

# General Commercial Terms and Conditions

In effect from 01/10/2014

## I. Validity and binding force of the Terms and Conditions

1. These General Commercial Terms and Conditions (hereinafter referred to as "GCT") form an integral part of Contracts for Sale of Goods, i.e. Purchase Contracts or Contracts for Work (hereinafter referred to as the "Contract", "Purchase Contract" or "Contract for Work"), concluded between JIVA-Jirák výroba velkokuchyňského zařízení spol. s r.o., Company No. 26494469, as the contractor (hereinafter referred to as the "Seller"), and its customers (hereinafter referred to as the "Purchaser"). GCT do not apply to Contracts in which the effectiveness of GCT is expressly excluded. Any changes of GCT which form a part of the Contract already concluded, or changes of the Contract may only be made in writing after agreement of the parties. A concluded Contract is also deemed to be a written order of the Purchaser, confirmed by the Seller. Different arrangements in the Contract shall prevail over the provisions of the Terms and Conditions.
2. If the Purchaser, with the Seller's previous agreement, orders any goods that are not contained in the Seller's offer, the Purchaser shall prepare a written specification of the goods, and shall agree the price with the Seller in advance (the so-called "specific goods") and shall conclude a Contract. Otherwise it is understood that the order was not made in a relevant manner, and therefore a contractual relationship was not concluded.
3. If the term "purchase price" is mentioned in these GCT, it also means the price of the work and vice versa, depending on the nature of the thing or relevant Contract. Depending on the nature of the thing or relevant Contract as well, the Seller also means the contractor of the work and vice versa, and the Purchaser also means the client ordering the work and vice versa.

## II. Price of the goods and services connected with the sale

1. The prices of the Seller's products shall be determined according to the Seller's pricelists that are valid when signing the Contract.
2. The price of the services connected with the sale is determined as follows:  
Price for the transportation of the goods:
  - transportation by car/pick-up: CZK 18 excluding VAT / km
  - transportation by car/Transit: CZK 22 excluding VAT / km
  - transportation by truck: CZK 28 excluding VAT / km
3. If, under the Contract, the Seller is obligated to ensure the transportation of the goods, the Purchaser shall also pay the price of handling and packaging the goods as follows:
  - piece goods CZK 100 to 300 (depending on the complexity and size)
  - goods at the price up to CZK 500,000 CZK 1,500
  - goods at the price from CZK 500,000 to 1,000,000 CZK 2,000

- goods at the price from CZK 1,000,000 to 1,500,000 CZK 2,500
  - goods at the price from CZK 1,500,000 and more CZK 3,500
4. If, under the Contract, the Seller is obligated to ensure the transportation or assembly of the goods, the Purchaser shall also pay the price of connecting materials as follows:
    - goods at the price up to CZK 500,000 CZK 1,500
    - goods at the price from CZK 500,000 to 1,000,000 CZK 2,000
    - goods at the price from CZK 1,000,000 to 1,500,000 CZK 2,500
    - goods at the price from CZK 1,500,000 CZK 3,500
  5. The price of assembling works shall be determined according to the time really spent by workers for the assembly, using the following rates per worker:
    - assembly CZK 650/hour
    - travel time CZK 250 / h
    - transportation shall be charged using the above rates and type of vehicle
    - provision of special service (night 22:00 - 6:00, public holiday, weekend):
      - assembly CZK 800/hour
      - travel time CZK 300 / h
  6. The purchase price (or prices of other services) does not include the recycling fee for electric devices, paid under Act No. 185/2001 Coll., on waste, and Regulation No. 352/2005 Coll. The fee shall be paid by the Purchaser to the Seller in addition to the purchase price (the fee shall be charged separately).
  7. The purchase price does not include secondary costs, such as the insurance, customs, etc. If such costs are incurred in connection with the performance under the Contract, they shall be paid by the Purchaser, and shall be charged in addition to the purchase price.
  8. If any additional changes to the goods are requested by the Purchaser, they shall be paid by the Purchaser. The price of additional changes is CZK 480 per working hour of a worker.
  9. All prices specified herein are VAT exclusive. The purchase price and other prices shall be increased by applicable VAT.
  10. If, after concluding the Contract, the prices of input prices of the goods and services as required for fulfilling the Seller's obligation under the Contract, including changes of the exchange rate, increase by more than 3%, the Seller shall be entitled to demand that the Purchaser would pay the purchase price or other prices under the Contract increased accordingly.

### **III. Delivery term, completion of the Contract and delivery takeover**

1. The Seller does not have to perform its obligations under the Contract till the Purchaser fulfils all its due payment obligations towards the Seller. The Seller also reserves the right to suspend, after a written notice to the Purchaser, all deliveries of goods till the Purchaser's due obligations are fully paid.
2. The Seller shall keep the set dates provided that the Purchaser delivers all necessary technical, business or other basic data to the Seller, if required.

3. If any delivery cannot be fully executed on the agreed date by the Seller, the Seller shall notify the Purchaser of it without delay. Then the parties shall agree a new delivery of the goods or a new delivery date.
4. Should the Purchaser submit other requirements for changes or additions to the goods, the delivery term shall be extended automatically by a period required to carry out such changes, unless otherwise agreed by the parties.
5. Delivery is regarded as fulfilled and the liability for damage to the thing shall pass to the Purchaser:
  - a. upon handover of the goods, and if the Purchaser does not take over the goods in due time, then on the day following the Seller's notice that the goods are prepared for the handover to the Purchaser, or
  - b. upon handover of the goods to the first carrier for transportation to the destination as determined by the Purchaser, if it is determined in the Contract that the Seller shall ship the goods.
6. The Purchaser must accept the goods delivered by the Seller under the Contract, even if the goods are delivered as partial delivery.
7. Should the Purchaser be delayed with the takeover of the goods, the Seller - after advising the Purchaser to take over the goods sufficiently in advance, but the Purchaser did not take the goods over - may terminate the Contract and sell the goods to a third party, or otherwise dispose of the goods, at its discretion. The Seller shall also be entitled to claim for compensation for damages incurred from the Purchaser. The provision on the contractual penalty is not thereby affected.
8. Should the Purchaser be delayed with the takeover of the goods, the Purchaser shall pay a contractual penalty to the Seller, amounting to 0.05% of the purchase price of the goods per day of delay with the takeover of the goods. The right to the contractual penalty shall not affect the Seller's right to claim for compensation for damages.

#### IV. Payment Terms and Conditions

1. The Seller shall become entitled to the payment of the purchase price corresponding to the actually delivered quantity of the goods.
2. The purchase price, advances for the purchase price and other prices under the Contract shall be due within 14 days from delivery of the respective invoice.
3. The delivered goods shall remain the Seller's property till the full payment of the goods by the Purchaser (**reservation of ownership**), i.e. the title to the goods shall pass to the Purchaser upon full payment of the purchase price and prices of related services (transportation, assembly, etc.). The purchaser shall treat the Goods that are subject to the reservation of ownership in such a manner so as to prevent their devaluation, damage, destruction, theft or loss. Till the reservation of ownership applies, the Purchaser must not alienate, pledge or otherwise encumber the goods with rights of third parties. In the case of further processing or modification of the goods, the Seller shall acquire the co-ownership right to the new thing in the proportion of the book price of the goods to the book price of the new thing.

4. Should the Purchaser be delayed with the payment, the Seller shall be entitled to request that the Purchaser return the unpaid goods, at the expense and risk of the Purchaser. The Purchaser must allow the Seller free access to buildings and land plots where such goods are stored. If the goods are taken back under this provision, it shall not have any effect of the Contract termination, and any other provisions of the GCT are not thereby affected.
5. The Purchaser is not entitled to retain the purchase price or goods under complaint that are to be sent back for any counterclaims. The Purchaser is not entitled to unilaterally set off its claims against the Seller against the Seller's claims. Any loss or damage of the goods incurred after the liability for damage of the goods passed to the Purchaser, or a complaint filed, does not relieve the Purchaser from its obligation to pay the full purchase price.

#### **V. Withdrawal from the Contract and Penalties**

1. The parties may withdraw from the Contract due to any reason as determined by law or by the Contract.
2. Any party may cancel an obligation under the Contract by way of payment of compensation, amounting to 30% of the purchase price or the price of the work. The Purchaser may only exercise this right till the Seller commences the manufacture or assembly of the ordered goods.
3. Should the Purchaser be delayed with the payment, the Purchaser shall pay default interest to the Seller, amounting to 0.05% of the due amount per day.

#### **VI. Rights resulting from defects of the goods - complaints**

1. The Seller is liable for the quality and hidden defects of the goods that occur in the Goods during the warranty period. The Seller gives the following warranty for the goods:  
24 months for material;  
12 months for delivered products (goods), except the parts and accessories as stated below, for which a 6-month warranty is given;  
6 months for lights - fuses, plexi doors, sealing, heaters, plastic parts of sliding doors and others, where the service life of the facilities is shorter than 12 months.  
The Purchaser shall use the goods properly and according to the operating instructions, otherwise the Purchaser is not entitled to claim for compensation under the warranty.
2. **Should the Purchaser use the subject matter of the Purchase Contract contrary to the Seller's instructions, all its rights under the warranty as given by the Seller shall expire.**
3. The Purchaser shall check the goods upon their takeover properly, and shall confirm the takeover in the carrier's transportation contract or delivery note, and shall keep controlled documents on the takeover. If the Purchaser does not to take over the goods in due time, it shall be liable for any related damage and costs incurred
4. Visual defects shall be reported no later than within ten days from the takeover.
5. All complaints shall be lodged to the Seller in writing.



6. The Purchaser's rights resulting from the goods defects shall only be recognized if defects were reported in due time, and if the Purchaser proves that they did not occur after the liability for damage of the goods passed to the Purchaser, or were caused during the warranty period by external effects, such as natural disasters, improper storage, common wear, unprofessional handling or other inadequate use contrary to the Seller's recommendations or operating instructions. A claim may only be recognised by the Seller on the basis of technical testing carried out by the Seller.
7. If the conditions for recognizing a claim resulting from goods defects are fulfilled, and if the Contract was materially breached by delivering goods containing defects, the Seller shall solely:
  - a. deliver the missing quantity of the goods,
  - b. replace the defective goods with goods free of defects, or repair the goods so that they would not contain defects,
  - c. reimburse the Purchaser for the costs incurred in relation to the return of the defective goods, if the Seller asked the Purchaser to return them.
8. The right to receive replacement goods or reimbursement for costs incurred in relation to the return of defective goods may only be exercised by the Purchaser after the return of the defective goods to the Seller on the basis of previous agreement.
9. If the Contract is breached insignificantly due to improper performance, the Seller shall solely:
  - a. deliver the missing quantity of the goods,
  - b. replace the defective goods with goods free of defects, or repair the goods so that they would not contain defects.

## **VII. Identification of the Goods**

1. The Seller identifies the goods with its trademark and other designations as used by the Seller. The Purchaser is not entitled to change, modify or cover such identifications without the Seller's approval. The Purchaser is only entitled to use the Seller's business name, trademark, designation of products and their illustrations in catalogues on the basis of the Seller's written approval.

## **VIII. Force Majeure**

1. Circumstances excluding the Seller's liability, which impede the fulfilment of its contractual obligations, are deemed to be natural disasters, war, riots, strike, lockout, official order, epidemic disease, delay or other breach of contractual obligations of the carrier, and circumstances that occurred independently of the will of the Seller.
2. If the circumstances of force majeure as provided in paragraph 8.1. occur in the period before the agreed date of performance (delivery term), the Purchaser's rights against the Seller under the concluded Contract - with the exception of additional performance - are excluded.

3. Should the event of force majeure occur, the Seller shall notify the Purchaser of its occurrence and nature without delay, and if possible, shall inform the Purchaser when the Seller may resume the fulfilment of its obligation. After the event of force majeure terminates, the Seller shall fulfil its obligations towards the Purchaser under the Contract, save to the extent that the Purchaser does not insist on the further fulfilment any more.

#### IX. Governing law

1. The contractual relationship detailed by the Contract, which also includes these GCT and all rights connected with this contractual relationship, shall be governed by the Czech law. The governing law is the law of the Czech Republic. The Czech courts are competent to resolve any disputes arising out of or in relation to the Contract.

In Vestec dated 1.10.2014

  
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Seller/Contractor - Václav Jiráček



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