

GENERAL TRADING TERMS AND CONDITIONS APPLYING TO THE SALE OF GOODS BY DEZA a.s.

Effective Date: January 1, 2010

1. Preamble

1.1 These GENERAL TRADING TERMS AND CONDITIONS APPLYING TO THE SALE OF GOODS BY DEZA a.s. (hereinafter referred to as "The General Trading Terms and Conditions") shall be applied to any legal relations arising from the SALE OF GOODS by DEZA a.s., a joint-stock company with registered office at Masarykova 753, Valašské Meziříčí, ZIP Code 757 28, Company Registration No. 00011835, registered in the Commercial Register kept by the Regional Court in Ostrava, Section B, Insert 120 (hereinafter referred to as the "Seller") to third parties as Buyers.

1.2 Unless agreed otherwise in the Contract concluded between the contractual parties, these General Trading Terms and Conditions shall form an integral part of a sales contract or a master contract for the sale of goods (hereinafter referred to as the "Contract"). Any departures from the individual provisions of these General Trading Terms and Conditions may be negotiated by an agreement of the contractual parties and included into the Contract.

1.3 If an agreement in the Contract is in deviation from the General Trading Terms and Conditions, preference shall be given to the agreements in the Contract.

1.4 These General Trading Terms and Conditions shall also apply to Contracts between the Seller and the Buyer that arise on the basis of the Buyer's written order that is confirmed by the Seller. The Seller shall only accept written orders delivered personally, by post or by fax to the Seller's registered office, or sent electronically by e-mail, and the orders are to contain the following particulars:

- complete identification of the Buyer (i.e. what entity it is, its corporate name or firm and registered office, Company Registration Number, Taxpayer Identification Number if registered for VAT, and contact person including contact information),
- precise identification of the subject matter of the order,
- the quantity of goods ordered,
- the place and terms of performance,
- the name and signature of an authorised representative of the Buyer.

On the basis of an order, the Seller shall issue to the Buyer a written confirmation of the order containing the type, price and quantity of goods which the Seller undertakes to deliver to the Buyer, or the Seller shall otherwise confirm acceptance of the order.

2. Delivery

2.1 The Seller shall be obliged to deliver the goods to the Buyer as required by the Contract, i.e. to a predetermined place and at a predetermined time.

2.2 The goods shall be deemed to have been delivered to the Buyer if they are made available to the Buyer according to the INCOTERMS delivery supplement agreed upon in the Contract. Unless stated otherwise in the Contract, INCOTERMS 2000 issued by the International Chamber of Commerce in Paris shall be applied.

2.3 Unless a different place of performance is agreed upon in the Contract, the place of performance shall be the Seller's registered office. If the Contract includes transportation of goods, the goods shall be deemed to have been delivered at the moment of their handing over to the first carrier carrying out transportation for the Buyer.

2.4 The Seller shall be obliged to deliver the goods:

- a) if a date is fixed by or determinable from the contract, on that date;

b) if a period of time is fixed by or determinable from the contract, at any time within that period unless circumstances indicate that the buyer is to choose a date; or

c) in any other case, within a reasonable time after the conclusion of the contract.

2.5 The Buyer shall not be entitled to request, and the Seller shall not be obliged to deliver, goods if, after such goods are delivered, the overall amount of the Buyer's obligations registered with the Seller exceeds the current credit limit stipulated by the Seller, i.e. if it exceeds the highest amount of pending receivables the Buyer is permitted to have on the basis of a credit risk analysis carried out by the Seller. At the Buyer's request, the Seller shall inform the Buyer about the amount of its current credit limit.

3. Special Provision Applying to the Delivery of Goods in Railway Tank Wagons

3.1 After the delivery of goods, the Buyer shall be obliged to discharge the tank wagons and then return the empty tank wagons to the carrier without undue delay, i.e., unless stated otherwise in the Contract, within 48 hours from the delivery of the goods at the latest.

3.2 The Buyer shall be obliged to inform the Seller of the delivery and unless the Buyer proves otherwise beyond any doubt, the goods in the railway tank wagons shall be deemed to have been delivered within the deadlines for the delivery of goods as they are specified in Clause 2 of these General Trading Terms and Conditions.

3.3 If due to technical defects of the railway tank wagons, it is impossible to discharge them, the Buyer shall be obliged to inform the Seller about this immediately. The Buyer shall not be allowed to send an undischarged tank wagon back to the Seller.

3.4 If, when discharging the railway tank wagons, the Buyer reveals a defect in the goods, the Buyer shall be obliged to stop discharging the tank wagons and inform the Seller about this without any delay. Further procedures to be followed in such a case are contained in Clause 5 of these General Trading Terms and Conditions.

3.5 Before returning the tank wagons back to the Seller, the Buyer shall be obliged to remove all of the original seals from the tank wagons and equip them with new seals of its own.

4. Quantity and Quality of Goods

4.1 Unless the contractual parties agree otherwise, the Seller must deliver the goods to the Buyer in the quantity, quality and with such a finish as determined by the Contract.

4.2 The Seller's obligation to deliver the goods in agreed-upon quantity shall be deemed to have been fulfilled if the actual quantity of goods delivered differs from the amount of goods agreed upon in the Contract by a maximum of 10%.

4.3 The quality of the delivered goods shall be declared in the waybill travelling with the shipment of the goods.

4.4 The Seller shall be obliged to pack the goods or otherwise equip them in compliance with details determined in the Contract. Unless stated otherwise in the Contract, the Seller shall ensure delivery of the goods in packaging that it uses as standard packaging for the given type of product.

5. Liability for Defects in the Goods

5.1 The goods shall be deemed as defective if, with regard to their quality, quantity, finish or packaging, they do not comply with the terms and conditions specified in the Contract. The Buyer shall be obliged to prove to the

- Seller, in a trustworthy manner, that the goods are defective.
- 5.2 After the delivery of the goods, the Buyer shall be obliged to inspect the goods or to ensure their inspection without undue delay, i.e. within three (3) days from the delivery of the goods at the latest.
- 5.3 If the Contract includes transportation of the goods, such an inspection may be postponed until the goods reach the designated place of delivery. In this case, the Buyer shall be obliged to inspect the goods or to ensure their inspection within three (3) days from their delivery to the designated place of delivery.
- 5.4 The Buyer shall be obliged to advise the Seller in writing of defects revealed by the inspection (i.e. to claim the goods), and to do so within seven (7) calendar days from the day of inspection at the latest. In the case of defects identifiable by a laboratory analysis, the Buyer shall be obliged to inform the Seller of these defects in writing within fourteen (14) calendar days from the day of inspection.
- 5.5 In the case of claims of weight variance, damage to the packaging, substandard quality of the goods or impairment to the goods, the Buyer must, within the framework of its claim, also substantiate the claim by a document attested by an independent inspection company (i.e. by a specialised third party). If the Buyer reveals that the means of transport has been damaged or that there exist circumstances which suggest a loss of weight of the goods during transport, the Buyer shall be obliged to ask the carrier to re-weigh the shipment and, if the weight varies from the value stated in the shipping documents, to request that a corresponding statement is issued (in the case of railroad transportation, the required document is the Commercial Statement of the Czech Railways – i.e. “Komerční zápis ČD” in the Czech language), and to lodge its claim with the carrier. Weight variances in the case of shipments transported by rail shall be handled according to the Transportation Code of the Czech Railways.
- 5.6 The Seller shall not be responsible for defects in the goods if the Buyer fails to inform the Seller about the nature of such defects within the aforementioned deadlines after they are revealed or after they are supposed to have been revealed.
- 5.7 The Buyer shall be obliged to store goods for which he has made a claim of defect separately from other goods and must not deal with the goods in a manner that can render the inspection of the claimed defects by the Seller difficult or impossible. The Seller shall be entitled to send its representatives or representatives of an independent laboratory to the Buyer with the purpose of verifying the claim made by the Buyer, and the Buyer shall be obliged to enable these representative or representatives of an independent laboratory to carry out inspection of the goods for which a claim of defect is made.
- 5.8 The Seller shall be obliged to decide about the claim within thirty (30) days from service of the Buyer’s notification about defects in the goods.
- 5.9 If the defect in the goods is acknowledged and the claim accepted as justified, the Seller shall be obliged to:
- either deliver replacement goods within thirty (30) days from the date of the Seller’s decision about the claim in a volume corresponding to that of the goods for which the claim was made; or
 - provide an appropriate discount from the purchase price of the goods for which the claim was made. The Seller shall be obliged to make out a credit note for this discount within thirty (30) days from the date of the Seller’s decision about the claim at the latest; or
 - enter into another agreement with the Buyer determining a solution to the situation arising from a justified claim within thirty (30) days from the date of the Seller’s decision about the claim at the latest.
- 5.10 If the quantity of goods in an individual delivery ascertained by the Seller differs from the quantity of goods in that delivery ascertained by the Buyer by +/- 0.5%, this shall not be deemed to constitute a defect.
- 5.11 In the case of hidden defects in delivered goods, claims must be submitted in writing to the Seller by the Buyer within the guarantee period at the latest.
- 5.12 In case it is necessary to substantiate the existence of defects in the goods by an expert evaluation, the costs incurred in connection with such an evaluation shall be settled by the party that commissioned the evaluation; however, such a party shall be entitled to seek compensation of these costs in case that the conclusions of the claim evaluation testify in that party’s favour.
- 6. Payment**
- 6.1 The invoice for delivered goods shall be issued by the Seller to the Buyer on the day of the goods delivery at the latest and the invoice shall contain all of the particulars a receipt of a tax deductible expenditure is supposed to contain in compliance with Act no. 235/2004 Coll. on Value Added Tax, as amended, or as the case may be in compliance with other legal regulations.
- 6.2 Unless stated otherwise in the Contract, invoices shall be payable within thirty (30) days from the issue date of the invoice.
- 6.3 The date of actual payment shall be understood as the day on which the corresponding account of the Seller is credited with the outstanding amount to be paid.
- 6.4 Unless stated otherwise in the Contract, it shall be the Buyer who shall cover all the bank fees related to the depositing or transferring of the outstanding amount to the Seller’s account, aside from fees charged by the Seller’s bank.
- 6.5 In case the Buyer is in default with the payment, the Seller shall be entitled to request payment of default interest in an amount corresponding to the annual REPO rate determined by the Czech National Bank (Česká národní banka in the Czech language) increased by seven (7) percentage points. For each calendar six months during which the debtor is in default with the payment, the amount of the default interest shall be tied to the amount of the REPO rate determined by the Czech National Bank and valid on the last day of the calendar six months which precede the calendar six months in which the default occurred.
- 6.6 Should the Buyer find itself in default with the payment of due invoices, the Seller shall be entitled to immediately stop further deliveries to the Buyer and rescind the Contract. If deliveries are stopped due to a situation described in the previous sentence, this shall not constitute a breach of the Contract and the Seller shall not be liable for any possible consequential losses.
- 6.7 The Buyer shall not be entitled to withhold payment of the purchase price or its part, nor to retain any claimed goods, in order to satisfy any of its own claims towards the Seller. The Buyer shall not be entitled to set off any of its own claims against the purchase price, not even in cases where these claims are underpinned by entitlements from claims submitted in a timely manner. Any possible discounts from the purchase price due to a claim of defect, shall, after the purchase price is settled, be handled by a credit note.
- 7. Risk of Damage to the Goods and Proprietary Rights**
- 7.1 The risk of damage to the goods shall pass from the Seller to the Buyer according to the INCOTERMS delivery supplement agreed upon in the Contract. Unless stated otherwise in the Contract, INCOTERMS 2000 issued by the International Chamber of Commerce in Paris shall be applied. If in doubt, the risk of damage to the goods shall be deemed to pass to the Buyer at the moment when the Seller fulfils the delivery conditions applying to the goods as they were determined in the Contract and the goods are made available for collection

- and handling by the Buyer at a predetermined place and time.
- 7.2 Should no delivery supplement be negotiated and included in the Contract, the risk of damage to the goods shall pass to the Buyer at the moment when goods are collected by the Buyer from the Seller or, if the Buyer does not do so in a timely manner, when the Seller makes the goods available for collection and handling by the Buyer and the Buyer breaches the Contract by not collecting the goods. If, according to the Contract, the Seller is obliged to dispatch the goods, the risk of damage to the goods shall pass to the Buyer at the moment when the goods are handed over to the first carrier for their transport to the Buyer.
- 7.3 Unless stated otherwise in the Contract, title and property in the goods shall pass to the Buyer at the moment when the risk of damage to the goods passes to the Buyer in compliance with Clauses 7.1 to 7.3 of these General Trading Terms and Conditions.
- 7.4 Passing of the title and property in the goods or occurrence of damage to the goods which arises after the risk of damage to the goods has passed to the Buyer shall not relieve the Buyer of its obligation to pay the purchase price to the Seller.
- 7.5 Together with the title and property in the goods, also the title and property in the industrial packaging shall pass to the Buyer. However, in this sense, railway tank wagons shall not be considered as industrial packaging.
- 7.6 The costs of transport from the place of performance to the designated place of destination shall be covered by the Buyer.
- 8. Repudiation of Contract**
- 8.1 Among other cases set out by these General Trading Terms and Conditions, the Seller and the Buyer shall be entitled to repudiate the Contract if the other contractual party commits a serious breach of the terms or conditions of the Contract that apply to that party. The following shall be considered as serious breach of the contractual terms and conditions:
- a) the Buyer is in default with the payment of the purchase price or of any other amounts payable according to the Contract or according to these General Trading Terms and Conditions,
 - b) the Seller is in default with the delivery of the goods,
 - c) the Buyer is in default with collecting the goods.
- 8.2 Repudiation of the Contract shall become effective on the day of service of a written Notice issued by the contractual party repudiating the Contract to the other contractual party. In case doubts arise as to the date of service of the written Notice informing about the repudiation of the Contract, the notice shall be deemed to have been served on the third day from the date of mailing. The Notice informing about the repudiation of the Contract must give a specific reason for the repudiation.
- 8.3 Repudiation of the Contract shall result into the extinguishing of all rights and termination of all obligations existing under the Contract with the exception of the right of compensation and the right for the payment of a contractual penalty as well as with the exception of provisions contained in the Contract or these General Trading Terms and Conditions related to the choice of governing law, resolution of disputes between the parties and those provisions that regulate the rights and obligations of the parties in the case of termination of the Contract.
- 9. Exclusion of Liability**
- 9.1 Aside from the payment of the purchase price, a contractual party shall not be liable for the failure to fulfil any of its obligations if it proves that such non-fulfilment was caused by an event or obstacle which was beyond its control, which cannot be reasonably expected to have been foreseen at the moment the contract was entered into, or which (or as the case may be, the effects of which) cannot be reasonably expected to be averted or overcome by the party (hereinafter referred to as "Force Majeure"). However, the liability to fulfil an obligation cannot be disclaimed if such an event or obstacle occurred at a moment when the party already was in default with the fulfilment of its obligations or where such an event or obstacle occurred as a result of that party's economic situation.
- 9.2 Inasmuch as they comply with the preconditions described in the previous clause (9.1) herein, namely the following events shall be considered as Force Majeure for the purposes of the Contract:
- a) natural disasters, fires, earthquakes, landslides, floods, storms or other atmospheric disturbances and phenomena of considerable impact, or
 - b) acts of war, riots, rebellions, civil unrest or strikes, or
 - c) decisions or other regulative acts of public authority, regulations, limitations, bans or other interventions of the state and public administration or self-administration bodies, or
 - d) explosions, or other damage or breakdowns of corresponding production or distribution equipment.
- 9.3 Exclusion of liability as per this Clause shall be effective for as long as these events or obstacles persist.
- 9.4 The party which cannot fulfil its obligation must notify the other party of the existence of an obstacle or event and its consequences for the party's ability to perform under the Contract. Unless such a notification is provided to the other party within a reasonable period of time from the moment the non-performing party learned (or should have learned) about such an event or obstacle, the party not fulfilling its obligation shall be liable for the damage that arises as a result of such a situation.
- 10. Dispute Resolution and Governing Law**
- 10.1 If a dispute arises between the parties with regard to the Contract, its application or interpretation, the contractual parties shall exert maximum efforts to resolve such a dispute by an amicable settlement.
- 10.2 If unable to reach an amicable resolution of the dispute between them in connection with the Contract, both of the contractual parties shall be entitled to refer the dispute to court for a decision.
- 10.3 The contractual parties hereby agree that they shall submit to the exclusive jurisdiction of the courts of the Czech Republic.
- 10.4 Except when expressly provided otherwise in the Contract, the rights and obligations of the contractual parties, as well as their legal positions arising out of, created by or existing in connection with these rights and obligations, shall be governed by the law of the Czech Republic. The United Nations Convention on Contracts for the International Sale of Goods is hereby expressly disclaimed.
- 11. Final Provisions**
- 11.1 Mutual relations not expressly regulated by the Contract and by these General Trading Terms and Conditions shall be governed by the corresponding provisions of the legal order of the Czech Republic and by the INCOTERMS delivery supplements.
- 11.2 These General Trading Terms and Conditions shall become valid and effective on January 1, 2010 and they shall replace any previous terms and conditions applying to the sale of goods by the Seller.