

General Commercial Terms and Conditions

§ 1: General Remarks

1. These General Commercial Terms and Conditions (hereinafter called GCTC) regulate the rights and obligations of Parties and are an integral part of a Purchase Contract concluded between the Supplier and the Purchaser.
2. These terms and conditions shall exclusively apply to all contracts in connection with purchases and deliveries between SPALBERG S.C. ("SPALBERG"), Pilsudskiego 31/20, 43-600 Jaworzno, REGON 384201933 (registered at National Official Business Register of Poland) and Purchasers.
3. Provisions stipulated in the Purchase Contract that are different from these GCTC always take precedent. GCTC are valid in their entirety, and any modifications, changes and additions are only valid in written format approved by the Parties.
4. Within the scope of a continuing business relationship in the future, these GCTC shall apply to future deliveries and services, even if they are not expressly agreed upon in each individual case.

§ 2: Offer

1. Our Offer is not binding and is to be understood solely as an invitation to place an order.
2. Unless expressly confirmed by us in writing as binding as an integral part of our offer, statements made – whatsoever - are to be considered only as approximately definitive.
3. We reserve the right to make technical and constructive customary changes to the ordered goods which may deviate from the descriptions contained in offers or brochures as far as they neither unreasonably impair the the Purchaser. nor affect the functionality of the ordered goods.
4. Models, samples, drawings, plans, descriptions, offers and other documents which we hand over to the the Purchaser. remain our property and are covered by our copyright. They may not be passed on or made available to third parties.

§ 3: Conclusion of Contracts

1. Products have to be ordered by the Purchaser in writing or via e-mail. Every order must contain the article code.
2. None of the information given by SPALBERG S.C. on the website or in any other public form shall be deemed a legally binding offer to enter into a contract. It is only a non-binding invitation to potential purchasers to submit an offer for the conclusion of a contract.
3. Contracts between SPALBERG and the Purchaser become binding as soon as SPALBERG has accepted the Purchaser's order in written form or or via e-mail. This acceptance can be confirm by issuing Proforma Invoice, order confirmation or the email respond with the clear statement of the order confirmation.
4. Additional agreements as well as telephonic or oral changes and supplements with respect to already acknowledged orders require our written confirmation to become effective.

§ 4: Terms of Payment, Invoices and Other Documents

1. Unless it has not been agreed otherwise, Invoices, Proforma Invoices, order confirmations and all other documents related to the commercial transaction such as waybills, packing lists, etc., are sent in electronic forms via email in PDF format .
2. The printed hard-copy invoices or other documents related to the commercial transaction are sent only on the explicit request of the Purchaser.
3. Unless agreed otherwise, payment is always on the basis of Proforma Invoice before delivery.
4. If no special agreement has been made and the payment is on the basis of Invoice, the payment has to be effected within 14 days after the invoice date.
5. In case of delay of payment SPALBERG is entitled to charge default interest of 12 % per year without a prior reminder. Moreover, in case of delay of payment SPALBERG is – irrespective of charging default interests – entitled to withdraw from the contract after granting an additional postponement of seven days, to demand a security deposit for all contracts that have not been completely fulfilled yet, and to demand advance payments for other due deliveries.
6. In case of delay of payment or any other substantial violation of contractual obligations (concerning a particular or any other order) by the Purchaser, SPALBERG shall be entitled to refuse performance.

§ 5: Price

1. Our prices shall be understood as for delivery ex works (INCOTERMS 2010) excluding packaging for transport, transport costs and costs for transport insurance. Those costs as well as costs for an ordered transport insurance, costs for installation and operation materials will be invoiced separately if not covered by a fix price according to our Order confirmation.
2. Technical changes requested by the Purchaser after our confirmation are without charge only if we incur no additional costs. Any additional and/or further costs in connection with subsequent requested and confirmed technical changes of the goods shall be borne by the Purchaser.
3. Unless otherwise expressly agreed, the prices stated in our offers are always in EURO without value added tax. At the express request of a business partner the prices can be agreed in a Polish currency (PLN), but also in this case, they are given without value added tax.
4. In case of the Purchaser, who is not registered in online database VIES (VAT Information Exchange System) of the European Union (for cross border transactions on goods or services) or the Purchaser's validity of a VAT number cannot be verified in VIES, SPALBERG in addition to the agreed net price, it adds VAT in accordance with Polish tax law.
5. The sales tax (VAT) – if applicable - valid on the day of payment is due will be invoiced separately.

§ 6: Delivery/ Shipping

1. Unless the delivery of the goods has not been agreed otherwise with the Purchaser, SPALBERG delivers goods on ex Works (EXW) KATOWICE terms according to INCOTERMS 2010. The Purchaser is obligated to pick up the products within seven days after notification. In case of delay, SPALBERG is entitled to charge the Purchaser storage costs of € 10,00 plus VAT (23%) per day for each pallet from the eighth day after notification.
2. SPALBERG feel obligated to keep delivery dates and deadlines that are agreed.

3. Delivery times begin with the dispatching of the order acknowledgement, however not before the Purchaser has provided the necessary documents, approvals or releases and not before any agreed down payment has been made.
4. The delivery period finishes and it is deemed to be met when:
 - a) delivery is arranged by SPALBERG and the ordered goods leave the SPALBERG Warehouse.
 - b) delivery is on exWorks terms and the Purchaser has been informed about issuing the goods for collection.
5. Agreed delivery times shall be reasonably extended in case of labour disputes, in particular strikes and lockouts, as well as in cases of force majeure or unforeseen events beyond our control, as far as such events can be proven to have an influence on the production or delivery of the ordered goods. This also applies if sub-suppliers are affected by such circumstances.
6. If our operations are influenced by the circumstances above in a way that we cannot reasonably be able to carry out the order, SPALBERG shall inform the Purchaser in immediate time about the above circumstances. Then, we shall be entitled to rescind the contract or at our request, the Purchaser shall declare within a reasonable period of time whether he, due to the delayed delivery, withdraws from the contract or the parties will jointly decide on a different solution.
7. If delivery is on SPALBERG side, the choice of the shipping route, the type of carriage as well as of the carrying agent will be determined by us in our sole discretion, unless otherwise expressly agreed in writing.
8. SPALBERG is not responsible for the forwarder prices offered in the day of dispatch. Because of this the prices might be various in different delivery lots and we shall not guarantee the lowest shipping costs.
9. The risk will pass to the Purchaser as soon as we hand over the ordered goods to the forwarder or to another person specified to carry out the shipment.
10. If shipment is delayed due to circumstances for which the Purchaser is responsible then the risk shall pass to the Purchaser on the day on which the Purchaser was given notification of readiness of shipment.

§ 7: Defective Goods, Warranty Claims

1. SPALBERG guarantee the contractual goods to be free of material defects in accordance with the respective state of the art as well as with the technical standards valid in the Republic of Poland. We do not guarantee compliance with any foreign standards unless this has been expressly agreed upon in writing for each individual case.
2. SPALBERG shall deliver goods or services in the required quantity, quality, packaging and design agreed by Parties. Goods or services shall be deemed defective if they differ from specifications given in the Purchase Contract or generally accepted standards applied to goods or services provided by SPALBERG.
3. The Purchaser is required to inspect the delivered goods directly after receipt and notify us of any apparent defects. If not agreed otherwise, evident defects in goods or services (quantity, material defects, damaged packaging etc.) shall be notified to the Supplier when the takeover of goods or services takes place by the Purchaser, but not later than 7 calendar days following the takeover

4. Non-apparent defects have to be notified immediately after their discovery. Buyer bears the burden of proof for all prerequisites of the claim, in particular the defect itself, for the point of time the defect was discovered and for the timeliness of the notification.
5. Notification must be in writing accompanied by documentation proving the validity of the claim. If the warranty claim is validated, SPALBERG will carry out measures to rectify defects within a reasonable time or deliver new goods under the original Terms and Conditions, or decide on a different solution, subject to the agreement with the Purchaser.
6. In the event of damage resulting from improper handling of the goods during transport (e.g. damaged packaging, etc.), SPALBERG is not responsible for compensation. The Purchaser is obliged to report his claims to the carrier and claim compensation from the carrier for the damaged goods.

§ 8: Retention of Title

1. All goods delivered by SPALBERG shall remain SPALBERG's property until all of SPALBERG's claims arising from the commercial relationship with the Purchaser have been paid in full. The Purchaser shall return goods promptly at his own expense if he does not or does not attend fully to his duties of payment. The Purchaser shall bear all risks of destruction or deterioration of goods to which SPALBERG retains title. Unless agreed otherwise, an exercise of the rights under this clause by SPALBERG shall not include a withdrawal from the contract unless explicitly stated otherwise.

§ 9: Obligation to purchase

1. If it is agreed that the Purchaser is under an obligation to purchase a certain quantity of goods within a certain period of time and the Purchaser fails for whatever reason to purchase the whole stipulated quantity, SPALBERG is entitled
 - a) to withdraw from the contract in full or in part after granting an additional postponement,
 - b) to transfer the remaining quantity to the next period or
 - c) to dispose the goods on the open market and to charge the Purchaser any difference due to a loss and all costs and expenses caused by disposal.
2. SPALBERG is entitled to charge the Purchaser adequate storage costs from the time of delay.

§ 10: Goods provided by the Purchaser

1. If it is agreed upon that SPALBERG shall customize or process goods provided by the Purchaser, SPALBERG shall carry out this work according to the Purchaser's requirements. SPALBERG shall not be held liable for the result any damage resulting from it to third party.
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§ 11: Intellectual Property Rights

1. Unless it has not been agreed otherwise, any graphic designs, packaging designs, photos, images, samples, models, drawings, plans, clichés or other auxiliary material which were created by SPALBERG for the Purchaser, remain our intellectual property.

2. SPALBERG shall be the holder of all intellectual property rights on any ideas or solutions created and provided by SPALBERG for the Purchaser in order to customize and process some goods or materials for the Purchaser's needs, unless it has not been agreed otherwise.
3. Any graphic designs, packaging designs, photos, images, samples, models, drawings, plans, clichés or other auxiliary material as well as any solutions which were provided to SPALBERG by the Purchaser in order to customize and process for the Purchaser's needs, is believed that they were created by the Purchaser and thus remain exclusive the Purchaser intellectual property.
4. SPALBERG shall not be liable for materials or solutions provided to SPALBERG by the Purchaser for their processing or adaptation to the needs of the the Purchaser, and which are the intellectual or material property of third parties.
5. By providing materials or solutions to SPALBERG by the Purchaser to process or adapt to the needs of the Purchaser, at the same time, the Purchaser warrants that no intellectual property rights of third parties are infringed.

§ 12: Liability

1. Unless otherwise provided for in these GCTC, The Purchaser's claims for damages whatsoever are excluded irrespective of their legal grounds, in particular on account of breach of obligations resulting from the contractual relationship and from tort.
2. Exclusions and limitations of liability do not apply
 - a) in case of intent and gross negligence;
 - b) as far as we have assumed a guarantee;
 - c) in case of breach of an essential obligation the breach of which jeopardizes the achievement of the purpose of the contract and the fulfilment of which the Purchaser may therefore regularly rely on.
3. Insofar we are only liable for the typical and foreseeable damage.
4. Liability based on the Polish Product Liability Act and from recourse against the manufacturer remains unaffected by the provisions above.
5. We do not assume any liability for damages resulting from the following circumstances: inappropriate or improper usage, faulty installation by the Purchaser or a third party, natural wear and tear, incorrect or careless handling, use of inappropriate equipment.
6. In case SPALBERG fails to fully comply with the contractual provisions, SPALBERG shall only be held liable within the boundaries of mandatory statute law.

§ 13: Conditional Performance

1. The performance of the contract is subject to the condition that no hindrance attributable to Polish, German or otherwise applicable national, EU or international rules of foreign trade law or any embargoes or other sanctions exist.
2. The Purchaser shall provide any information and documents required for export, transport and import purposes.

§ 14: Applicable Law, Jurisdiction

1. These terms and conditions, including the question of their formation, shall be governed by Polish law. The provisions of the United Nations Convention on Contracts for the International Sale of Goods as well as conflict rules referring to foreign law are excluded.
2. Legal disputes arising from or connected to this agreement have to be brought exclusively at the courts having subject-matter and local jurisdiction in Jaworzno / Poland. SPALBERG has also the right to claim at the place of general jurisdiction of the other party.
3. These GCTC, including the issue of conclusion, shall be governed by the substantive laws of the Republic of Poland, excluding the provisions of the United Nations Convention on Contracts for the International Sale of Goods (CISG) and the conflict of laws that refer to foreign law.

§ 15 Miscellaneous

1. If one or more provisions of these terms are or become invalid, or void, or if it contains a gap, the validity of these terms shall not be affected. The parties are obliged to replace any invalid or void provision with a valid provision which comes closest to what the parties had intended with respect to the purpose under the invalid or void provision.