

GENERAL TERMS AND CONDITIONS OF SALE AND DELIVERY

§ 1 General Provisions

1. General Terms and Conditions of Sale and Delivery (hereinafter referred to as GTCSD) specify detailed rules of entering into agreements of sale and delivery of goods offered by MOBI Sp. z o.o.
2. Definitions of expressions used in the General Terms and Conditions of Sale and Delivery:
 - a) **GTCSD** – General Terms and Conditions of Sale and Delivery
 - b) **Seller** – MOBI Sp. z o.o. with its seat in Wrocław.
 - c) **Buyer** – every entity that issued an order for goods offered by MOBI Sp. z o.o. to the Seller.
 - d) **Order** – a declaration made to the Seller on behalf of the Buyer by an authorized person, containing the will of entering into agreement.
 - e) **Delivery** – sale of the goods currently offered by the Seller.
3. GTCSD are an integral part of all sale and delivery agreements made with MOBI Sp. z o.o. and apply throughout the entire agreement duration unless the parties have distinctly decided otherwise. Every departure from GTCSD shall be made in writing under the pain of invalidity.
4. GTCSD are available on the website of MOBI Sp. z o.o., or they can be mailed to the Buyer at his request. If the Buyer is a regular customer of MOBI Sp. z o.o., his acceptance of GTCSD at the first order is considered as their acceptance for all the remaining orders and sale and delivery agreements until they have been changed or cancelled.
5. The Buyer's General Terms and Conditions do not apply to the transactions with MOBI Sp. z o.o., where to the GTCSD in question are exclusively applicable.

§ 2 Order of Goods

1. The transaction between the parties shall be carried out against the order made by the Buyer. The order may be made to the Seller only in a written or electronic form, by means of e-mailing the order by a person authorized to make orders on behalf of the Buyer.
2. When making an order, the Buyer shall be required to confirm that he knows the GTCSD and accept their provisions, which are an integral part of the agreement.
3. Each and every alteration to the provisions of individual or additional arrangements shall become legally binding to the parties as soon as the Seller has issued a written confirmation of the aforesaid changes, and shall be applicable only and exclusively to the agreement it concerned; it shall not apply to the other agreements between the parties.
4. Any alterations to the order or cancelation thereof cannot be issued without a written consent of the Seller.

§ 3 Specification of Goods

1. All the technical specifications of goods, especially dimensions, conversion factors and size, as defined in the materials provided by the Seller, are orientation data and binding only to the extent they have been accepted by the both parties.
2. The Buyer shall know the technical parameters of the ordered goods. MOBI Sp. z o.o. shall deliver the goods in line with the order made and shall not be responsible for their further use by the Buyer.
3. The models and samples of goods offered by the Seller are solely in the nature of visual materials.
4. The goods offered by the Seller comply with respective European and national standards.

§ 4 Prices

1. The prices of individual goods are indicated in the Seller's offer and valid throughout the period specified by the Seller.
2. The price of goods is set against the Seller's price list valid on the day of the order being made.
3. The prices indicated by the Seller in the offer are net prices and do not include VAT unless the both parties have decided otherwise. VAT shall be automatically added to net prices, in the amount valid on the day of the order being made.
4. The collection of goods shall take place in the Seller's seat or branch. If the Seller is to deliver the goods to the Buyer's seat or branch, the parties shall set the costs of delivery and other related services over the stage of order completion.
5. Incidental expenses related to the proper completion of the order shall be charged to the Buyer unless the parties have decided otherwise.
6. In case of changes in payments and expenses affecting the price, which are beyond the Seller's control and occurred in the period between entering into an agreement and delivery, the Seller may use his right to change the price within a relevant range.
7. The Seller shall be entitled to give the Buyer discounts, bonifications and the like, after the establishment of conditions with the Buyer.

§ 5. Quantity of Goods

1. When carrying deliveries into effect, the Seller reserves the right to a margin of quantity accuracy in completing orders at the level of plus/minus 10%.
2. Goods are sold in terms of quantity against sale units (e.g. mb, kg).
3. The Buyer has the right to lodge a quantity complaint after the goods collection, but not later than within one working day following the collection in question, under the pain of losing the entitlements resulting from quantity irregularities.
4. The delivered material may differ by plus or minus 5% in relation to the technical specification.

§ 6 Quality of Goods

1. The Buyer is responsible for the proper specification of the ordered goods, in particular in terms of technical data, quality and quantity of the material meeting his needs.
2. If the order does not specify the compliance of the material with standards or does not describe the required quality of the material, it will be delivered as regular trade goods.
3. Should the Buyer require in the order to enclose the copies of relevant certificates and attestations related to the goods being purchased, the Seller shall be obliged to provide and enclose the aforementioned documents. The Seller is responsible for ensuring that the enclosed documents actually refer to the delivered goods. Due to the factors beyond the Seller's control, the Seller does not verify the technical information included within the attestations, certificates and other documents proving quality.
4. Enclosing necessary certificates and attestations may be payable. The Seller reserves the right to provide necessary certificates and attestations following the order completion.
5. The Buyer has the right to lodge a quality complaint after the goods collection, but not later than within 30 days following the collection in question. Failing to lodge the complaint within the specified period entails losing the entitlements resulting from quality irregularities.

§ 7 Delivery of Goods

1. The provided delivery dates are of informative nature. Should the Seller fail to meet the delivery date, the Buyer shall be entitled to assert his statutory rights, only if the Seller, without being affected by an additional date agreed upon with the customer and expressed in writing, notwithstanding a written notice, fails to perform delivery or services subject to clause 3.
2. The parties to the agreement agree on the date and place of delivery or collection of goods. The Buyer is obliged to provide the Seller with all the information necessary to properly complete the order.
3. Should the Seller fail to deliver the goods to the Buyer within the agreed time due to an impediment resulting from circumstances beyond the Seller's control, including unpunctual goods delivery by the Seller's deliverers, force majeure, unforeseen disturbances in the Seller's work, e.g. a failure in the power supply, transport and customs delays, transport impediments, such as road blockades, time limits in truck traffic, shortages of electricity, and shortages of materials and raw materials, the delivery date shall be automatically moved in time so as to include the duration of the impediment in question.
4. The Seller is obliged to notify the Buyer in writing about the availability of the ordered goods on his stock, and the Buyer is obliged to collect them immediately. Should the Buyer fall behind schedule with collecting the goods, the Seller shall be able to charge the Buyer for storing expenses on the stipulation of other rights reserved for the Seller. If the delivery is carried out in parts, each part shall constitute a separate transaction, and the Seller shall have the right to invoice it separately.
5. Should the Buyer decide on goods delivery carried out by the Seller's (or his deliverers') means of transport, the following regulations are mutually binding for the parties:
 - a) The Seller reserves the right to change the time and date of delivery, should the circumstances mentioned in § 7 clause 2 occur. In this case, the Buyer does not have the right to lodge a complaint related to the delivery delay.
 - b) The Buyer assures that the service roads leading to the place of unloading make it possible for a truck of 10-ton ballast per axle with a trailer which is 13,6 m long and 4.0 m high to enter and exit. When making an order, the Buyer is obliged to inform the Seller in writing about any possible impediments, accepting at the same time possible delays in delivery resulting therefrom.
 - c) The date of completing delivery by the Seller's means of transport shall be met to an accuracy of 1 day, to which the Buyer consents.

§ 8 Completion of Delivery and Risk Transfer

1. The risk of goods delivery shall be transferred to the Buyer as soon as the goods are handed over to a person authorized to collect them, including a forwarder or carrier.
2. If no detailed arrangements have been made between the parties, the delivery shall take place according to the Seller's standards.

§ 9 Packaging

1. The Seller is obliged to pack the goods in a way befitting for their properties.
2. The materials used to pack the goods constitute the Seller's prime costs and shall not be redeemable.

§ 10 Responsibility for Faults

1. The Buyer has the right to examine the goods for faults in terms of quantity and quality, immediately after their receipt.
2. Should the Buyer examine the goods and find any inconsistency in terms of quantity with the POD document, he shall make a written annotation on the aforementioned document in the presence of the Seller's representative, and shall inform the Seller about it in writing no later than within 24 hours following the delivery so as to decide on a further course of action.
3. The questioned goods shall be available in an unprocessed form to the Seller during all the time of complaint up to its completion, i.e. information being provided by the Seller.
4. The Seller shall be absolved of responsibility by virtue of warranty if the Buyer has known about the fault when entering into agreement, making the order, receiving the offer, receiving the POD document, and in other cases defined in the regulations in force.
5. Should the faults specified in clause 3 be found, the Seller shall exchange the purchased goods, or remove the fault. In such a case, the exchange of goods shall take place immediately, provided new materials are available in the Seller's storehouses. Otherwise, the exchange shall take place within 3 months from the date of reporting the fault provided that the buyer's actions do not affect the delay of the process. In case of failing to provide the goods within the time specified above, the Buyer shall have the right to recede from the agreement
6. If the faults of the goods have been revealed and the Buyer has accepted them, he may demand an appropriate reduction in the price of the faulty goods.
7. If the Buyer has used or processed the goods in a wrong way, the Seller shall have the right not to satisfy the Buyer's complaint.
8. If only some of the purchased and delivered goods are faulty and they can be separated from the fault-free goods, the Buyer's right to give up the order completion or to recede from the agreement shall be limited to the faulty goods.
9. The Buyer who as a result of finding a physical fault in the goods recedes from the agreement or demands delivering fault-free goods instead of faulty ones cannot send the goods back to the Seller prior to the latter's consent expressed in writing.
10. The Seller shall be exempted from liability for the damage resulting from the faults in case of exercising the rights by virtue of warranty, subject to Art. 558 of the Civil Code.
11. Rights by virtue of warranty for physical faults shall expire after 6 months from the day on which the goods were handed over to the Buyer or according to separate arrangements between the parties.
12. The Buyer's questioning the goods in terms of quantity and/or quality shall not entitle him to hold the payment for the completed delivery.
13. The Seller shall bear no responsibility for the use of goods in deviation from their purpose and technical properties, and for the faults resulting from the workmanship and design mistakes of the third parties, and resulting from failing to follow the manufacturer's recommendations and instructions.
14. In case of a complaint the burden of proof lies with the Buyer
15. Under no circumstances shall the Seller be liable for a sum greater than the claimed material value.
16. Quality complaints shall be taken into account if the defective material represents at least 2% of the overall delivered material.

§ 11 Return of Goods

1. The return of the goods questioned by the Buyer and recognized by the Seller is possible provided that they have not been damaged, processed by means of the Buyer's production procedures, and that they are identifiable in terms of parameters included in the attestations. In the case of the factory-packed goods, they must be in an original and undamaged packing.
2. The goods return shall be possible only after the Seller has been notified about it in writing and has issued his written confirmation / acceptance.
3. The goods return takes place against the Seller's documents.

§ 12 Compensation Claims

1. If the faults of the goods are not the result of the Seller's intentional guilt, the Buyer shall not be entitled to seek compensation by reason of the order completion. In particular, the Seller shall not be held liable for damage on the Buyer's side in the form of economic loss and benefits lost as a consequence of the faulty goods.
2. The Buyer shall follow the instructions for further processing of the goods (manufacturing instructions) in every respect. The Seller shall be exempted from liability, should the Buyer fail to follow the instructions in question or to meet legally defined conditions allowing for the use or authorizing the sale and universal working of the product of smelting, alternatively authorizing the sale and individual working.
3. The Seller shall be exempted from liability in case of force majeure or other circumstances beyond the parties' control, such as strikes, customs, currency and energy restrictions, general shortage of goods, extraordinary decisions of authorities, failure or delay in completing the orders by the Seller's deliverers resulting from any of the circumstances described hereto.

§ 13. Terms of Payment

1. The invoices issued by the Seller shall be payable without any deductions or subtractions within the time specified on the invoice, counting from the day of the invoice issuance.
2. Should the Buyer fall behind with payment, the Seller has the right to calculate interest for late payment, unless he has incurred some higher expenses, in the statutory amount, starting from the day after the payment deadline specified on the invoice.
3. Should the Seller receive information about the Buyer's poor financial standing, the Seller may demand that the Buyer make immediate payment for the goods, regardless of payment deadlines previously agreed on, and/or demand that the Buyer provide a guarantee of payment in the form accepted by the Seller.
4. Promissory notes and checks shall be accepted only for the purposes of indemnifying claims, following a written settlement with the Seller.
5. In case of the Buyer's delay with the payment or other actions to the detriment of the Seller, the Seller reserves the right to hold deliveries or providing other services until the existing impediment influencing the completion of the service has been removed. The Seller shall be also entitled to demand that the Buyer fulfill all the financial obligations to the Seller, including the payments due and those which have not matured yet.
6. Should the Buyer order goods and fail to collect them, cancel the order, recede from the agreement or in any other way fail to execute the agreement, the Seller shall have the right to calculate a contractual pecuniary punishment in the amount of 60% of gross value of the order that has not been completed.
7. In case of cancelling the order for goods delivery carried out at the customer's individual request, the contractual pecuniary punishment shall amount to 100% of the gross value of the goods. All the advance payments made by the Buyer and pertaining to the order in question shall be recognized as sums against the payment of the aforementioned contractual punishment.
8. The Seller shall have the right to demand compensation higher than the value of contractual pecuniary payments.

§ 14. Reservation of Ownership

1. The Seller reserves the ownership of the goods until the entire price amount is paid unless the parties decide otherwise and express it in writing.
2. The Buyer shall have the right to further process the goods delivered by the Seller as part of its legal business operations, except for § 9 point 3. When the material has not been paid for, in the case of processing, combining or joining with other goods it shall be Mobi Sp. z o. o. that remains the owner also of the third-party material, without the need for Mobi Sp. z o. o. to pay remuneration or damages for such other material. Any goods processed this way shall be included in the reservation of title in the meaning of the present provisions of these General Terms of Sale and Delivery and shall be stored by the Seller free of charge. The Buyer shall provide the Seller with access to a warehousing space at any time in order to enable the Seller to inspect the goods retained.
3. If there are still other invoices, not paid by the Buyer on time, issued by the Seller, the purchased goods may not be either sold or processed by the Buyer until such invoices are paid.

§ 15. Law in Force, Place of Completing Obligations, Court's Territorial Competence

1. The jurally relations with the Buyer shall be regulated exclusively by the Polish law. Wrocław shall be the place of completing all the obligations resulting from the regulations in question.
2. For any and all disputes that may possibly arise, directly or indirectly, from these regulations, the territorial competence shall belong to the Polish court whose jurisdiction encompasses the Seller's seat. In the case of the Buyer established outside Poland, Seller reserves the right to indicate a German court in Berlin as relevant for the settlement of disputes.

§ 16. Miscellaneous

1. The parties preclude any cession of rights resulting from the agreements concluded with MOBI Sp z o.o. or the orders made, in favor of the third parties without the Seller's written consent.
 2. Should individual clauses of the GTCSD become ineffective in terms of law, the remaining provisions and the orders made on their basis shall remain in force. The parties shall agree on an effective provision substituting the ineffective one, which shall express its meaning and intention as faithfully as possible.
 3. By accepting the GTCSD the Buyer agrees on his personal data being processed by the Seller for the purpose of completing the order and for the marketing purposes related to his activity.
 4. The Buyer shall have all the rights arising from the Data Protection Act of 29 August 1997 (Law Journal of 2002. No. 101, item 926, as amended), and in particular, the right to access his own personal data and to update it.
 5. The issues not regulated with the provisions of these GTCSD shall be settled pursuant to the relevant regulations of the Civil Code and the Act of 12 June 2003 on Payment Dates in Commercial Transactions (Law Journal, No. 139, Item 1323).
 6. Goods delivered by Mobi Sp. z o.o. shall not constitute the bankruptcy estate and may not be subjected to arrangement or recovery proceedings.
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