

General Business and Delivery Terms and Conditions JANKA 2017

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General Business and Delivery Terms and Conditions, hereinafter only as “GBTC”, “Terms”

1. General Provisions

1. The following general business and delivery terms and conditions (these “Terms” or “GBTC”) extend the provisions of the purchase contract and they are integrally incorporated therein. In case of any disputes between the purchase contract and the present Terms, the provisions of the purchase contract shall prevail.
2. The relationship of obligations between the buyer and the seller shall be governed by the Czech law, namely by the Civil Code No. 89/2012 Coll. (hereinafter only as “NCC”) and INCOTERMS 2010. If the contract is signed on the Buyer's behalf by a person whose authorisation to such signature is not mentioned in the excerpt from the Czech Commercial Register, such person shall present to the Seller a valid power of attorney or other document certifying the right of this person to represent and legally bind the Buyer; if the Buyer is a natural person, he or she shall present a trade licence or other similar document proving the licence to operate business.
3. Rights and obligations arising out of the purchase contract and the present Terms may be transferred or assigned by the Buyer onto a third party only subject to a previous written consent of the Seller. The present General Business Terms and Conditions pursuant to Section 1751 NNC determine the principles of sale of goods and services by JANKA Radotín, a.s. (hereinafter only as “Seller”) in the territory of the European Union and also in the territories of states which are not EU members.
4. The acceptance of an offer by a customer (hereinafter only as “Buyer”) with a reference to its business or purchase terms and conditions may apply only in the scope in which they are not in conflict herewith.
5. The Seller shall prepare on the basis of an inquiry or order of a potential Buyer and according to the specifications (inquiry) of the Buyer technical and price offer which is pursuant to Section 1731 NCC et seq. a purchase contract proposal. An offer is compiled by a sales representative of the Seller on the basis of the Buyer's inquiry or order. The inquiry or the order must contain technical specifications in the requested output parameters, configuration, identification of an operator and the environment in which the goods shall be operated, or other specific requirements (supply in more parts, dismounted and mounting at the construction site etc.).
6. Prices stated in the offer are excluding VAT. The prices shall be increased by VAT at the statutory level. If a technical part of the offer was processed already at the stage of creation of the project and in cooperation with the project author, it may be released as a copyright work only to the Buyer who accepts the offer. The offer shall also include data about the anticipated delivery date which is not binding on the Seller until the offer is accepted, and

the validity period of the offer. The Seller reserves the right in accordance with Section 1738 (1) NNC to withdraw the offer during the offer validity.

2. Price and Payment Terms

1. The purchase price for the Goods is set in the purchase contract and it is fixed. Unless otherwise agreed, the purchase price includes packaging of Goods and loading to a transport means in the production plant at the Seller's seat.
2. The price of delivery of the Goods is set individually for each delivery and stated with broken down item prices in the Seller's offer. The purchase price includes the goods with the exception of non-returnable pallets that are not a part of the goods. These shall be charged to the Buyer. By accepting the offer the Buyer acknowledges its agreement with the level of the offered price, the acceptance of the offer shall also be sending the order after the offer is prepared pursuant to art. 1. sub. 5 of GBTC. Prices are stated EXW, according to Incoterms 2010, the Seller's business place, Vrážská 143, Post Code 153 00 Prague 5, Radotín or CPT transport paid to the destination. The Seller has the right to request payment of a reasonable advance. A reasonable advance means an amount up to 50% of the purchase price, unless otherwise stated in the Contract. Until the Advance is paid, the Seller is not obliged to perform according to the Contract, in which case the time of delivery and handover of the Goods shall be extended reasonably by the time during which the Seller is late with payment of the Advance. Unless otherwise stated, the advance is payable upon the Seller's written request within 3 days from delivery. In case of the Buyer's delay with payment, the Seller has the right to withdraw from the purchase contract.
3. The Buyer has the right to return an invoice to the Seller if the invoice does not contain the statutory particulars. The Seller is obliged to correct the invoice/receipt, or issue a new one. By returning the invoice the original maturity period is not suspended and the original due date remains unchanged.
4. Should the Buyer not ensure dispatch of the Goods or not accept the Goods on the day of delivery of the Goods according to the purchase contract, the Buyer agrees that warehouse or storage fees shall be charged to the Buyer for each day of storage during the Buyer's delay with the acceptance of the Goods in the amount of 0.05% of the purchase price of the Goods for each, even commenced, calendar day of storage, unless otherwise stipulated in the purchase contract. At the same time the Goods shall be released to the Seller's stock or stored at other appropriate place and the Buyer agrees with issuing an invoice for storage or warehouse fees. The price does not include the costs of storage and the Seller has the right to claim efficiently expended costs, namely the costs related to transportation. Storage or warehousing depends pursuant to the provisions of Section 1727 NNC on the Purchase Contract. The Seller is not obliged to release the articles during the Buyer's delay with the acceptance of the Goods. In such case the risk of damage to the articles pursuant to Section 2121 (2) of NNC shall not be transferred onto the Seller.
5. Final invoice shall be payable within 14 days from the issue date of an invoice, unless otherwise stipulated in the Purchase Contract.
6. All amounts shall be paid by a bank transfer from bank accounts of the contracting parties.
7. Payment shall be considered made after the relevant funds are credited to the Seller's bank account.

8. The Seller reserves the right to retain delivery of the Goods and postpone handover thereof if the Advance is not paid as agreed and/or in case that arrears, if any, from previous Purchase Contracts have not been settled in full, or the Buyer is late with the fulfilment of other obligation with respect to the Seller, in which case the term of delivery and handover of the Goods shall be extended appropriately by the time corresponding to the Seller's delay.
9. In such case the Seller reserves the right to withdraw from the contract. The Seller reserves the right to perform the subject of the contract before the stipulated date. In case of any delay of the Buyer with payment of the contract price, the Seller has the right to charge for the time period from the due date until the due amount is paid a default interest of 0.05% for each, even commenced, calendar day of such delay.
10. The quality and the quantity of the Goods supplied and handed over to the Buyer is specified solely in a written form in the offer.
11. The Seller's goods and services and their parameters are publicly accessible and they can be found for example in the accompanying technical specifications in the offer, in catalogues, leaflets etc. All technical data about products that are not explicitly marked as binding are for information only and the Seller reserves the right to change it. The process of delivery and handover of the Goods includes delivery of accompanying documents pursuant to the Act No. 22/1997 Coll., on Technical Requirements for Products.
12. All copyrights and titles to all provided documents, software, technical solutions and know-how shall remain the Seller's property. This information may be copied or otherwise distributed and made available to other persons only subject to the Seller's written consent. All information both exchanged during negotiations regarding concluding the Purchase Contract, including sent offer and the acceptance thereof, and during the subsequent process of concluding the Purchase Contract, is marked as confidential and it is subject to trade secret pursuant to Section 2985 NCC. The Buyer is not authorised to disclose such information, including documents, to third parties without the Seller's written consent. In case of breach of art. 2 (12) on the Buyer's part a contractual penalty is hereby established in the amount of CZK 500,000. For this purpose the contracting parties exclude the application of Section 2050 NCC.

3. Delivery terms:

1. A standard delivery period is specified in each specific offer. The date of delivery is specified in the Seller's order confirmation, unless the date of delivery and handover of the Goods is specified in the offer. The date of delivery means a day when the subject of the contract is ready for handover and takeover by the Buyer or by a carrier at the Seller's seat. As regards the Goods where an unchangeable component from a subcontractor is incorporated, the Seller may exceptionally extend the delivery period in association with an extended delivery time of such subcontract. The Seller shall notify the Buyer of such situation immediately and the Buyer shall accept it, providing that the subcontract has been agreed in the Purchase Price, the Buyer has agreed with the subcontract and with the entity delivering the subcontract, the delivery period has been extended in consequence of the character of the subcontract, without a breach of obligations by the Seller and the extended time is reasonable.
2. The date of delivery stated by the Seller excludes the time of transportation of goods to the Buyer.

3. The date of delivery of performance is binding on the Seller providing that no additional requirements for changes in the technical workmanship of the Goods have been raised by the Buyer, all payable financial obligations (invoices) have been paid in full, on time and in the set manner and the Buyer has no overdue obligations to the Seller. The delivery date is also not binding on the Seller if technical or sales documents necessary for the execution of a contract have not been delivered by the Buyer to the Seller on time. If these terms are not observed, the Seller has the right to change the originally agreed time of delivery by a reasonable time, or withdraw from the respective part of performance or the whole Purchase Contract.
4. If the Seller is late with delivery of the subject of the Purchase Contract, or the Seller breaches its obligations, a contractual penalty is hereby set in the amount of 0.05% of the value of not delivered Goods for each, even commenced, day of such delay, which shall be payable within 15 days from the day the claim is lodged. The Buyer cannot claim damages and payment of other costs.
5. If the Buyer requests a partial supply and a partial handover of the Goods or additional supplies, the Buyer shall pay all additional costs of transportation and installation.
6. The Seller fulfils its obligation arising out of the Purchase Contract by delivering the agreed Goods so that it delivers the Goods and hands them over to the Buyer under the stipulated terms and marks them properly.
7. The place of performance(delivery) of the Goods EXW and CPT according to Incoterms 2010 means the Seller's place of business Vrážská 143, 153 01 Prague - Radotín in accordance with Section 7 (1) and (2) of the Act No. 235/2004 Coll., as amended.

4. Force Majeure

The parties consider the events of Force Majeure to be such unusual circumstances (e.g. legal strike, natural disaster, amendments to statutes etc.) which prevent the parties temporarily or permanently from fulfilling the obligations stipulated in the contract which occur after the entry into legal force and effect of the Purchase Contract and which could not have been foreseen or averted by the contracting parties. The party which cannot fulfil its obligation due to the event of Force Majeure shall inform the other party immediately upon the occurrence of such circumstances and present the other party documents, or information that these circumstances have a substantial impact on performance of contractual obligations. In case that the circumstances of Force Majeure last longer than 90 days, both parties shall start negotiations on a change of the Purchase Contract.

5. Complaint Procedure and Quality Warranty

1. The goods have defects if they are not supplied in quantity, quality and workmanship defined in the Purchase Contract.
2. The Buyer is obliged to inspect the Goods immediately after the acceptance thereof and, if appropriate, to report the detected patent defects, i.e. to claim the Goods, however, no later than within fifteen calendar days from the day of acceptance.
3. The Seller is obliged to provide a warranty for the Goods in normal length and for normal purpose and parameters. Unless the contents of the Purchase Contract imply otherwise, the warranty period shall start from the day the Goods are accepted. As regards defects of the

Goods that are not covered under the warranty, the provision on statutory defect liability shall apply in full scope.

4. If the Purchase Contract is breached in a material manner by delivery of defective Goods, the Buyer may:
 - request removal of defects by repair of Goods, provided that the defects are repairable;
 - request an adequate discount from the purchase price.
5. The Buyer shall inform the Seller of the detected defect and exercise its right arising out of a defective supply without undue delay, providing that the defect appears only after the acceptance of the Goods, otherwise the rights from the quality warranty or liability for defects shall expire. Address for reporting defects: reklamace@janka.cz The option to choose between the claims stated in the previous subparagraph may be exercised by the Buyer, only providing that the Buyer reported the defect to the Seller in time. The Buyer may not alter its asserted claim without the Seller's consent. The Seller shall assess the claim or remove the detected defects by the date agreed by the contracting parties reklamace@janka.cz in each specific case depending on the type of the defect; if such date is not set by the contracting parties, then in the time period reasonable according to the character of the reported defect.
6. The Seller shall not be liable for any defects of the Goods which occurred as a result of an unprofessional interference of the Buyer's operator. The Seller's liability for defects shall also not cover any defects caused by a breach of the terms of operation, maintenance and repairs which were delivered to the Buyer in writing on or before takeover and handover of the Goods. Defects occurred in consequence of the events of Force Majeure, defects caused by the Buyer, by a third party or as a result of normal wear and tear shall also be excluded from the liability for defects (contamination of filters).
7. The Seller's standard and normal warranty for the Goods shall be 24 months from the day of delivery and takeover of the Goods. The parts of the Goods that are in their nature perishable or liable to wear and tear are excluded from the warranty as well. If the option of the extended warranty has been chosen, the Buyer shall indicate this fact explicitly in the order and in the order acceptance and fulfil the additional requirements stated in the Warranty and Complaint Terms.
8. If the Buyer is late with payment of the purchase price when the claim is raised, in such case the Buyer is not authorised to exercise any rights with respect to the Seller's liability for defects of the Goods. The Seller shall attend the claim only after the purchase price is paid in full. In such case the Buyer is not authorised to perform any service action at own costs alone or by means of third parties. However, if the Buyer performs such service action, the warranty and liability for defects shall expire.
9. During the warranty period the Buyer shall comply with operating rules and the Seller's instructions related to operation and maintenance. This obligation applies namely to the obligation to use consumables delivered exclusively by the Seller (filters and other consumables). If any non-original parts or consumables are used, the Seller has the right not to acknowledge the Buyer's right arising out of the warranty and the liability for defects and to reject the claim.

6. Risk of damage to the Goods and the liability for damage caused by a defect of the product

1. The risk of damage to the Goods shall be transferred onto the Buyer in accordance with the clause EX WORKS (Incoterms 2010) when the Buyer is enabled to dispose of the Goods at the place of delivery. In the Goods are not accepted by the Buyer at the time the Seller enabled the Buyer to dispose of the Goods, not even within the substitute time period of 10 business days, the Goods may be moved by the Seller to the outdoor area, and the Seller shall be liable for damage which may be caused to the Goods, namely by climatic conditions. Any damage to the General Business and Delivery Terms and Conditions JANKA 2019 Version 01-2019 JANKA Radotín,a.s. Vrážská 143, 153 00 Prag 5 – Radotín, Tschechische Republik www.JANKA.cz Tel.: +420 251 088 777 Fax: +420 251 088 844 E-mail: janka@janka.cz Goods occurred after the transfer of risk to the Buyer shall not affect the Buyer's obligation to pay the purchase price.
2. The Seller shall be liable for any damage caused by a defect of the product pursuant to Section 2939 et seq. in the scope agreed in writing between the Seller and the Buyer. The Seller shall not be liable for damage that has not been caused directly on the delivered goods.

7. Withdrawal from the Contract

1. The right to withdraw from the contract may be constituted on the basis of the provisions of the Purchase Contract, the present Terms or by the operation of law.
2. Withdrawal from the contract must be made in writing and demonstrably delivered to the other party. The Purchase Contract is terminated upon delivery of a written notice of withdrawal. The Seller has always the right to withdraw from the Purchase Contract in case of a material breach of the Purchase Contract by the Buyer. For the avoidance of any doubts, a material breach of the Purchase Contract shall mean the Buyer's delay with payment of any obligations arisen out of the Purchase Contract which shall exceed 30 calendar days.
3. The Seller shall also have the right to withdraw from the Purchase Contract in case of the Buyer's delay with payment of any other obligation not related to the Purchase Contract, providing that such delay exceeds 30 calendar days Should the Buyer withdraw from the Purchase Contract for any reason after sending the binding order/order confirmation, the Buyer shall pay the Seller a contractual penalty in the following amount: • 10% of the purchase price in case of withdrawal from the Purchase Contract within one week from the day of delivery of the binding order/order confirmation to the Seller, • 30% of the purchase price in case of withdrawal from the Purchase Contract within two weeks from the day of delivery of the binding order/order confirmation to the Seller, • 70% of the purchase price in case of withdrawal from the Purchase Contract within three weeks from the day of delivery of the binding order/order confirmation to the Seller, • 90% of the purchase price in case of withdrawal from the Purchase Contract within 4 weeks from the day of delivery of the binding order/order confirmation to the Seller, • 100% of the purchase price in case of withdrawal from the Purchase Contract, if the subject of the contract has already been manufactured and transported to the Seller's warehouse of finished products.
4. The Buyer shall pay the contractual penalty within 14 days from delivery of the notice of withdrawal from the Purchase Contract to the Seller.

5. In case of the Buyer's delay with payment of the contractual penalty, the contracting parties set a default interest of 0.05% of any amount due for each day of such delay. For this purpose the contracting parties exclude the application of Section 2050 NCC. 8. Acquisition of title Title to the Goods shall be transferred onto the Buyer when the Goods are accepted and the purchase price for the Goods is paid in full. Until the purchase price is paid in full, the contracting parties have agreed on the reservation of title. The risk of damage to the Goods shall be transferred onto the Buyer in accordance with art.6. of GBTC.

9. Final Provisions

1. Any matters which are not explicitly regulated under the purchase contract, or the present Terms, shall be governed by the applicable provisions of the Civil Code, as amended. If any partial provision of GBTC or the Purchase Contract is invalid, such provision shall be assessed in terms of its invalidity separately and it shall not cause the invalidity of the Purchase Contract or GBTC as a whole.
2. The parties have agreed that in case of any dispute stemming out of this relationship of obligations or in relation to it, the subject-matter and local jurisdiction shall always be determined according to the Seller's seat.
3. The parties have agreed that the maximum aggregate level of all contractual penalties exercised against the Seller shall be limited to the maximum amount of 10% of the price of the Goods.