

## **1. SUBJECT OF GENERAL CONDITIONS OF SALE**

- 1.1. The subject of these General Conditions of Sale (GCS) is to define the principles of cooperation between the Seller and the Buyer within professional trade, including in particular contract conditions. GCS are not addressed to consumers.
- 1.2. Whenever in these conditions a reference is made to:
  - a) "GCS" – "General Conditions of Sale";
  - b) "Seller" - means Diversa Diversa sp. o.o. sp.k. (Ltd. partnership) located at 36 Prężyńska St., 48-200 Prudnik, registered in the register of entrepreneurs of the National Court Register by the District Court in OPOLE, VIII COMMERCIAL SECTION OF THE NATIONAL COURT REGISTER under the number KRS 0000296870, NIP (Tax ID) 7551891582, REGON (statistic No.) 160167807
  - c) "Buyer" - means a natural person who has full legal capacity, a legal person or organizational unit without legal personality, which acquired the products from the Seller in connection with the carried out economic activity,
  - d) "Standard Products" means any products, goods and services offered by the Seller, included in the current price list of the Seller,
  - e) "Individual Standard Products" means any products, goods offered by the Seller included in the current price list of the Seller, produced at an individual order
  - f) "Non-Standard Products" means any products, goods and services offered by the Seller, which are not included in the current price list of the Seller.
  - g) "Force majeure" – means any event of an extraordinary nature, which could not be prevented by the parties and beyond control of the parties, in particular, riots, fires, strikes, labor disputes, armed conflicts, state of war, natural disasters, adverse weather conditions that prevent transport of the product, any government ordinance or amendment of the law establishing manufacturing constraints or causing impossibility of production and/or sale, including embargoes, restrictions and export bans, acts of terrorism that prevent implementation of all or a part of the contract, unforeseen changes in general economic relations, including those of customs, financial or political nature, that cause significant contractual or financial imbalance.

## **2. SCOPE**

- 2.1. These GCS apply to all sales contracts between the Seller and the Buyer, running an economic activity, unless they concluded an individual sales contract, excluding in writing, under pain of nullity, the application of these General Conditions of Sale only to the extent regulated differently in the sales contract.
- 2.2. The Seller is not bound by any sales conditions or reservations of the Buyer that are in conflict with these terms and conditions, even if the Seller has not expressed clear objections to such conditions or reservations. The offer can only be accepted without reservations. The Seller also is not bound by any reservations of changes or additions made by the Buyer at any time of cooperation, which are not accepted in writing under pain of nullity, even if they do not change significantly the content of the received offer. In the case of receipt of a declaration concerning acceptance of the offer with reservations, the contract is concluded without such reservations.
- 2.3. The Buyer may not assign his rights and obligations under these GCS.
- 2.4. Placing an order with the Seller by the Buyer means acceptance of the General Conditions of Sale.

## **3. OFFERS AND ORDERS**

- 3.1. The offers made by the Seller for Standard and Non-Standard products are valid for a period of 30 days during which the Seller expects acceptance of the offer by the Buyer, unless it has been agreed otherwise in writing under pain of nullity.
- 3.2. The Seller's price list is valid from the date of notification of its cancellation or change. Update of the price list shall enter into force within 31 days of its notification by the Seller or within the period specified directly by the Seller.
- 3.3. The Buyer places an order based on the offer or the Seller's current price list.
- 3.4. The Buyer places orders:
  - personally in the presence of the other party;
  - in writing by sending a registered letter with acknowledgment of receipt;
  - by telefax;

Orders submitted in a form other than in writing can be confirmed by the Seller by e-mail or fax.

- 3.5. Subsequent changes and additions to the Order require written form in order to be valid.
- 3.6. In the case of Orders for Non-Standard Products an Order can be canceled unless production for that Order has not started, or if the Seller confirmed acceptance of the Order. If the production has been started the Buyer cannot cancel the order and is obliged to pay the full amount of the Order and to collect the ordered goods.
- 3.7. Any offer and design documents are intellectual property of the Seller and without his written permission may not be reproduced or made available to third parties. These documents, in particular the conditions of cooperation described in them, are also covered by confidentiality and are intended only for the recipient, unless they have been given by the Seller to the public.
- 3.8. Obvious mistakes, printing, machine, accounting errors for the Seller are not binding and cannot give rise to pay damages to the Buyer for any reason.

#### **4. PRICES**

- 4.1. The prices contained in the Seller's price lists are those valid at the time of placing the order, unless otherwise agreed in writing.
- 4.2. Prices do not include taxes and duties, as well as all the costs of loading and delivery. These costs shall be borne by the Buyer
- 4.3. All prices include the Seller's standard packing, but do not include pallets or crate boxes.
- 4.4. Prices are based on current costs of materials, storage and transport. In the case of increase above five percent in the above-mentioned price factors in the period between placing the order and the date of execution, the Seller reserves the right to price adjustments, which will directly reflect such changes.

#### **5. PAYMENTS**

- 5.1. Payments shall be made in the currency specified on the invoice.
- 5.2. The buyer is obliged to make payments of the full invoice value according to the payment date indicated on the invoice.
- 5.3. The date of payment shall be the date of crediting on the Seller's bank account or the date of receipt of cash payment.
- 5.4. The Seller shall have the right to charge maximum interest within the meaning of art. 481 § 21 of the Civil Code for delays in payment.
- 5.5. The Buyer is obliged to compensate the Seller for all costs incurred by the Seller in connection with collection of overdue receivables. The basis for a claim for reimbursement of the costs of debt collection is a VAT invoice issued by the entity professionally engaged in the provision of legal assistance, with attached specification concerning the debtor. Maturity claims for reimbursement of recovery of collection costs is 3 days from the date of receipt of a copy of the a/m invoice with a debit note.
- 5.6. The Seller is entitled to withdraw from realization of order (agreement concluded as a result of the order) with immediate effect by submitting a written statement to the Buyer, if the Buyer violates his obligations under the order or any other agreement with the Seller. The right of withdrawal can be executed by the Seller within 3 months from the date of receipt of the order.
- 5.7. Based on these GCS, the Buyer is in breach, inter alia, in the following situations:
  - a) does not fulfill his obligations on the dates when they fall due;
  - b) negotiates with creditors to the detriment of the Seller
  - c) any party initiated an enforcement proceedings or made security of a financial claim in relation to the Buyer;
  - d) Buyer's entire property or a part of it is subject to a forced management (administration or the Buyer is in liquidation or an application for bankruptcy or establishment of administration in relation to the Buyer has been made.
- 5.8. The Buyer without the written consent – under pain of nullity - of the Seller is not entitled to deduct or offset amounts, which he claims from the Seller from the amount he is obliged to pay the Seller under order or another agreement with the Seller.
- 5.9. The Seller is obliged to deliver Products only if the Buyer has paid all due amounts that he was obliged to pay the Seller on the date of delivery under the sales agreement.
- 5.10. The Seller is not obliged to resume deliveries until the Buyer make payments of all outstanding debts, including any costs and due interest.
- 5.11. Obtaining all licenses, foreign currency control documents and other necessary decisions to export and import and use of the Products is the sole responsibility of the Buyer. The Buyer shall not be relieved of his obligations under these GCS, if he does not obtain a permission or another decision.
- 5.12. The Seller reserves the ownership of the articles sold to the Buyer until full payment for them. In the case of sale by the Buyer of the articles purchased from the Seller or their combination with objects

owned by third parties, as a security of payment the Buyer assigns to the Seller all his claims (including the future ones) against such third parties in the amount of his debt towards the Seller, increased by 30%. At the same time the Buyer authorizes the Seller to notify third debtors of the assignment. The Buyer authorizes the Seller (with the right of substitution) to enter his premises or his property and take over the goods owned by the Seller.

## **6. TRADE CREDIT AND DEBT LIMIT**

- 6.1. The Buyer shall be obliged to settle the payments in cash for the purchased products, the Seller may grant the Buyer deferred payments and a debt limit, which shall be determined individually based on analysis of the credit risk of the customer and the needs resulting from potential size of commercial cooperation.
- 6.2. Due to limitation of the credit risk the Seller reserves the right to reduce the limit of trade credit to customers, who for the last 12 months purchased in disproportion to the granted limit.
- 6.3. The payment term may be changed, and the debt limit may also be reduced or withdrawn in relation to customers who do not pay their obligations within the time-limit granted by the Seller.

## **7. DELIVERY AND FORCE MAJEURE**

- 7.1. Products are supplied unless otherwise agreed in writing, EXW Prudnik acc. to Incoterms 2000 published by the International Chamber of Commerce.
- 7.2. The Buyer shall be obliged to pay all costs incurred by the Seller due to non-collecting the delivery by the Buyer either:
  - a) on the date specified on the invoice or Seller's confirmation or
  - b) when the products are ready for delivery, if the Seller notified the Buyer in writing of such readiness, and the Buyer did not collect the delivery within 7 days, unless otherwise agreed in writing.
- 7.3. If the Seller agrees to make delivery of Products on a specific date and fails to do so within 30 days from the specified delivery date, the Buyer shall be entitled to withdraw from all or a part of the order which has not been realized, with the exception of orders for non-standard and individual standard products. The Buyer accepts such right to withdraw as the exclusive and only compensatory remedy and expressly disclaims any and all other rights in this respect.
- 7.4. The Buyer is obliged to check thoroughly the Products upon their delivery. The Seller is not responsible for any quantitative defects seen at the time of delivery or quality defects not reported to the carrier at the time of collection, for which there was not prepared a damage report signed by the carrier and about which the Seller was not notified on the day of collection of goods.
- 7.5. If the Buyer does not receive the Products on the agreed date of delivery, he shall notify the Seller within 48 hours of the agreed date of delivery. The Seller does not accept any liability, and the Buyer waives any rights to compensation under this provision if the Buyer's information is not sufficient to allow the Seller submit a justified claim against the carrier of the Product due to their loss, damage or shortages.
- 7.6. The Seller is exempt from the obligation to deliver the Products on the original delivery date and may postpone the date of delivery, in the case when events beyond the control of the Seller (force majeure) prevent him from execution of sales agreement. The Seller may withdraw from the sales agreement, if such events make to the Seller impossible performance of the sales agreement.
- 7.7. The Seller may refuse, reduce or suspend delivery of Products in order to rationally allocate their stocks between the Buyer and his other customers, if events beyond his reasonable control prevent him from providing all Products and complete implementation of the orders placed by other customers. In this case, the Buyer has the right to withdraw from the order/orders which has/have not been completed.
- 7.8. The Buyer is obliged to ensure at the collection of the goods the presence of a person empowered in writing to receive the goods, submit on his behalf any statements concerning receipt of the goods, confirm their quality and quantity, including signing relevant documents. Absence of such a person, or lack of a document legally confirming powers of that person gives the Seller the right to suspend the delivery and charge the Buyer with all consequential costs.

## **8. PASSING OF RISK AND TITLE OF PROPERTY AND RETURNS**

- 8.1. The risk of accidental loss or damage to the goods passes from the moment the goods are delivered to the carrier. In the case of delivery by the Seller or the Buyer's own transport - upon receipt of the goods by the Buyer.

- 8.2. If collection of the goods is delayed due to reasons attributable to the Buyer, the above risk passes onto the Buyer from the date of placing the goods by the Seller to be collected by the Buyer at the premises of the Seller, or transfer of the goods by the Seller to the carrier running carriage of goods for shipping.
- 8.3. All sales are final. It means that the Buyer is not entitled to recognize (offset) his account for returned Products, regardless of whether the Buyer submitted a complaint. If the parties expressly agree in writing that the Seller credits the Buyer returned Products, the Buyer is obliged to immediately return the products, which are in the Seller's opinion in good condition, with payment of transport costs.

## **9. SELLER'S WARRANTY AND LIMITATION OF LIABILITY**

- 9.1. The Seller warrants that the Products are of good quality in terms of materials and workmanship and correspond to published information about the product in force at the date of purchase.
- 9.2. The Seller shall be liable under this warranty only if the product at the moment of release was defective and the Buyer:
  - a) transported, stored, reloaded and used the Products in accordance with all information given to the Buyer by the Seller and the international customs in this field,
  - b) lodged a written complaint, which documents the reported defect or damage of the Products within 2 days from the date of detection of a defect, and in the case of a defect visible on the day of delivery as described above together with participation of the carrier
  - c) allowed the Seller due inspection of the Products being subject of a complaint
  - d) has fulfilled his obligations under the sales agreement, including timely payment of the purchase price and discontinued the use (including resale) of the Products as soon as he detected or could have detected their defectiveness.
- 9.3. The Seller's warranty does not cover damages caused by mechanical damage, operation of high or low temperatures, action of bacteria, pollution, electromechanical factors, damage during unauthorized repair.
- 9.4. In case of breach of warranty resulting from these GCS the Seller shall, at its option, either replace the Products or repair them, but the Seller is not obliged to pay any amount over the invoice price of the Products. The Buyer shall not be entitled to any other remedies once the Seller replaced or repaired the Products. The Seller can adequately suspend further deliveries of the Products or postpone corresponding dates of delivery until final determination of the Buyer's complaint legitimacy.
- 9.5. The Parties agree that the responsibility of the Seller towards the Buyer shall not exceed the net price of the complained product.
- 9.6. The Seller shall not be responsible for indirect losses, including loss of profits or revenue, loss of time or loss of use of the Products.
- 9.7. The Seller shall not be responsible, if the use of the Products by the Buyer violates the intellectual property rights of a third party.
- 9.8. Deadline for fulfillment of obligations of the guarantor shall be set at 30 days from the date of delivery by the Buyer of defective goods to the guarantor unless the parties agreed otherwise.
- 9.9. This warranty will expire automatically on the expiry of 12 months from the date of delivery and it does not cover any defects unreported in accordance with these conditions before the expiry of that period.
- 9.10. According to art. 558 § 1 of the Civil Code the Seller's liability under the warranty for the Product towards the customer who is not a consumer is excluded.

## **10. FINAL PROVISIONS**

- 10.1. GCS will be notified to customers via website under [www.diversa.info.pl](http://www.diversa.info.pl). Copy of GCS may also be obtained at the registered office of the Seller or at request, in electronic version.
- 10.2. In matters not covered by these GCS, the provisions of the Polish Civil Code are applicable. Appropriate law to settle disputes arising from the application of these GCS is the Polish law only. In case of interpretation doubts the version of GCS in Polish is the binding version for the parties.
- 10.3. Any disputes arising out of these GCS shall be settled by common court of competent and local jurisdiction for the registered office of the Seller. This provision means that the Polish courts have exclusive jurisdiction in all disputes that may arise from the agreement. GCS are not subject to the provisions of the UN Convention on Contracts for the International Sale of Goods.
- 10.4. These General Conditions of Sale shall enter into force on 25.02.2016.