

# GENERAL TERMS AND CONDITIONS OF SALE PERFORMED BY FIBRAIN SP. Z O.O. IN ZACZERNIE

## DICTIONARY:

**FIBRAIN** -- FIBRAIN Sp. z o.o. with its registered office in Zaczernie, Zaczernie 190F, 36-062 Zaczernie, entered into the Register of Entrepreneurs conducted by the District Court in Rzeszów, 12<sup>th</sup> Commercial Division of the National Court Register under no: 0000113958, NIP (Tax Identification Number) 813-03-36-808, REGON 690216613, amount of the sharecapital of 124 440,00 PLN, BDO no: 000007477.

**Buyer** - an entity forming the other Party of the Agreement concerning Products offered by FIBRAIN, not being a consumer within the meaning of Article 22 §1 of the Act of 23 April 1964 Civil Code (Dz.U.2018.1025).

**k.c.** - Act of 23 April 1964 Civil Code (Dz.U.2018. 1025).

**User** - the entity purchasing directly from the Buyer the Products offered by FIBRAIN.

**Agreement** - Sale Agreement or Delivery Agreement of the Products within the meaning of the k.c., which was concluded in the form provided for by law, including as a result of an Order placed, pursuant to which FIBRAIN transfers the ownership of the Products to the Buyer, concluded between FIBRAIN and the Buyer.

**Products** - Products and equipment offered by FIBRAIN available in the offer of FIBRAIN.

**Credit Limit** - The maximum outstanding balance (i.e., the maximum value of open, i.e., unpaid invoices) due to FIBRAIN from the Buyer, covered by insurance under the insurer's decision.

**Price list** - a document specifying the prices applicable to Buyers for the Products.

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

**Parties** - FIBRAIN and the Buyer concluding the Agreement on the basis of the General Terms and Conditions.

**General Terms and Conditions** - these General Terms and Conditions of Sale FIBRAIN.

## 1. SUBJECT MATTER OF THE GENERAL TERMS AND CONDITIONS

- 1.1. General Terms and Conditions set out terms and conditions of concluding Agreements by FIBRAIN and form an integral part of the offers and all Agreements concluded by FIBRAIN and the Buyer. The General Terms and Conditions apply to all price and sale offers, unless otherwise agreed in writing.
- 1.2. The General Terms and Conditions shall be binding to the Buyer upon their transfer, at the conclusion of the Agreement, or as soon as the Buyer is able to easily read their content. The General Terms and Conditions are posted by FIBRAIN on the FIBRAIN website: [www.fibrain.pl](http://www.fibrain.pl).
- 1.3. If the Parties concluded another agreement with each other, that is connected with governing of rules of sale or distribution of the Products, in the event of a conflict of the provisions of the agreement with the General Terms and Conditions, the provisions of that agreement shall apply.
- 1.4. Whenever reference is made to the form of communication between the Parties (in particular to the placing of an offer, order confirmation) writing and oral forms (directly or by phone), sending by mail, by fax or by e-mail are acceptable.
- 1.5. These General Terms and Conditions develop the content of the legal relationship between FIBRAIN and the Buyer and constitute a standard agreement within the meaning of Article 384 of the k.c.
- 1.6. The provisions of the General Terms and Conditions do not apply to consumers.
- 1.7. Conditions not conforming to the following provisions do not bind FIBRAIN even if they have not been expressly denied by FIBRAIN. Such conditions shall be binding for FIBRAIN, provided that FIBRAIN agrees in writing for a different regulation of mutual rights and obligations of the Parties.

## 2. ORDERS

- 2.1. The conclusion of the Agreement between FIBRAIN and the Buyer shall be governed by the principles set out below.
- 2.2. Catalogues, price lists and other information addressed by FIBRAIN to the Buyer do not constitute an offer, but only an invitation to place Orders. A submitted Product Purchase Order constitutes an offer within the meaning of the k.c..
- 2.3. In order to initiate the Agreement conclusion process the Buyer shall send to FIBRAIN
  - (a) inquiry regarding the possibilities and terms and conditions of Product's purchase, specified in the inquiry for the Products; or
  - (b) Products Order.
- 2.4. In the case of receipt of the inquiry, FIBRAIN shall send an offer to the Buyer. The offer should indicate reference codes of the Products, their description, unit price of each Product, value of the offer, method of payment and availability of the Products.
- 2.5. The offer presented by FIBRAIN shall be binding for a period of 7 days, unless otherwise specified in the content of the offer. The term of being bound by the offer shall begin, in particular, at the date of sending the letter by mail, fax or email by FIBRAIN.
- 2.6. Within the period of validity of the offer, the Purchaser may at any time accept the offer by submitting Orders for the Products covered by the offer. The date of submitting of the order shall be deemed, in particular, the date of service to FIBRAIN of a letter, receipt of a fax or an e-mail.
- 2.7. The Order of the Buyer preceded by the offer of FIBRAIN should include:
  - description of the ordered Products, according to the indications given in the offer,
  - required delivery term, not shorter than the term specified in the offer,
  - place of delivery of the Products,
  - name of the person authorized to accept the Product,
  - address of the Buyer's registered office, and in the event of Buyers who are natural persons, the address at which business activity is conducted and the address of residence should be provided,
  - NIP (Tax Identification Number), telephone number and e-mail address of the Buyer,
  - name, surname, telephone number and e-mail address of the contact person.

- 2.8. Any discrepancies or deficiencies in the content of the Order charged the Buyer.
- 2.9. It is assumed that the person indicated by the Buyer for contacts is authorized by the Buyer to make declarations of will, statements of knowledge concerning the Agreement, including the conclusion, change, detail, withdrawal, termination of the Agreement and the receipt of Products.
- 2.10. The basis for the execution of the Order is its confirmation by the FIBRAIN. After receiving the order, referred to in section 2.7., FIBRAIN shall immediately, not later than within 7 working days confirm to the Buyer acceptance of the order or refusal to accept an Order for execution. Confirmation of the execution of the Buyer's Order can be sent in writing, by fax or e-mail.
- 2.11. Upon confirmation of the Order by FIBRAIN, the Agreement shall be concluded, and it shall include: offer of FIBRAIN, Order of the Buyer, confirmation of the Order by FIBRAIN and the General Terms and Conditions.
- 2.12. The Buyer may resign of the stage of placing an enquiry regarding terms and conditions of purchase of the Products and place directly Orders for the Products which, in that case, shall form an offer of the Buyer of purchase of the Products under the terms and conditions specified in the Order.
- 2.13. Unless otherwise agreed with FIBRAIN, in case of the Orders placed in under Section 2.12., the price of the Products shall be based on current Price List and any discounts granted to the Buyer, and the terms of payment of the price shall be determined under Section 5.4. of the General Terms and Conditions.
- 2.14. FIBRAIN accept the Order of the Buyer, made according to the procedure described in Section 2.12, by confirming acceptance of the Order. Upon receipt of the confirmation by the Buyer, the Agreement shall be concluded, and it shall include: Order of the Buyer, confirmation of the order by FIBRAIN and the General Terms and Conditions.
- 2.15. FIBRAIN may refuse to accept the Order placed by the Buyer, without giving any reason, by notifying the Buyer thereof, within 5 business days of receipt of the Order.
- 2.16. Regardless of the method of concluding the Agreement, FIBRAIN shall have the right to make adjustments of obvious spelling errors in the Orders of the Buyer, in particular the errors regarding reference codes of the Products or their descriptions. FIBRAIN shall notify the Buyer of the executed adjustment when confirming its acceptance of the Order. In case of disagreement of the Buyer for any executed adjustment the Agreement shall not be concluded. The Buyer's failure to reply within 2 working days shall be deemed as consent to the performance of the Order adjusted by FIBRAIN.
- 2.17. Waiver by the Buyer of all or part of the Order after the conclusion of the Agreement, as well as, making any changes in the Order, shall not be considered, unless such the possibility was reserved in writing in the content of the offer of FIBRAIN or confirmation of receipt of the Order.
- 2.18. The Buyer shall be liable towards FIBRAIN for any damage caused by the unfounded waiver of whole or part of the Order after the conclusion of the Agreement.
- 2.19. Should the Buyer intend to proceed to perform or take part in a tender for the implementation of a complete ICT system (the "Project"), it shall immediately inform FIBRAIN thereof. In this case, FIBRAIN, at its discretion, may treat as a priority the reported Project and perform the order of the Buyer within a given Project under separately agreed terms and conditions.
- 2.20. The application of Article 68<sup>1</sup> and Article 68<sup>2</sup> of the k.c. is excluded from concluding Agreements on the basis of these General Terms and Conditions.

## 3. PERFORMANCE OF DELIVERIES

- 3.1. The Ordered Products shall be delivered in accordance with the information contained in the Order confirmation, i.e., by FIBRAIN's own transport or by courier, at the address indicated in Order confirmation and within at the term indicated in the Order confirmation. Detailed regulations on the time of delivery of the shipment by the courier shall be included in general terms and conditions of delivery of the courier performing the delivery.
- 3.2. Should not all the Products be available in warehouses, at the time of acceptance of the Order, then the Order shall be performed in partial deliveries, according to the information contained in the Order confirmation. In this case, the Buyer shall bear the transport fee for the quantity of deliveries indicated in the Order confirmation.
- 3.3. In the case of impossibility to deliver the ordered Products, the Buyer shall be notified of this fact in writing, immediately after determining that fact.
- 3.4. The fact of delivery of the Products by FIBRAIN, shall be confirmed by the Buyer with a legible signature of a person authorized to receive the Products and the company seal placed on the delivery document. In the case of delivery by transport of FIBRAIN, the fact of receipt of the Products, shall be confirmed by the Buyer with a legible signature of a person authorized to receive the goods on the delivery document (CI). In the case of delivery of the Products to the Buyer through a carrier, the delivery of the Products takes place at the moment of entrusting the Products to the carrier.
- 3.5. FIBRAIN agrees to timely perform deliveries of the Products. However, in no case, shall FIBRAIN be held liable for any delays in delivery of the Products, due to causes that are not attributable to and independent of FIBRAIN, unless otherwise expressly agreed. FIBRAIN shall not be held liable for any contractual damages payable by the Buyer to its contractors or for any other claims raised by the contractors against the Buyer for late delivery of the Products.

## 4. PLACE OF DELIVERY, COST OF TRANSPORTATION

- 4.1. If no place of delivery was indicated in the Order, that place shall be the registered office of the Buyer.
- 4.2. The cost of delivery of the Products shall be covered by the Buyer, unless the Parties agreed otherwise.
- 4.3. Unless otherwise agreed, the cost of unloading of the Products at the place of delivery shall be covered by the Buyer.
- 4.4. The benefits and burdens associated with the Products, including the risk of accidental loss or damage, shall be transferred to the Buyer upon delivery of the goods to the Buyer. In the case of delivery of the Products to the Buyer through a carrier, the liability of the carrier begins with the delivery of the Products for transport by FIBRAIN and ends with the delivery of the Products to the Buyer.
- 4.5. Before the unloading, the Buyer shall be obliged to examine the delivered Products in a manner appropriate to the quantity and type of the Products and of their packaging. In the case of finding any defects or damage that may have occurred during transportation, the Buyer shall be required to take any steps necessary to establish the liability of the carrier, as well as, shall immediately notify FIBRAIN, not later than on the day following the date of delivery, under pain of losing its claims for damages against FIBRAIN on this account.

## 5. PRICE LIST, TERMS OF PAYMENT

- 5.1. FIBRAIN shall provide the Buyer with the Price List. FIBRAIN reserves the right to change that Price List; the new Price List shall each time bind the Buyer, from the time of providing thereof to the Buyer, or from the time when the Buyer shall be able to easily learn about the content of the new Price List in any different way. FIBRAIN may also, at its discretion, provide the Buyer with a list of discounts and rebates on the standard Price List available to the Buyer on the FIBRAIN website [www.fibrain.pl](http://www.fibrain.pl).
- 5.2. The offer shall include prices in PLN resulting from the price list.
- 5.3. The Price List shall include prices of the Products net of VAT, which will be added at the current applicable rate.
- 5.4. Unless otherwise indicated in the offer, the Buyer shall be obliged to make an advance payment in the amount of 100% of the Ordered Products, within 7 days of receipt of the Order confirmation, along with a prepayment invoice, but not later than before the date of dispatch of the Products.
- 5.5. All the payments shall be made by transfer into the bank account of FIBRAIN, indicated on the document implying obligation to pay.
- 5.6. The Buyer shall be obliged to timely settle any payments due to FIBRAIN. For each day of delay in payment FIBRAIN shall be entitled to charge statutory interest to the Buyer.



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- 5.7. FIBRAIN reserves the right to suspend the performance of the Agreement and delivery of the Products in the absence of the required advance payment, what shall promptly be notified to the Buyer.
- 5.8. FIBRAIN shall have the right to withhold performance of all or some of the Agreements concluded with a given Buyer, as well as, withhold acceptance of performance of new Orders of the Buyer, in the event of any arrears in payment of any outstanding invoices or in the event that the given Buyer exceeds the credit limit agreed therewith, what shall promptly be notified to the Buyer.
- 5.9. The Buyer authorizes FIBRAIN to issue VAT invoices without the signature of the person authorized to receive them on behalf of the Buyer and to send them to the mailing address of the Buyer.
- 5.10. The date of receipt of the payment shall be deemed the date of receipt of funds into the bank account of FIBRAIN.

## 6. GUARANTEE

- 6.1. FIBRAIN guarantees that the Products are of good quality in terms of the used materials and workmanship. The provisions of this section provide exclusive terms and conditions of the guarantee for the Products, unless FIBRAIN provided the guarantee for the Products sold under the terms and conditions set forth in the guarantee card delivered with the Product. FIBRAIN shall not assume any other liability hereunder (express or implied) for quality of the Products and their workmanship, suitability for installation, sale or suitability for any purpose.
- 6.2. The guarantee of FIBRAIN shall not cover any defects caused by mechanical damage, results of too high temperature, action of bacteria, pollution, electromechanical factors other than normal wear and tear.
- 6.3. FIBRAIN shall be liable under that guarantee only if the Buyer:
  - 1) transported, stored, applied or installed the Products in accordance with all the information provided to the Buyer by FIBRAIN and the international industry customs,
  - 2) filed a complaint in writing, by fax or e-mail, documenting the reported defect or damage of the Products, within 5 days from the date on which the Buyer first time found or was able to find any defect or damage
  - 3) along with the complaint it submitted the invoice which was the basis and prerequisite for an effective filing of a complaint for the Products
  - 4) allowed a proper examination of the Products by FIBRAIN
  - 5) ceased the use of the Products, as soon as, it found or could have found the defect.
- 6.4. The costs associated with returning the Product for which the Buyer filed the claim to FIBRAIN shall be borne by the Buyer.
- 6.5. Under the guarantee resulting from this section, FIBRAIN shall, at its discretion, in the first instance, repair or replace the Product. The Buyer shall not be entitled to any other remedies, as soon as, the Seller shall have repaired or replaced the Product.
- 6.6. The guarantee shall expire automatically after 12 months from the date of delivery of the Product to the Buyer.
- 6.7. The Buyer shall be solely liable towards the Users of the Products for any claims filed thereby and for the due and punctual performance of any guarantee procedures.
- 6.8. The guarantee provided by FIBRAIN shall not cover the defects of the Products that arose after the delivery of the Products to the Buyer, for what the Buyer shall be held fully liable.
- 6.9. FIBRAIN shall not be liable for compliance of the Products with the expectations of the Buyer or the Users, correct installation of the Product in a building, target room, or outside, and for inappropriate selection of the Products in terms of their installation parameters.
- 6.10. Liability of FIBRAIN under the warranty shall be excluded. The liability of FIBRAIN for damages of any kind shall be limited to the value of the Products sold (invoiced price of the product). In addition, FIBRAIN shall not be liable for lost benefits, loss of time, or loss of possibility to use of the Products by the Buyer or the User of the Products.
- 6.11. In case of issuing by FIBRAIN of the guarantee card for the Product, the provisions contained in the guarantee card shall supplement the General Terms and Conditions in terms of the scope of the guarantee. In the event of a conflict between the guarantee card and the General Terms and Conditions, the content of the guarantee card shall prevail, with the exception of Sections 6.2. - 6.5 and 6.7. - 6.9., which shall apply regardless of the content of the guarantee card.

## 7. PROPERTY DISCLAIMER

- 7.1. FIBRAIN reserves the right of ownership of all the Products until full payment of the price by the Buyer. Until that time, the risk of loss, damage or impair of the value of the Products shall be incurred by the Buyer.
- 7.2. Should the Buyer, before the payment of the price, transfer the right of ownership to a third party, obtained amount shall primarily be used to satisfy the claims of FIBRAIN. Should such the amount may not be recovered, the Buyer shall be liable for the resulting damage.

## 8. CONFIDENTIAL INFORMATION

- 8.1. FIBRAIN may disclose some confidential information to the Buyer. Unless FIBRAIN express a prior written consent, The Buyer shall not use or disclose such information to third parties. The confidential information shall include, but shall not be limited to the granted discounts, information about the software and the disclosed source code.
- 8.2. A Buyer who in performance of the Agreement uses or works with third parties, shall be obliged to inform these parties of their obligation to maintain confidentiality of the confidential information and the effective enforcement of their obligation of confidentiality to the same extent as the obligation that applies to the Buyer.
- 8.3. The Buyer 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 on Combating Unfair Competition (hereinafter: "**uznk**"), and in particular the following obligations:
  - a. not to disseminate, disclose or use information constituting a secret of FIBRAIN within the meaning of Article 11 of the uznk
  - b. not to induce any entity (natural person, organizational unit with or without legal personality) being a party to the agreement with the FIBRAIN to fail to perform or improperly perform their duties towards the FIBRAIN.
- 8.4. The Buyer 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 FIBRAIN's business, but the dissemination, disclosure or use of which could in any way damage the FIBRAIN's reputation or otherwise cause damage.

## 9. AMENDMENT OF THE GENERAL TERMS AND CONDITIONS

- 9.1. The General Terms and Conditions may, at any time, be amended by FIBRAIN. FIBRAIN shall make every effort, in particular, through an announcement on its website, to inform the Buyers about any amendments to the General Terms and Conditions. The entry into force of the amended General Terms and Conditions shall occur upon their announcement on the following website [www.fibrain.pl](http://www.fibrain.pl)
- 9.2. Any amendments to the General Terms and Conditions shall not apply to the previously concluded Agreements, i.e., before the entry into force of the amended General Terms and Conditions.

## 10. FORCE MAJEURE

- 10.1. Neither Party shall be liable for failure to perform or improper performance of its obligations under the Purchase Agreement due to force majeure.
- 10.2. As force majeure the Parties shall deem an exceptional occurrence, independent from the Parties, impossible to be predicted and prevented, even if avoiding it, would require to take steps which costs would exceed the benefits possible to be saved; in particular, as cases of force majeure shall be deemed: war, natural disaster such as earthquake or flood, explosion, fire, strike of a massive nature etc.

## 11. PERSONAL DATA

- 11.1. The administrator of the personal data of the Buyer or natural persons representing the Buyer, provided in accordance with the provisions of point 2.7 of the General Terms and Conditions and processed in order to perform the Agreement is FIBRAIN Sp. z o.o. with its registered office in Zaczerwie.
- 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 Buyer or natural persons representing the Buyer are contained in the Privacy Policy, available on the FIBRAIN's website at the following address [www.fibrain.pl](http://www.fibrain.pl)

## 11'. INTELLECTUAL PROPERTY RIGHTS

- 11'.1. All intellectual property rights to the Products and Services to which FIBRAIN is entitled, including software and documentation, in particular any plans, cost estimates, designs, analyzes, reports, offers, source codes or other technical documents, know-how, commercial materials, including catalogs, folders, brochures, photos, descriptions, etc. are the exclusive property of FIBRAIN, or are used by FIBRAIN under a license granted to FIBRAIN by the authorized entity and are not transferred to the Buyer together with the Product / Service or their Documentation or Software.
- 11'.2. Along with the purchase of Products and / or Services, the Buyer obtains a non-exclusive license to exercise the rights referred to in point 11'.1. above, to the extent and in such fields of operation as are necessary for the correct, consistent with their intended use of the Products and / or Services or for their resale (unless FIBRAIN or the authorized entity has not stipulated otherwise). The use of these rights by the Buyer may not lead to violation of legitimate interests of FIBRAIN and each time in cases of doubt, requires to be agreed with FIBRAIN. Copying of the Documentation and copying or reproduction of the Software source code, or translation of its form, as well as making them available to any third parties, requires each time separate consent of FIBRAIN (or authorized entity) granted in writing, except for cases referred to in the mandatory provisions of law.
- 11'.3. The Buyer can not transfer the license referred to in point 11'.2. above, to other party, unless it is necessary for the resale of the Products or their transfer to a third party under another legal title, provided that the third party agrees to be subject to the provisions of these General Terms and Conditions.
- 11'.4. The Buyer is obliged to inform FIBRAIN of any known to him cases in which FIBRAIN's intellectual property rights could have been infringed in relation to the Products and / or Services or software provided to him by FIBRAIN.
- 11'.5. The Buyer may install the software provided by FIBRAIN only to the Products provided by FIBRAIN and with the consent of FIBRAIN. Any attempt to analyze software, decompile or install on devices other than those provided by FIBRAIN is prohibited.

## 12. MISCELLANEOUS

- 12.1. The Parties shall endeavor to amicably resolve any dispute concerning the interpretation or performance of the Agreement.
- 12.2. All disputes arising from sales contracts concluded on the basis of these General Terms and Conditions or in connection with these contracts, including contracts with foreign Buyer, will be settled by: "Ultima Ratio" The First Electronic Arbitration Court at the Association of Notaries of the Republic of Poland in Warsaw, in accordance with the provisions of the Rules of this Court in force on the date of initiation of proceedings. An arbitration clause does not bind the insurance company, pursuing a claim that was ceded to it in connection with the payment of compensation to FIBRAIN.
- 12.3. The standard agreement used by the Buyer shall not apply to the shaping of the legal relationship with regard to the sale and delivery of Products, even if they meet the conditions set out in Art. 384 of the k.c. Moreover, FIBRAIN shall not be bound by any general terms and conditions of contracts (or documents of similar importance) delivered by the Buyer, and even though they have been delivered, they shall not be treated as an offer.
- 12.4. In matters not covered by the General Terms and Conditions the provisions of the Polish law shall apply.
- 12.5. The General Terms and Conditions exclude the application of the Vienna Convention of 11 April 1980 on the international sale of Products.

FIBRAIN Sp. z o.o. with its registered office in Zaczerwie

Date: 04.11.2019

Version: V3

Language: EN



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