the delivery.
- 6.4 Seller is obliged to cover the insurance for goods throughout, including storage and shipment to the buyer.

## 7. LIABILITY FOR DEFECTS OF GOODS AND WARRANTY

- 7.1 The Seller provides the Buyer with a guarantee of the quality of goods for the period of 24 months since the delivery of the goods to the buyer. The warranty period begins with the delivery of the ready products. "Quality Guarantee" means that the goods will be eligible for a period of warranty, to be used for the agreed or usual purpose, or maintain agreed or usual characteristics.
- 7.2 If delivered goods do not meet conditions set in sales agreement as to amount, quality, make or packing, such goods are defective. In case of damage of the goods or other obvious damages, buyer is obliged to record the damage on the carrier shipping and to accept the delivery with reservation or not to accept the delivery as a whole. In case of visible damage on packaging or packaging tape, buyer is obliged make a notice to the transportation documents or to refuse the delivery as a whole. Buyer is obliged to prove defects of goods to seller in a verifiable way.
- 7.3 Buyer is obliged to inspect goods without unreasonable delay after passing risk of damage to goods or after their delivery on a destination place. The inspection must adequately reflect characteristics of goods. Buyer is obliged to inform seller of

defects found in the course of goods inspection, in writing and within 7 calendar days after the inspection.

- 7.4 Within 3 days after the service of notification concerning the defects found by buyer, seller shall suggest next steps to resolve complaint, or refuse to resolve it. Seller is entitled to refuse complaint after this time limit as well if it proves to be wrongful.
- 7.5 Buyer is obliged to store defective goods that are cause of complaint, separately from other goods and is not allowed to handle them in a way that might make mitigation of alleged defects more difficult or not possible to seller. Seller is entitled to send its representatives to the buyer to check complaint, and buyer is obliged to allow the representatives of seller an inspection of defective goods.
- 7.6 If seller meets a claim and allows it in writing, buyer is entitled to ask delivery of missing or defective goods or discount of the purchase price. Buyer can withdraw from agreement only if sales agreement was broken by delivery of defective goods in a substantial way. By fundamental breach of the agreement is meant repeated delivery of defective goods.
- 7.7 In case of delivery of substituted goods or withdrawal of buyer from sales agreement, buyer is obliged to return goods to seller in the same condition as when taken over from seller. Buyer is not entitled, unless having an explicit written consent from seller, to return goods to seller before the conclusion of the complaints procedure.
- 7.8 Buyer by takeover of the goods expressly consents to the Terms and Conditions; the current version is available at the website of the seller [www.tescan.cz](http://www.tescan.cz) ([www.tescan.com](http://www.tescan.com))

## 8. WITHDRAWAL FROM SALES AGREEMENT

- 8.1 Seller and buyer are entitled to withdraw from sales agreement in circumstances other than those defined in these general terms and conditions, if the other contractual party commits substantial breach of obligation resulting for the party from sales agreement. Fundamental breach of contractual obligations is considered to encompass:
  - 8.1.1 Buyer in default with coverage of purchase price, or any parts payable according to sales agreement or these general terms and conditions.
  - 8.1.2 Delivery delay of the supplier exceeding the period of one month.
  - 8.1.3 Buyer in default, whilst taking goods.
- 8.2 Contractual party is entitled to withdraw from the Agreement in the event that that the other contractual party as a debtor submits an insolvency petition in accordance to the article 98 of Act No. 182/2006 Coll. Bankruptcy and Settlement (Insolvency Act) as amended (hereinafter referred as "Insolvency Act"); insolvency court decide on bankruptcy petition within three (3) days from the commencement of insolvency proceedings; Insolvency court will make and Insolvency decision pursuant to the article 136 of Act on Bankruptcy and Settlement; Insolvency court rejects the insolvency petition for lack of assets of the opposing party; Insolvency court made other party bankrupt; or the decision on termination of a contractual party by both a voluntary and compulsory basis (excerpt business transformation case).
- 8.3 If the additional period allotted by one of the contractual parties to the other contractual party to fulfil required contractual obligations, the other contractual party is in default with, vainly lapses, withdrawal from the agreement does not occur, even if the contractual party entitled to the fulfilment of such obligations informs the other contractual party that the additional period will not be prolonged.
- 8.4 Withdrawal from sales agreement comes into effect by service of a notice in writing from a contractual party about withdrawal from the sales agreement to the other contractual party. In case of doubts between parties concerning the date of service of notice about withdrawal from sales agreement, the day of service is considered the third day after mailing such a notice. Notice of

withdrawal from sales agreement must contain the reason for withdrawal presented in specific, clearly enumerated terms.

- 8.5 All rights and obligations of parties resulting from a sales agreement terminated by withdrawal from sales agreement, besides right of damages and contractual penalty and provisions of sales agreement and these general terms and conditions, that concern choice of law, settlement of disputes between the parties and regulation of rights and duties of parties for the case of sales agreement termination.

## 9. DAMAGES

- 9.1 Contractual party which breaches any obligation resulting from sales agreement, is obliged to pay such damages to the other contractual party that were caused by this breach of its obligations.
- 9.2 The Seller is responsible for the damage up to an amount equal to the purchase price. This provision does not apply in case the damage was caused by wilful act.
- 9.3 Obligations to pay damages do not arise if an obligation to pay contractual penalty was created, or if neglect of duty by the obligated party was caused by acts of an injured party, or by lack of cooperation, that an injured party was obliged to furnish. The contractual party which breached of the obligation, is not obliged to pay damages to the other contractual party if it proves that this breach of obligation resulted from operation of circumstances excluding responsibility, or by force majeure.
- 9.4 If breach of any obligation of sales agreement occurs by any contractual parties and damages arise to the other contractual party, or both contractual parties, as a result of such breach of obligation, contractual parties must use all effort and measures to reach an amicable settlement with regard to the damages.
- 9.5 If any of contractual parties withdraws from sales agreement, right for damages arisen as a result of breach of obligation remains preserved.

## 10. FORCE MAJEURE

- 10.1 None of contractual parties is responsible for any neglect of duty from sales agreement besides obligation to pay the purchase price, if this neglect or delay was caused by an obstacle or impediment, that occurred independently of the obligated party's will, and impeded the party in the discharge of its duty, if it is not possible to expect reasonably the obligated party to be able to prevent or overcome this obstacle or its results, and further, that at the moment of obligation creation, this obstacle could not have been really expected by the obligated party (hereinafter referred to as "force majeure "). However the obstacle or impediment, created only at the time of the obligated party's default of discharge of a duty, or created as a result or product of their economic situation, does not exclude the responsibility for discharge of obligation.
- 10.1.1 For purposes of this agreement, if they satisfy presumptions stated in the previous paragraph, force majeure is considered to include: natural disasters, fires, earthquakes, landslides, floods, storms or other atmospheric disturbances and phenomenon of a considerable magnitude, or wars, rebellions, revolts, civil disturbances or strikes, or decisions or legal acts of organs of public authority, regulations, restrictions, prohibitions or other interventions of a state, organs of state administration or self-administration, or explosions or other damages or defects of relevant production or distribution facilities.
- 10.2 The contractual party that broke, breaks or with respect to all known facts expects to break its obligation from sales agreement, namely resulting from force majeure, is obliged to inform the other party of the breach or accident without any delay and exercise all possible effort to prevent and remove such accidents or their results.

## 11. CHOICE OF LAW

- 11.1 Legal relations, with respect to rights and obligations of contractual parties from sales agreement, their securing, alterations and termination, follow exclusively legal order of the Czech Republic, namely Act No. 89/2012 Coll. the Civil Code as amended.
- 11.2 Contractual parties hereby exclude the application of the United Nations Convention on Contracts for the International Sale of Goods and rights and obligations arising from.
- 11.3 Contractual parties further agreed that ordinary commercial practice does not exceed any provisions of the law, even as regards law with no compulsory nature.

## 12. DEALING WITH THROWAWAY PACKAGING

- 12.1 Buyer secures the fulfilment of obligation to use packing waste of packed products according to Section 12 of Act N 477/2001 Coll. to specify packaging as amended.
- 12.2 Buyer declares that packaging meets specifications of Act N 477/2001 Coll. to regulate packaging as amended.

## 13. FINAL PROVISIONS

- 13.1 Provisions of article 1799 and article 1800 of the Civil Code governing the Terms and Conditions of the form contracts which defines incomprehensible terms or clauses which are particularly onerous and impacts upon validity of same, does not apply.
- 13.2 Contractual parties declare that neither one nor other feels to be weaker party and had opportunity to get acquainted with the wording of the agreement and wording of the Terms and Condition, that they understood the content, it is they will to be bound by them, and that they have sufficiently discussed the contractual agreements between themselves. Furthermore, the parties to the agreement declare, that execution of the purchase agreement does not place one of the parties in a disproportionate position pursuant to § 1793 of the Civil Code.