

# General Terms and Conditions of Purchase performed by FIBRAIN Sp. z o.o. in Zaczernie

No. OWZ

## DICTIONARY:

**Ordering Party** - FIBRAIN sp. z o.o. with its registered office in Zaczernie, at 190F, 36-062, Poland, entered into the Register of Entrepreneurs conducted by District Court in Rzeszów, XII<sup>th</sup> Commercial Division of National Court Register under no: 0000113958 Tax Identification Number (NIP): 813-03-36-808, REGON 6902166123, amount of the share capital 124 440,00 PLN.

**Supplier** - a natural person conducting business activity, a legal person or an organizational unit without legal personality, which within the scope of its business activity, delivers the Goods to the Ordering Party.

**Goods** materials, raw materials, parts, prefabricates, products or equipment supplied by the Supplier to the Ordering Party.

**k.c** - Act of 23 April 1964 Civil Code ((Dz.U.2018.1025)

**Agreement** - a contract for the sale or delivery of the Goods within the meaning of the k.c., which was concluded in the form provided for by law, under which the Supplier transfers the ownership of the Goods to the Ordering Party.

**Order** - a statement of the Ordering Party or any other person, entity duly authorized to act on behalf of the Ordering Party, addressed to the Supplier, containing the will to conclude an Agreement with the content and form indicated in the General Terms and Conditions.

**General Terms and Conditions** - These General Terms and Conditions of Purchase

**Parties** - the Ordering Party and the Supplier concluding the Agreement on the basis of the General Terms and Conditions

## 1. SUBJECT OF GENERAL TERMS AND CONDITIONS

- 1.1. These General Terms and Conditions apply to all Agreements concluded by the Ordering party.
- 1.2. The Supplier's General Terms and Conditions shall not apply to the Ordering party. All references and Supplier's indications regarding the validity of its terms and conditions shall be expressly rejected. No terms and conditions contained in confirmations of Orders, previous offers and other documents issued by the Supplier shall be binding for the Ordering party, even if they have not been expressly rejected.
- 1.3. General Terms and Conditions shall apply to the orders placed by Ordering party and shall concern the Agreements concluded between Ordering party and Supplier.
- 1.4. The inquiries of the Ordering party to the Supplier regarding his Goods and the conditions of their delivery or the Ordering party's request to submit an offer by the Supplier shall not bind the Ordering party in any way.
- 1.5. The General Terms and Conditions shall bind the Supplier since the moment of their handover at the time of concluding the Agreement or since the moment when the Supplier could easily get acquainted with their content.
- 1.6. The acceptable forms of communication between the Parties are written form, oral form (directly or by telephone), sending by post, fax or e-mail.
- 1.7. These General Terms and Conditions develop the content of the legal relationship between the Ordering party and the Supplier and constitute a standard agreement as defined in Article 384 of the Civil Code.
- 1.8. The General Terms and Conditions shall be posted on the following website [www.fibrain.pl](http://www.fibrain.pl).

## 2. TERM OF DELIVERY

- 2.1 The terms of deliveries shall be the terms specified in the Order and they shall indicate term of delivery of the Goods to the place of delivery specified in the Order. The Supplier is obliged to comply strictly with these deadlines.

- 2.2 In the event of a threat to fail to meet the term of delivery, the Supplier shall be required to notify, in writing, the expected period of delay and the reasons for occurrence thereof. In the absence of the above information, or failure to provide information that the delivery shall not be possible to be completed on time, may form the basis for cancellation of the Order by the Ordering party, including the consequences arising out of Section 3.12 of the General Terms and Conditions.
- 2.3 The Ordering party reserves the right to withdraw from the whole or part of the Order that was not performed within the period specified in the Order, without the obligation to pay any compensation. At the same time, the Ordering party reserves the right to seek from the Supplier damages for improper performance of the Order, under general principles set out in the k.c. and the reimbursement of costs incurred for the replacement performance of the Order.
- 2.4 Compliance with the delivery date shall be deemed to be the entry of the Goods to the place indicated by the Ordering party or the timely preparation of the Goods for collection in the Supplier's plant, depending on the agreed delivery condition.

### **3. TERMS OF DELIVERY**

- 3.1. A valid and binding Agreement between the Ordering party and the Supplier, including the General Terms and Conditions, shall take place through:
- 3.1.1. Transfer of the Order by the Ordering party to the Supplier.
- 3.1.2. Acceptance of the Order by the Supplier. Each Supplier's Order confirmation, which differs from the Ordering Party's Order, constitutes a new offer and shall be confirmed by the Ordering party.
- 3.2. The Order number should be indicated on the Delivery Notification, invoice, WZ document, acceptance protocol and all other transaction documents.
- 3.3. Acceptance for execution of each Order should be confirmed in writing by the Supplier within 3 days from the date of its receipt. A paper document, fax or e-mail sent by the Supplier to the Ordering party shall be regarded as a written confirmation. Lack of written confirmation of the Order by the Supplier within the above-mentioned deadline shall be treated by the Ordering party as tacit acceptance of the Order by the Supplier for execution on the terms and conditions specified in the Order and consistent with the General Terms and Conditions.
- 3.4. Confirmation or acceptance of the Order for execution means acceptance of these General Terms and Conditions, which at the moment of confirmation or acceptance of the Order for execution bind the Supplier and mean the Supplier's statement that these General Terms and Conditions take precedence over the General Terms and Conditions in case of their validity with the Supplier.
- 3.5. If the Order has been accepted by the Supplier subject to changes or additions, the confirmation or acceptance of the Order by the Supplier shall not be binding for the Ordering party.
- 3.6. The Ordered Goods shall be delivered by the Supplier to the place specified in the Order. The Delivery may be rejected by the Ordering party it will not be accompanied by a delivery document issued by the Supplier, including the Order number, specification of the goods shipped, quantity, details regarding the package, weight and place of acceptance and approvals, certificates and guarantee cards.
- 3.7. Unless otherwise specified in the content of the Order, the obligation and cost of transport, loading, unloading, insurance, packaging and other similar costs related to the Goods shall be borne by the Supplier. If the content of the Order determines the terms of delivery in accordance with Incoterms 2010, in the event where the Ordering party pays for transport, the transport must take place by means of a forwarding company approved by the Ordering Party.
- 3.8. The Supplier is obliged to pack the Goods in a way that guarantees their non-defective delivery to the Ordering Party.
- 3.9. The Supplier shall be liable for any damages resulting from any delay, loss or damage caused by improper labeling, packaging and identification of the Goods.
- 3.10. The delivery of the Goods ordered shall be deemed as performed, in terms of fulfillment of the conditions of delivery and passing of risk of accidental loss or damage to the Goods from the Supplier to the Ordering party, at the time of a documented defect-free acceptance of the Good by the Ordering party, at the agreed place.
- 3.11. The Ordering party shall be authorized to return to the Supplier, at its own expense and risk, each shipment delivered before the date of delivery or to charge the Supplier the relevant costs of storage. The risk of damage or loss shall be incurred by the Supplier.
- 3.12. The liability for failure or improper performance of the Order shall be established in the form of contractual penalties in the following cases and amounts:  
The Supplier shall pay the Ordering party the following contractual penalties:

- 3.12.1 for withdrawal from performance of the Order by the Ordering party for reasons attributable to the Supplier or by the Supplier for reasons beyond the control of the Ordering party - 10% of the value of the Order;
  - 3.12.2 for exceeding term of delivery, in the amount of 0.6% of the value of the Order for each day of delay, this shall also apply to the intermediate terms;
  - 3.12.3 for delay in removal of defects found during the acceptance of the subject matter of the Order or within the guarantee and warranty for defects period in the amount of 0.4% of the value of the Order for each day of delay, calculated from the expiry of the period to remove the defects indicated by the Ordering party.
- 3.13. If the contractual penalties referred to in item 3. 12. do not cover the damage suffered by the Ordering party , the Ordering party may claim additional compensation under the generally applicable rules.
- 3.14. The Ordering party shall have the right to deduct the accrued contractual penalties from the remuneration of the Supplier.
- 3.15. In case of delay of the Supplier in performing the subject matter of Order or failure by the Supplier to perform the obligations set out in Section 2.2 of the General Terms and Conditions, the Ordering party may - without giving up the right to charge a contractual penalty and additional compensation - exercise one or more of the following rights:
- 3.15.1 require the performance of the Order in whole or in part;
  - 3.15.2 make a purchase from another supplier, at the expense and risk of the Supplier;
  - 3.15.3 withdraw from the Order for reasons attributable to the Supplier, without setting additional time, upon written notice to the Supplier.

#### **4. GUARANTEE AND WARRANTY**

- 4.1. The Orders performed by the Supplier shall result in providing guarantee and warranty for the Goods for the period specified in the Order.
- 4.2. The guarantee period shall run from the date specified in the Order, and if the Order not specify that information, for a period of 24 months from the date of delivery, i.e. from the date of signing by the Ordering party the protocol of receipt of the Goods without reservations.
- 4.3. The liability of the Ordering party under the guarantee shall be in accordance with the provisions of the k.c..
- 4.4. The Ordering party shall notify the Supplier of any found defects of the delivered Goods. The defects found upon acceptance and within the guarantee period shall be removed by the Supplier within the period prescribed by the Ordering party. Lack of a written opinion within the time limit set by the Ordering party shall be tantamount to accepting the whole complaint by Supplier. The Ordering party shall, in accordance with its choice, reserve its right to return all defective Goods, at the expense of the Supplier, including the request of reimbursement of the payment made for them, or request of their replacement or repair. The Supplier shall take all and any necessary steps to ensure that the replacement or repair of faulty Goods is performed at its own expense, and with due diligence. If the Supplier fail to remove the notified defects within the prescribed time limit, the Ordering party shall be entitled to remove the defect in place of the Supplier, at its expense, subject to prior written notice delivered to the Supplier. The above shall not affect any rights of the Ordering party for the contractual penalties, additional compensation and to withhold payment of invoices of the Supplier, and shall not relieve the Supplier from any liability under the guarantee.
- 4.5. Irrespective of the right of the Ordering party under the guarantee, the Supplier shall be liable towards the Ordering party under the warranty for defects, in accordance with the k.c..
- 4.6. Using the warranty, the Ordering party may, at its own discretion, either withdraw from the Order or its part, or demand a reduction of the price by the Supplier, proportionally to the extent to which the defect limits the usefulness of the Goods for the Ordering party, demand removal of defects in the Goods or replacement of the Goods with Goods free from defects.
- 4.7. Each complaint submitted within the warranty and/or guarantee period extends the warranty and/or guarantee periods by the time counted from the date of notification to the date of removal of the reported defect/fault. When the Goods have been replaced, the guarantee and warranty for such Goods shall run from the beginning of the day of its replacement.
- 4.8. The Ordering party is entitled to assign the rights under the guarantee and/or warranty granted by the Supplier to third parties.
- 4.9. If the Supplier grants the Ordering party a guarantee for the Goods for a period exceeding the guarantee period resulting from these General Terms and Conditions, the provisions of the guarantee document shall apply in the part relating to the duration of the guarantee, unless expressly agreed otherwise in writing.

## **5. PRICE**

The Prices included in the Order shall be fixed and not subject to change, cover the Goods delivered to a specified place of delivery at the expense of the Supplier.

## **6. SUBJECT MATTER OF THE DELIVERY**

- 6.1. The subject matter of the delivery must be performed in accordance with the content of the Order, applicable standards and regulations, for which the Supplier shall provide the necessary documents, approvals and certificates together with delivery of the purchased Goods.
- 6.2. The Supplier assures that the Ordering party or the Ordering party's customers shall not infringe any third party's property rights, in particular intellectual property rights and industrial property rights, by purchasing, possessing, offering, using, processing or further distribution of the Goods. If the Supplier breaches this obligation, the Supplier is obliged to indemnify the Ordering party and its customers from all claims of third parties and shall bear all costs that arise in connection with the breach.
- 6.3. Benefits and burdens related to the Goods shall pass to the Ordering party upon signing the protocol of receipt of the Goods without reservations.

## **7. TERMS OF PAYMENT**

- 7.1 Subject to compliance of the delivered Goods and invoice with the specification and clauses of the Order, the payments shall be made by the Ordering party in the form of a bank transfer into the bank account of the Supplier indicated on the invoice, within 90 days from the date of delivery to the registered office of the Ordering party of an invoice together with the defect-free acceptance protocol of Goods, unless it was agreed otherwise in writing.
- 7.2 In each case, the base of issuing of an invoice shall be a fault-free acceptance protocol, proof of delivery or bill of lading signed by representatives of the Parties.
- 7.3. The date of payment shall be the date on which the Ordering party's bank account is debited.

## **8. CONFIDENTIALITY**

- 8.1. Any information directly resulting from these General Terms and Conditions, as well as information obtained by the Supplier in connection with the performance of the Order, including but not limited to any organizational, commercial and technical information regarding the Ordering party and not accessible to the public, shall be considered by the Supplier as a confidential information, and shall not be disclosed to third parties. This obligation shall not apply to situations in which the obligation to provide information results from the absolutely applicable laws.
- 8.2. In particular, the Supplier agrees to treat as confidential the information relating to trading volumes, prices, discounts, product specifications, logistics agreements, technological data, under pain of cancellation of the order by the Ordering party for reasons attributable to the Supplier.
- 8.3. The Supplier represents that it shall not use any confidential information for purposes other than for performance of the Order, and it shall provide an adequate protection to that information, relevant to its confidential nature. The obligation to keep such information confidential shall remain in force after the performance of the Order and may be waived only under the written consent of the Ordering party, to be valid.
- 8.4. Supplier declares that is aware of criminal and civil liability for acts of unfair competition, as defined in the Unfair competition Act of 16 April 1993 (hereinafter: "uznk"), and in particular the following obligations:
  - a. not to disseminate, disclose or use information which constitutes a secret of the contracting authority's undertaking within the meaning of Article 11 of the uznc
  - b. not to induce any entity (natural person, organizational unit with or without legal personality) being a party to the agreement with the Ordering party to fail to perform or improperly perform their duties towards the Ordering party.
- 8.5. The Supplier shall not, during the term of the Agreement and after its termination, disseminate, disclose or use also such information which does not constitute a secret of the Ordering party's business, but the dissemination, disclosure or use of which could in any way damage the Ordering party 's reputation or otherwise cause damage.

## **9. ADDITIONAL PROVISIONS**

- 9.1. In case of extension of the scope of the Order, the Supplier shall deliver additional or replacement Goods under commercial terms and conditions applicable to the performance of a given Order (unit prices, discount).
- 9.2. Partial deliveries are generally unacceptable, unless the Ordering party expressly consents to them.
- 9.3. The Ordering party reserves the right to return a part of the Order and to limit its scope. Any possible return of the subject matter of the Order or limiting of its scope shall occur by using the unit prices adopted in the performance of the Order.
- 9.4. The Supplier may not entrust the performance of all or part of the Agreement to a subcontractor without the consent of the Ordering party, expressed in writing under pain of nullity.

- 9.5. In the event of entrusting the performance of all or part of the Agreement to a subcontractor or subcontractors, there will be no legal relationship between the Ordering party and these entities and the Ordering party is not obliged to pay any amounts due to these entities on this account. In such a case, the Supplier shall be liable to the Ordering party for the performance of the Order by the subcontractor or subcontractors.
- 9.6. The Supplier may not transfer or encumber the rights resulting from the Agreement to third parties without the written under pain of invalidity consent of the Ordering party.

#### **10. DISPUTES**

In the event of a dispute concerning the interpretation or performance of the Order and General Terms and Conditions, which the Parties are unable to amicably resolve, the competent conclusive authority shall be a court of law competent to the registered office of the Ordering party.

#### **11. PROTECTION OF PERSONAL DATA**

- 11.1. The Ordering party shall be the controller of personal data of the Supplier or natural persons representing the Supplier processed for the purposes of performance of the delivery contract.
- 11.2. Providing personal data is voluntary, but necessary for the effective conclusion of the Agreement and its implementation.
- 11.3. Detailed provisions relating to the protection of personal data of the Supplier or natural persons representing the Supplier are contained in the Privacy Policy, available on the Ordering party 's website at the following address \_\_\_\_\_.

#### **12. MISCELLANEOUS**

- 12.1. These Terms and Conditions shall form an integral part of the Order placed by the Ordering party to the Supplier. In the event of any conflict or inconsistency, the content of the Order shall prevail.
- 12.2. If the Parties concluded another agreement with each other, including regulations of the rules for placing and performance of the Orders, in the event of a conflict of the provisions of the agreement with the General Conditions, the provisions of that agreement shall apply.
- 12.3. The General Terms and Conditions may be amended by the Ordering party at any time. Ordering party shall use its best endeavours, in particular by posting on its website, to notify Suppliers of any changes to the General Terms and Conditions. The amended General Terms and Conditions shall enter into force upon publication on the website [www.fibrain.pl](http://www.fibrain.pl). Any amendments to the General Terms and Conditions do not apply to agreements concluded earlier, i. e. before the entry into force of the amended General Terms and Conditions.
- 12.4. In matters not covered by the General Terms and Conditions the provisions of the Polish law shall apply.

FIBRAIN Sp. z o. o.

Date: \_\_\_\_\_

Revision: V1

Language: EN