

# General Business Terms and Conditions for the sale of goods by the company ERA a.s.

## 1. Initial provisions

- 1.1. These General Business Terms and Conditions (hereinafter referred to as the “**General Terms and Conditions**”) shall regulate conditions for the sale of goods by the company ERA a. s., registered office at Průmyslová 462, 530 03 Pardubice, reg. no.: 60916427, registered in the Companies Register held by the District Court in Hradec Králové, section B, insert 1141 (hereinafter as the “**Seller**”).
- 1.2. For the purposes of the General Terms and Conditions the below mentioned terms shall have the following meaning:
  - (a) Buyer – the contracting party that is the buyer of the Goods according to the Contract;
  - (b) Civil Code - Act no. 89/2012 Coll., the civil code, as amended;
  - (c) Contract – a written contract for the sale of the Goods concluded between the Buyer and the Seller;
  - (d) Goods – the object of the sale under the Contract;
  - (e) Incoterms – international commercial terms of the International Chamber of Commerce, 2010 edition;
  - (f) Parties – the Seller and the Buyer;
  - (g) Purchase Price – price for the sale and purchase of the Goods.
- 1.3. By entering into the Contract the Buyer confirms that has read the contents of these General Terms and Conditions, fully understands them and agrees with all the rights and obligations set forth herein.
- 1.4. In case of any inconsistency or discrepancy the provisions of the Contract shall take precedence over the provisions of the General Terms and Conditions. The above mentioned shall take precedence over the directory provisions of the Civil Code.
- 1.5. Mutual relationships, which are not defined in the Contract or in these General Terms and Conditions, including conclusion of the respective Contract, its validity and effect, shall be governed by the Civil Code. Application of the United Nations Convention on Contracts of International Purchase of Goods shall not be excluded.

## 2. The Contract

- 2.1. Unless agreed by the Parties otherwise in writing the subject matter of the Contract shall be the obligation of the Seller to deliver the Goods to the Buyer in accordance with the terms of the Contract and transfer the possessory rights to the Goods on the Buyer. The Buyer shall be obliged to accept the Goods delivered in accordance with the Contract and pay to the Seller its Purchase Price.
- 2.2. The Contract can be concluded in the form of a written agreement of both Parties or in the form of a written acceptance of the Seller’s written offer by the Buyer.
- 2.3. If the Buyer encloses its own terms and conditions to the Contract the Seller shall be not bound by such terms and

conditions unless expressly accepted in writing. In such case the Contract and the General Terms and Conditions shall take precedence over the Buyer’s terms and conditions. The Section 1751 Subsection 2 of the Civil Code shall be disregarded.

## 3. Requirements for the Goods

- 3.1. The Seller shall be obliged to deliver the Goods to the Buyer in quantity and quality according to the Contract.
- 3.2. Should the quality be not defined in the Contract the Seller shall deliver the Goods in standard quality with usual (standard) equipment. The Goods shall comply with all technical requirements set forth in the Contract as well as relevant and applicable technical and safety standards concerning the Goods valid within the territory of the Czech Republic, and if necessary, within another country based on the agreement between the Parties.
- 3.3. Together with the Goods, the Seller shall be obliged to deliver documents which are expressly defined in the Contract.

## 4. Place and time of delivery

- 4.1. Place and other conditions of delivery shall be defined in the Contract; otherwise the Goods shall be delivered in accordance with Incoterms 2010 EXW delivery conditions at the Seller’s premises Průmyslová str., Pardubice, Czech Republic.
- 4.2. The Seller’s obligation to deliver the Goods is fulfilled by delivering the Goods to the Buyer to the place of delivery in accordance with Art. 5 hereof.
- 4.3. The delivery term shall be defined in the Contract. The delivery term shall commence upon the conclusion of the Contract. The Seller shall be entitled to deliver the Goods in advance provided the Seller informs the Buyer about the delivery term at least 3 (three) working days in advance in writing.
- 4.4. Should the delivery of the Goods be dependent or subject to any cooperation, action or obligation of the Buyer the delivery term shall be extended by the Buyer’s delay with fulfilment or provision of such cooperation, action or obligation of the Buyer. The Seller shall be entitled to claim any and all expenses, additional costs and/or damages incurred in connection with the Buyer’s delay.
- 4.5. The Seller shall be entitled to a partial delivery.

## 5. Delivery of the Goods

- 5.1. The Seller shall be obliged to deliver the Goods to the Buyer in accordance with the Contract and within the stipulated delivery term. The risk of damage and the possessory rights to the Goods shall pass on the Buyer upon the due delivery of the Goods, unless agreed otherwise in the Contract.
- 5.2. In case of transport the Seller shall be obliged to pack the Goods and to secure it for transport in the manner defined in the Contract; otherwise in a standard manner corresponding to the nature of the delivered Goods. Any special requirements for packing or transportation shall be defined in the Contract and shall be borne by the Buyer unless expressly agreed otherwise by the Parties in writing.

- 5.3. Upon delivery of the Goods the Seller shall submit to the Buyer a bill of delivery, which shall include at least indication of the Parties, the Contract, description and quantity of the Goods, the Purchase Price and the date of delivery.
- 5.4. The Goods shall be deemed to be duly delivered upon the confirmation of the bill of delivery by the Buyer. The Buyer shall confirm the bill of delivery upon the fulfilment of the following conditions:
- the Goods have been delivered by the Seller to the place of delivery,
  - the relevant (agreed) documentation relating to the Goods has been delivered with the Goods,
  - the Goods have been delivered to the Buyer free of defects, or the Goods have been delivered with obvious defects, however, the Buyer has recorded such defects in the Report of Defects and has declared that accepts the Goods with such defects.
- 5.5. Should the Buyer discover that the Goods have defects it shall create a Report of Defects containing the description of the defect, proper evidence of the defect, date of discovery of the defect and signature of the Buyer's authorised representative. The Buyer shall allow the Seller to inspect the defective Goods upon the written request of the Seller otherwise loses its rights and claims arising from the delivery of the defective Goods.
- 5.6. The Buyer shall deliver the Report of Defects to the Seller within 15 (fifteen) days after delivery otherwise the Buyer loses its rights and claims arising from the delivery of the defective Goods. The foregoing provision shall not apply on hidden defects that could not have been discovered by the Buyer with a professional care within the 15 (fifteen) days term. Such defects shall be dealt with under warranty, if provided by the Seller. The warranty conditions and duration of the warranty period shall be set forth in the Contract.
- 5.7. The Seller shall be not responsible for any defect of the Goods caused by improper handling, operation and/or unauthorized interference in the Goods by the Buyer. The Goods shall be handled, operated and maintained in accordance with the Sellers instructions and/or operation manual.
- 5.8. Should the Goods have defects the Seller is responsible for, the Seller shall decide with its best knowledge and conscience to either replace the defective Goods, to repair the Goods or the defective parts, or provide the Buyer a reasonable discount from the Purchase Price agreed by the Buyer.
- 5.9. The choice of remedy pursuant to Art. 5.8 hereof belongs solely to the Seller.
- 5.10. Should the defect of the Goods have been caused by transport or through the negligence of the forwarding agent, the Seller shall render the Buyer all necessary cooperation in order to obtain damages either from the insurance company or from the forwarding agent provided the Buyer has expressly asked to do so and always at the Buyer's expenses and risk.
- 6. Purchase Price, payment terms**
- 6.1. The Buyer shall pay to the Seller the Purchase Price determined in the Contract. The Purchase Price shall include all costs relating to the delivery of the Goods in accordance with the respective delivery conditions set forth in the Contract.
- 6.2. The payment terms shall be defined in the Contract; otherwise the claim for the Purchase Price shall arise for the Seller upon the delivery of the Goods to the Buyer. Should the Contract define payment of the Purchase Price by instalments the entire balance of instalments shall become due if the Buyer is in default with the payment of any of the instalments.
- 6.3. The Buyer shall pay the Purchase Price by means of bank transfer on the basis of the invoice issued by the Seller and delivered to the Buyer. The due date of the invoice shall be defined in the Contract. Should the due date be not defined in the Contract, then the Buyer shall be obliged to pay the Purchase Price within 15 (fifteen) days from the date of delivery of the invoice to the Buyer.
- 6.4. Should the Buyer be in delay with the payment of the Purchase Price or any part thereof, the Buyer shall be obliged to pay the Seller the default interest in the amount of 0.2 % (two tenths percent) from the due amount for each and every commenced day of delay.
- 6.5. The Buyer shall be not entitled to withhold any payment of the Purchase Price on the basis of any claims against the Seller, whether connected with the Contract or not, or set off any of its claims against the payment of the Purchase Price.
- 7. Changes of the Contract**
- 7.1. The Seller shall have the right to inform the Buyer in writing until the delivery of the Goods about its proposal for the change of the Contract, in particular, the quantity and/or quality of the Goods or term of delivery of the Goods.
- 7.2. The Buyer shall inform the Seller in writing whether it accepts the proposal for change of the Contract or not within 7 (seven) days from the date of delivery of the written proposal for change by the Seller, or whether proposes a different change.
- 7.3. Provisions of Art. 16.1 shall apply accordingly.
- 8. Termination of the Contract**
- 8.1. Unless agreed otherwise in the Contract, the Contract may be terminated:
- by the written agreement of the Parties, such an agreement including a settlement of their liabilities and claims following from the Contract;
  - by a withdrawal from the Contract of either Party arising from a material breach of the Contract by the other Party.
- 8.2. The Parties have in agreed that besides the reasons set forth by the Contract, these General Terms and Conditions or the applicable laws, the following reasons only and exclusively shall be deemed to be a material breach of the Contract:
- the Seller's delay with the delivery of Goods for more than 30 (thirty) days;
  - the Buyer's delay with the payment of the Purchase Price or any part thereof for more than 30 (thirty) days;
  - the Buyer's delay with fulfilment of any of its obligations provided that such delay was not cured within the additional term given by the Seller in writing, such additional term shall be at least 15 (fifteen) days;
  - final decision of the competent authority of bankruptcy or insolvency of the Party;
  - any breach of the confidentiality duty hereunder.
- 8.3. Furthermore, the Seller shall have the right to withdraw from the Contract should the Force Majeure as defined in provision

- 13.1 hereof prevent fulfilment its duties under the Contract for a period exceeding 2 (two) months.
- 8.4. The withdrawal shall be made in writing and shall become effective as from the date on which such withdrawal notification was delivered to the other Party.
- 8.5. Upon withdrawal from the Contract, the following shall not extinguish:
- claims for damages arising from a breach of the Contract,
  - claims for payments of contractual penalties arising from a breach of the Contract,
  - stipulations concerning the duty to maintain confidentiality,
  - stipulations concerning the selection of law and settlement of disputes.
- 8.6. Unless stipulated otherwise in the Contract, the delivered Goods, to which the title passed on the Buyer prior to withdrawal from the Contract:
- shall remain within the property of the Buyer if the Purchase Price has already been paid for such Goods. Should the Purchase Price for such delivered Goods be not paid prior to withdrawal from the Contract, the Buyer shall be obliged to pay the Purchase Price of such Goods to the Seller without undue delay;
  - may be returned to the Seller if the Seller allows it in writing, and the Seller shall be obliged to return the Purchase Price to the Buyer in case it has already been paid.
- 8.7. In case of withdrawal from the Contract, the Parties shall be obliged to settle their matters by method and within time limits agreed by both Parties.
- 9. Other provisions**
- 9.1. Should the Buyer attend the premises of the Seller it shall be obliged to move only within the area specified by the Seller and in accordance with the instruction of the Seller.
- 9.2. All notices, requests or other messages to be made or sent in accordance with the Contract shall be made in writing and addressed to the respective Party and marked explicitly as notices, requests or messages in accordance with the Contract.
- 9.3. The notices, requests and other messages shall be deemed to have been duly sent or made:
- in the case of a delivery in person, delivery by a messenger or post, upon the moment of delivery; or
  - in the case of a fax, upon transmission, provided that the report of transmission states a correct code or fax number;
  - in the case of an e-mail, upon the moment of delivery, provided that a person entitled to act for the respective Party in the matters hereunder actively confirms delivery of the e-mail message.
- 10. Confidentiality duty**
- 10.1. The Parties have agreed that all information they provided each other in negotiations on the Contract and in connection therewith shall be confidential and neither Party to which such information has been provided may either divulge the same to a third person or use for its own interests the same in conflict with the purpose thereof. The Parties shall further keep confidential all information concerning the Goods and/or customers that is not already in the public domain. Regarding this, the Parties undertake to ensure that all of their employees or persons acting on their behalf in connection with implementation of the subject matter of the Contract also keep confidential such information.
- 10.2. The confidentiality duty hereunder does not apply to information that:
- might be disclosed without breach of the Contract;
  - were exempted from these restrictions by mutual written consent of both Parties;
  - are already in public domain or were disclosed without breach of the Contract;
  - the recipient knows such information before its disclosure by the Party;
  - are requested by the court, the public prosecutor or by a competent administrative body in accordance with the applicable law, or whose disclosure is required by the applicable law;
  - the Party discloses to the person bound by a legal obligation of confidentiality (e.g. a lawyer or tax consultant) for the purposes of exercising its rights.
- 10.3. If the confidentiality duty hereunder is breached the affected Party shall have the right to require the other Party to surrender the benefit accrued from the business transaction in which the confidentiality duty was breached and/or to transfer to the affected Party, for no consideration, the rights corresponding thereto. The right to damages shall not be affected thereby, including the right to expiate a non-proprietary loss.
- 10.4. The confidentiality duty according to this Section 10 shall survive termination of the Contract for a period of 3 (three) years from termination of the Contract's effectiveness.
- 11. Intellectual property rights**
- 11.1. The Seller undertakes to ensure that the delivery of the Goods under the Contract does not illegally affect or breach any rights to intellectual or industrial property of any third party.
- 11.2. Intellectual property rights or IPR shall mean any intellectual property rights of any qualification irrespective of their stage of development or finalisation, including, but not limited to, patents, trademarks (registered or not), designs and models (registered or not) and applications for the same, copyright (including on computer software), rights in databases, and know-how in records which includes technical and other data and documents related to or contained in the Goods.
- 11.3. All the Sellers's IPR contained in, related to or resulting from the Goods shall remain vested in the Seller. The Seller grants the Buyer a non-exclusive and irrevocable right to use (license) any IPR for the purpose of legitimate use of the Goods in accordance with the Contract.
- 11.4. The Buyer shall not alter or reverse engineer the Goods or decompile any source code contained in the Goods and/or facilitate the alteration or reverse engineering of the Goods or decompiling of its source code by third parties. The Buyer shall be entitled to examine, alter or modify the Goods only should

it be necessary for the proper functioning of the Goods or removing of any defects of the Goods.

## 12. Liability for damages

- 12.1. Liability for damages of both Parties shall be limited up to the total Purchase Price.
- 12.2. The Buyer on behalf of itself and each of its representatives hereby irrevocably and unconditionally waives, to the maximum extent permitted by the applicable by law, any right it may have to claim any special, exemplary, punitive or consequential damages or lost profit.

## 13. Force Majeure

- 13.1. Neither Party shall be liable for the full or partial non-fulfilment of its contractual obligations due to the circumstances beyond its reasonable control (hereinafter as "Force Majeure"), which shall include, but not be limited to, war, general mobilisation, natural disasters such as flood, fire or earthquake, riots or revolts, strikes, and/or embargoes, and which the Parties at the date of the Contract's conclusion could not reasonably foresee or subsequently avoid or overcome.
- 13.2. The Parties shall inform each other of the occurrence and termination of the Force Majeure without any unreasonable delay in writing. The terms for fulfilment of any duty under the Contract affected by the Force Majeure shall be extended by the duration of the Force Majeure event.

## 14. Decisive law

- 14.1. Rights and duties of the Parties, including conclusion of the Contract, its validity and effect shall be governed by laws of

the Czech Republic with the exclusion of the conflict of laws clauses.

- 14.2. The Parties by undertake that they will exercise their best effort to settle disputes arising from the Contract or in relation to it in an amicable manner. All disputes arising from the present contract and in connection with it failed to be settled by negotiations of the parties shall be finally settled by the competent courts of the Czech Republic according to the registered office of the Seller.

## 15. Severability clause

- 15.1. Should any provision of the Contract or of these General Terms and Conditions be or become invalid or ineffective, such invalidity or ineffectiveness shall not affect the remaining provisions of the Contract or of these General Terms and Conditions. In such a case, the Parties undertake to replace the invalid and/or ineffective provision by means of agreement with a new provision that would correspond best with the originally intended purpose of the original provision.

## 16. Final provisions

- 16.1. The Contract may be changed or amended only by written amendments signed by authorized representatives of both Parties on the same instrument.
- 16.2. The Parties undertake neither to assign nor to transfer, without the prior explicit written consent of the other Party, any rights or duties following from the Contract, to a third person or third persons.
- 16.3. The Contract shall be interpreted only and exclusively in accordance with the provisions explicitly expressed therein. The habits and established practices of the Parties shall be disregarded, the customs of trade shall be disregarded