

# GENERAL COMMERCIAL CONDITIONS

**CRYSTALITE  
BOHEMIA**

## 1. GENERAL PROVISIONS

1.1 General Commercial Conditions: By these commercial conditions (hereinafter referred to as the "General Conditions") is determined a certain part of the content of the purchase contract concerning goods, entered into between CRYSTALITE BOHEMIA s.r.o., ID No.: 26174723, having seat at Zámecká 730, 582 91 Světlá nad Sázavou, as the Seller, and the Purchaser (the Seller and the Purchaser hereinafter referred to as the "Parties", and each individually as the "Party"). Unless the Parties have expressly and in writing agreed otherwise, these General Conditions are binding for both contractual Parties.

1.2 Commercial conditions of the Purchaser: The Seller shall not be bound by any general or other commercial conditions of the Purchaser or other third parties and such commercial conditions of the Purchaser or other third parties shall in no way apply to the purchase contract entered into with and the commercial relationship with the Seller, unless the Seller would have accepted such commercial conditions of the Purchaser or other third parties in writing.

1.3 The form of legal acts: Should the written form be a condition in order to make the legal acts performed under the purchase contract or in connection therewith and/or these General Conditions binding, they must be performed by persons competent hereto by letter, by fax or by electronic mail. If a legal act performed by electronic mail does not contain a valid electronic signature, it must be confirmed without unnecessary delay by a letter containing original document or a fax of the Party which has despatched it; otherwise the other contractual Party can consider it as not binding.

## 2. CONCLUSION OF THE PURCHASE CONTRACT

2.1 Proposal to conclude a purchase contract: After having received the purchase order from the Purchaser, the Seller prepares and dispatches to the Purchaser written purchase order confirmation representing proposal to enter into a purchase contract containing in particular an exact definition of the subject of the purchase, including but not limited to quantity,

the purchase price, payment and delivery terms and eventually other terms and conditions of the purchase contract (hereinafter referred to as the "Order Confirmation"). These General Conditions constitute an integral part of the Order Confirmation by the Seller as well as of any amendments related to such Order Confirmation. The Seller is entitled to deviate from these General Conditions in his Order Confirmation. In such a case the Order Confirmation shall take precedence over the General Conditions. The Order Confirmation is binding on the Seller for 15 days from delivery of the Order Confirmation to the Purchaser. The Seller reserves the right to withdraw the Order Confirmation even during the 15-day period for binding acceptance of the Order Confirmation by the Purchaser.

2.2 Acceptance of the Order Confirmation: The Purchaser is obliged to deliver full and unconditional written acceptance of the Order Confirmation within a term of 15 days from receiving the Order Confirmation from the Seller, otherwise the purchase contract will not be concluded between the Parties. Unless agreed otherwise in writing between the Parties, the purchase contract is concluded when the full and unconditional acceptance of the Order Confirmation by the Purchaser has been delivered to the Seller within the 15-day acceptance period. These General Conditions form inseparable part of the purchase contract. In case of any discrepancy between the purchase contract and the General Conditions, the purchase contract shall take precedence over the General Conditions.

2.3 Modification of the Order Confirmation: A partial acceptance or a partial rejection by the Purchaser of the Order Confirmation presented by the Seller is considered to be a modification of the Order Confirmation. For the conclusion of the purchase contract a written full and unconditional acceptance by the Seller of the modified proposal (Order Confirmation) is necessary. Unless agreed otherwise in writing between the Parties, the purchase contract is concluded when full acceptance by the Seller of the modification of the Order Confirmation, as presented by the Purchaser to the Seller, has been delivered to the Purchaser.

2.4 Previous agreements: Any previous agreements and arrangements entered into between the Parties before the conclusion of the purchase contract regarding the same subject matter of the purchase contract are replaced by the later purchase contract in full extent with immediate effect and are no more binding on the Parties.

2.5 Amendments to the purchase contract: Any amendment to the purchase contract must be made in writing and executed by both Parties, otherwise shall not be binding on the Parties.

## 3. PURCHASE CONTRACT AND CONDITIONS OF PAYMENT

3.1 Purchase price: The Seller determines the purchase price. The purchase price is based on the Seller's price list and applicable VAT is being added on top according to applicable mandatory circumstances. The purchase price is understood as net and determined without any and all side costs (VAT, other taxes, fees, customs duties etc.) connected with the dispatch and delivery of the goods to the Purchaser and applicable according to agreed pre-defined international contract term according to INCOTERMS 2010.

3.2 Maturity of the purchase price: The purchase price is mature under conditions and in terms fixed by the contractual Parties and stated in the purchase contract.

3.3 Sanctions: Should the Purchaser not pay the purchase price for the goods duly and in time, the Seller is entitled to withdraw from the purchase contract and is entitled to have the goods returned by the Purchaser as well as to a compensation of damages suffered. In case of any delay in the payment of the purchase price, the Purchaser is obliged to pay to the Seller an interest for delay in the amount equal to 0,05% of the due amount per each day of the delay.

3.4 Documentary letter of credit: Unless the Parties have agreed otherwise, in case of payments of the basis of

a documentary letter of credit, the conditions of the opening of such documentary letter of credit must be in harmony with the purchase contract which means also with these General Conditions; otherwise the Seller is entitled to refuse such kind of payment of the purchase price and ask the Purchaser to apply another method of payment of the purchase price. The costs of the opening of a documentary letter of credit are always borne by the Purchaser.

3.5 Payment of the purchase price: If the purchase price is paid by bank transfer, the purchase price is considered paid when it has been credited to the bank account of the Seller. Any and all costs of a bank transfer are always borne by the Purchaser.

3.6 Instalments: If the Parties agree on the payment of the purchase price in instalments and if the Purchaser runs into delay with any of the instalments, all the rest of the purchase price shall become instantly mature.

3.7 Currency: The purchase price has to be paid in the currency stated in the purchase contract. The Purchaser is entitled to pay the purchase price in a different currency, other than it was agreed in the purchase contract, only in case the Seller has agreed to it in writing. The Purchaser must apply in such case the exchange rate published by the Czech National Bank (Česká národní banka) as the valid rate for the day on which the payment of the purchase price is effectuated.

3.8 Ban on set off and transfer of the purchase contract: The Purchaser is not entitled to set off his receivable towards the Seller against any receivable of the Seller towards the Purchaser. The Purchaser is not entitled to transfer any receivable or its part, or the purchase contract or its part to a third party without prior written consent of the Seller.

3.9 Ban on re-export of the goods: The Purchaser is not entitled to sell and re-export the goods purchased from the Seller to third countries outside the European Union without prior written consent of the Seller. Breach of this ban by the Purchaser shall be considered as material breach of the purchase contract. Should the Purchaser breach his obligation not to sell and re-export the goods to third countries outside the European Union, any and all purchase contracts entered into between the Parties and/or any and all Order

Confirmations shall be automatically cancelled with immediate effect and the Seller shall be no more bound thereby, shall be entitled to immediately stop any and all pending deliveries and keep the purchase price paid by the Purchaser until then, even for the goods not delivered to the Purchaser. In addition, the Purchaser shall be obliged to pay a contractual penalty of EUR 60,000 to the Seller upon Seller's written call. In such a case the Seller shall not be liable for any damage or loss the Purchaser may suffer in consequence of immediate cancellation of the purchase contracts and/or Order Confirmations.

#### **4. CONDITIONS AND TERMS OF DELIVERY**

4.1 Conditions of delivery: The conditions of delivery are governed by EX WORKS Světla nad Sázavou INCOTERMS 2010, unless another pre-defined international contract term according to INCOTERMS 2010 is agreed upon between the Parties in writing.

4.2 Partial deliveries: Partial deliveries of the goods by the Seller are permitted.

4.3 Delivery term: The general delivery term of goods shall be 3 (three) months computed from the day on which the purchase contract has been concluded, unless agreed otherwise between the Parties in writing.

4.4 The non compliance with the delivery term: In case that it can be foreseen that the agreed upon delivery term will not be met, the Seller is obliged to inform the Purchaser about such fact in writing and immediately after he has got the respective knowledge. Unless the Purchaser raises a written objection within 15 days, computed from the day on which the above mentioned information has been handed in to him, it is understood that he agrees to the belated delivery of the goods without any reservations. In every case, the Purchaser by accepting the Order Confirmation undertakes to tolerate eventual delay of the Seller in delivery in the duration of up to 20 days and waives any and all rights to claim eventual damage or loss incurred in consequence of the Seller's delay in the extent of up to 20 days.

4.5 Licences, permits: The Purchaser is obliged to acquire on his own risk and costs any export and import licences and/or other official authorisations and fulfil all custom obligations connected with the export and import of the goods.

4.6 Passing of risks: The danger of loss of, destruction of and damage to goods passes on the Purchaser in conformity with contract term EX WORKS according to INCOTERMS 2010, unless stipulated otherwise between the Parties in writing.

4.7 Taking delivery of the goods: The Purchaser is obliged to take over the goods within the agreed upon delivery term, once he has received from the Seller the announcement that the goods are ready for delivery, at the latest within 10 (ten) days after such announcement has been handed in on him. Should the Purchaser fail to take over the goods within the agreed term, the danger of loss of, destruction of and damage to the goods would pass on the Purchaser on the first day after the agreed term has elapsed in vain.

In case the Purchaser does not take the goods over at the latest 20 (twenty) days after the agreed term for the delivery has elapsed, the Seller is entitled to withdraw from the purchase contract and to sell the goods to a third person. In addition, the Seller is entitled to the compensation of damages caused to him by the Purchaser who has not taken over the goods, incl. the compensation of costs caused by the storage of goods.

4.8 Passing of the ownership right: The ownership right to the delivered goods passes on the Purchaser on the day when the total purchase price has been paid to the Seller. The Seller is entitled to retain documents constituting the evidence of the legal status of the goods until the full payment of the purchase price.

#### **5. CONTROL, PACKING, MARKING, TRANSPORTATION AND INSURANCE**

5.1 Control, marking, packing, transportation and insurance of the goods shall be carried out in harmony with the agreed upon commercial clause according to INCOTERMS 2010.

5.2 Insurance against breakage: The goods are not insured by the Seller against breakage, unless stipulated otherwise in the purchase contract.

#### **6. DEFECTS OF THE GOODS, RESPONSIBILITY FOR DEFECTS**

6.1 Defects of goods: The Seller is responsible, towards the Purchaser, for the following defects of goods:

a) quality defects consisting in the fact that the goods do not satisfy the quality

foreseen by technical norms valid in the Czech Republic and/or the agreed upon quality;

b) quantity defects, consisting in the fact that the goods have been delivered in a quantity different from the one which has been agreed upon. It is not considered to be a quantity defect, if the goods in question are delivered in a quantity differing by plus/minus 5% from the agreed upon quantity;

c) defects of packing and marking consist in the fact that the goods are not packed and/or marked in harmony with the purchase contract and/or these General Conditions and/or in the way securing appropriate and reasonable protection of goods;

d) breakage of goods caused by ineffective packing;

e) delivery of other goods than those agreed upon in the purchase contract;

f) defects in documents which are necessary to make possible an usual usage of the goods.

6.2 Defects of goods on the passage of the risks of loss of, destruction of and damage to goods: The Seller is responsible, towards the Purchaser, for defects which the goods had on the passage of risks of loss of, destruction of and damage to goods on the Purchaser; this applies even in the case when the defect became apparent only after that moment. In such case the Purchaser is obliged to prove that the defect of goods existed on the passage of risks of loss of, destruction of and damage to goods from the Seller on the Purchaser.

6.3 Defects of goods after the passage of risks of loss of, destruction of and damage to goods: The Seller is responsible, towards the Purchaser, for defects which show up on the goods after the passage of risks of loss of, destruction of and damage to goods on the Purchaser, provided such defects have been caused by a violation of the duties of the Seller (e.g. by defective packing of the goods). The Seller is, however, not responsible for defects of goods originated by improper transfer of and/or manipulation with and/or use of the goods effected by the Purchaser.

6.4 Responsibility for the defects of goods caused during the production of the goods, caused by objects or procedures of the Purchaser: The Seller

is not responsible, towards the Purchaser, for defects of goods caused in the course of the production of the goods by using objects or procedures which have been handed over or earmarked to the Seller by the Purchaser, if the Seller could not, even using his professional care, ascertain the unsuitability, or the Purchaser insisted on using them even having been notified by the Seller of their unsuitability.

6.5 Notification of defects: The Purchaser is obliged to notify in writing the Seller about existing defects without undue delay after the delivery of the goods, whether the defects are apparent or latent, but, in case of latent defects, at the latest within 12 (twelve) months counted from the delivery of the goods, i.e. when they could not be ascertained earlier even though the Purchaser has applied all his adequate care. If the Purchaser fails to abide by these terms, his claims based on the responsibility of the Seller for defects of goods become extinct.

6.6 Complaints: The Seller is obliged to deal with complaints immediately after delivery of the written notification of the Purchaser, however within 2 (two) months at the latest counted from the day on which he had received the complaint from the Purchaser. Should an obligation of the Seller to remove a defect for which he is responsible in accordance with the purchase contract arise, he is entitled to do so in the way which he will consider to be the most appropriate one.

## **7. DOCUMENTATION, DESIGNS, MODELS, PATENTS, SECRECY**

7.1 Documentation: All documents, designs, models and patents linked to the goods and their production remain exclusive property of the Seller, eventually the producer and cannot be transferred by the Purchaser on any third person without a previous written consent of the Seller. This provision does not apply to documentation, designs, models and patents linked to goods and their production which the Purchaser has delivered to the Seller. The Seller is entitled to use such documentation, designs, models and patents only in conformity with the instructions of the Purchaser.

7.2 Trademarks: By the delivery of goods protected by a trademark the right to use such trademark is not transferred in any way whatsoever to the Purchaser.

7.3 Secrecy: The Purchaser is obliged to keep secret all informations which the Seller has passed on him in connection

with the purchase contract. The Seller considers all informations concerning the goods confidential and secret and the Purchaser is not allowed to reveal such information, which is not publicly available, to any third person.

## **8. FORCE MAJEURE**

8.1 Force majeure: The contractual parties shall be free of any responsibility for a partial or complete non-fulfilment of obligations resulting from the purchase contract, if such non-fulfilment is consequence of circumstances qualified as force majeure. Events such as fires, inundations, earthquakes or other natural disasters, civil disturbances, wars, strikes, changes of the legislation or decisions of the government, of organs of state administration or of the territorial self-government authorities, or any other similar circumstances which the contractual Parties cannot foresee, control or influence, shall be considered force majeure cases provided such circumstances have a direct influence on the fulfilment of obligations of the Parties.

8.2 Obligation to notify: If a circumstance, which is to be qualified as force majeure, arises the hereby affected Party is obliged to announce this circumstance in writing to the other Party immediately after such event originated, at the latest within 48 (fourty eight) hours. Immediately after the event of force majeure ends, the Party which has invoked the force majeure clause, is obliged to announce to the other Party in writing the exact date on which the force majeure has terminated, its influence on the fulfilment of contractual duties and add to such notification the related hereto certificates, confirmations and evidence, issued by official organs and organisations.

8.3 Withdrawal from the purchase contract: In case the circumstances qualified as force majeure affecting one Party last longer than 6 (six) weeks, the other Party is entitled to withdraw from the purchase contract without being obliged to compensate the Party, which invokes the force majeure clause, any damage which that Party has suffered.

## **9. APPLICABLE LAW, SOLUTION OF DISPUTES**

9.1 Law to be applied: The Order Confirmation, purchase contract, including its amendments, as well as all other contracts and agreements concluded between the Seller and the Purchaser in connection with this purchase contract shall be governed

by the applicable legal regulation of the Czech Republic. Invalidity or unforceability of any provision of the Order Confirmation, purchase contract and/or these General Conditions does not affect the validity or forceability of the remaining provisions of mentioned contractual documents. In such case such an invalid and/or unforceable provision shall be replaced by the provision of the Czech legislation corresponding most to the sense and the aim of the Order Confirmation and/or purchase contract in question.

9.2 Interpretation of terms: The International Commercial Terms INCOTERMS 2010, issued by the

International Chamber of Commerce in Paris, shall be applied for the interpretation of commercial clauses contained in the purchase contract.

9.3 Litigations: All disputes arising from the Order Confirmation and/or the purchase contract and/or in connection with it shall be finally decided with the Arbitration Court attached to the Czech Chamber of Commerce and the Agricultural Chamber of the Czech Republic according to its Rules by three arbitrators in accordance with the Rules of that Arbitration Court. The arbitration proceedings shall be held at the seat of the aforementioned Arbitration Court in Prague, the Czech Republic, in Czech in

case where both Parties to the dispute are based in the Czech Republic, or in English in case where one of the Parties to the dispute is based outside the Czech Republic.

The Purchaser by accepting the Order Confirmation in full, or otherwise executing the purchase contract with the Seller, confirms his unreserved agreement with the General Conditions, which form an inseparable part of the Order Confirmation and the purchase contract.