

# General Terms of Deliveries

General Terms of Delivery are valid from 09th October, 2023 until further notice.

## 1. Definitions

For the purposes of these General Terms of Delivers, the following terms shall have the following meanings:

1. **"Contract"** means a contract for the delivery or sale of Goods, including the provision of services related to the performance of delivery, concluded between the Recipient and the Supplier in the manner specified in the GTDs, including a contract concluded as a result of exchange of order documents and acceptance of the order by the Supplier, as well as a contract drawn up in the form of a separate document
2. **"Goods"** shall mean and refer to the Supplier's complete product range, which is the subject of the contact
3. **"GTD"** means the General Terms of Delivers
4. **"Parties"** means jointly the Supplier and the Recipient
5. **"Price List"** shall mean the list of prices for the sale of Goods applicable at any given time and determined by TOP-THIMM Opakowania Spółka z ograniczoną odpowiedzialnością (Polish limited liability company) with its registered office in Tychy or by TOP Packaging Spółka akcyjna (Polish join – stock company) with its registered office in Tychy
6. **"Recipient"** shall mean the entity entering into the Contract with the Supplier
7. **"Supplier"** shall mean TOP-THIMM Opakowania Spółka z ograniczoną odpowiedzialnością (Polish limited liability company) with its registered office in Tychy or TOP Packaging Spółka akcyjna (Polish join – stock company) with its registered office in Tychy

## 2. Scope of application

1. These GTDs apply to the terms of delivery and payment in contracts between the Supplier and Recipients.
2. The GTDs are applicable to the extent that they are not modified or waived by the Contract.
3. By placing an order, the Recipient accepts only the Supplier's GTDs, even if other terms and conditions are attached to its request for quotation. Deviations from these terms and conditions are binding only if accepted by the Supplier in writing under pain of nullity.

## 3. Conclusion and terms of contracts

1. Under the Contract, the Supplier undertakes to deliver to the Recipient and transfer ownership of the Goods to the Recipient, and the Recipient undertakes to receive the Goods and pay the price to the Supplier.
2. Until the full price is paid by the Recipient, the Supplier reserves the ownership of the subject of the Contract.
3. The Contract shall be concluded only after confirmation of the final content of the order by the Supplier at least at documentary form (in meaning of polish civil code). The Supplier may accept the order in whole or in part. The application of Article 68<sup>1</sup> - Article 69 of the Polish Civil Code in relations between Parties is excluded.
4. Each order should include:

- a) data of the Recipient (name, address, register number, tax ID number),
  - b) the exact address of delivery,
  - c) method of delivery,
  - d) description of the ordered goods: type, dimensions, weight and quantity,
  - e) contact details of the Recipient.
5. Lack of confirmation referred to in section 3 above shall be considered as non-acceptance by the Supplier of the order for execution.
  6. The date of delivery of the Goods to the Recipient at the place indicated in the Contract is the date of performance (delivery date).
  7. The place of delivery of the Goods shall be indicated each time in the Contract.
  8. In the event of withdrawal from the Contract by the Supplier/termination of the Contract by the Supplier or withdrawal of the order by the Recipient - in whole or in part, after written confirmation of the order by the Supplier referred to in section 3 above, the Recipient shall be obliged to cover all costs incurred by the Supplier related to the execution of the Contract in this regard.
  9. The Supplier, prior to the performance of the Contract, may require prepayment by the Recipient to the Supplier's bank account by the date specified in the Contract. The date of payment shall be the date on which the Supplier's account is credited.
  10. If, after confirmation of the order by the Supplier, the Recipient fails to pay the prepayment referred to in section 9 above, the Supplier shall be entitled to withdraw from the Contract (in whole or in part) starting from the day following the expiration of that period, without having to set an additional period for the Recipient to pay the prepayment.
  11. In the event that the Customer is, as of the date of conclusion of the Contract, in default of payment of amounts due under any invoices, the obligation to pay of which arises from previous Contracts concluded with the Customer, the Supplier shall be entitled to withdraw from the Contract (in whole or in part) without the need to set an additional period of time for the Customer to make payment. The right to withdraw from the Contract may be exercised by the Supplier within 2 months from the date of confirmation of the order by the Supplier.
  12. In the event that the Recipient fails to provide the Supplier with all the information necessary for the performance of the Contract, the Supplier shall be entitled to withdraw from the Contract (in whole or in part) without having to grant the Recipient an additional period of time to provide the information. The right to withdraw from the Contract may be exercised by the Supplier within 3 months from the date of confirmation of the order by the Supplier.
  13. In the event of a material change of circumstances causing that the performance of the Contract is not in the interest of the Supplier, which could not have been foreseen at the time of its conclusion, the Supplier reserves the right to withdraw from the Contract (in whole or in part) within 14 days from the date of delivery to the Recipient of a notice of the occurrence of circumstances justifying the termination of the Contract. In such a case, the Recipient may only demand the return of the remuneration paid to the Supplier in connection with the performance not performed for its benefit. At the same time, the Recipient waives the right to claim damages - both in terms of actual damage and lost benefits.

#### **4. Characteristics and quantities of the Goods**

1. The Parties agree that the permissible quantity differences of the Goods are: +/-10% in relation to the quantities specified in the Contract.
2. If the quantity of Goods not subject to quantity differences is specified in the Contract, the Recipient will be charged with additional costs in the amount indicated in the Contract, the amount of which depends on the value of the Contract and the type of Goods.
3. The Parties accept that the permissible weight differences of the Goods (in grams) are +/-5% in relation to the weight specified in the Contract.

4. The Supplier shall not ensure complete uniformity of the color of the paper used in the manufacture of the Goods.

## **5. Terms of delivery**

1. The time limit for acceptance or delivery shall not exceed 7 working days from the date of communication by the Supplier to the Recipient on the completion of production of the Goods. The detailed conditions and time limit for delivery or acceptance of the Goods shall be specified in the Contract.
2. The Supplier shall make full truckload deliveries. In the case of delivery of an order with a smaller quantity, the Supplier shall charge the Recipient with the costs resulting from the difference in the cost of full-carriage in the amount specified in the Contract.
3. If the Parties have agreed that a certain quantity of Goods will be stored at the Supplier's premises, the terms and conditions, the amount of related costs and the method of their settlement shall be specified in the Contract.

## **6. Passing of risk**

1. At the time of delivery to the Recipient (in the case of delivery by the Supplier) or the carrier of the Goods covered by the order, all benefits and burdens associated with the Goods, as well as the danger of accidental loss or damage to the Goods, shall pass to the Recipient.
2. The Goods shall be delivered to the delivery address specified in the order. If the Recipient notifies, after placing the order, a change of the above address, he is obliged to bear the costs resulting therefrom, unless it was notified to the Supplier at least 14 days before the planned date of shipment.
3. The Recipient may indicate only one delivery address in the order.
4. The Recipient shall be obliged upon delivery of the Goods to inspect the delivered Goods and shall bear the costs and risks associated therewith, regardless of which Party of the Contract is obliged to cover the transportation costs.
5. The Supplier shall not be liable for the consequences of delays in the delivery of the Goods resulting from circumstances attributable to the carrier.
6. The Recipient shall confirm acceptance of the Goods on: the acceptance protocol, copy of the invoice, goods dispatched note and waybill. Accepting the Goods the Recipient confirms the fact of absence of visible external defects.
7. The Recipient shall be obliged to inspect the delivered Goods for compliance with the order, quantity and quality for defects not discovered at the time of delivery.
8. At the time of receipt of the shipment, the Recipient shall also be obliged to examine the packaging of the Goods (and the Goods themselves if possible) for any visible damage in transit and to take all steps to determine the carrier's liability and to draw up an appropriate protocol. Any shortage or damage to the products must be noted.
9. In confirmation of the circumstances referred to in sections 7 and 8 above, the Recipient shall be obliged to draw up a protocol of defects, signed by the Recipient and the carrier directly on delivery of the Goods under pain of forfeiture of the right to file a complaint referred to in point 7 below.
10. The Recipient shall secure the damaged Goods and allow inspection by the carrier and the Supplier.
11. Acceptance of the Goods by the Recipient without exercising due diligence and performing the activities referred to in sections 7-10 above shall be considered as confirmation of correctness of delivery and the delivered Goods.
12. The Recipient shall be fully liable to the Supplier for any damage resulting from unjustified refusal to accept the delivered Goods.

## **7. Complaints**

1. If the Recipient is an entrepreneur, the Parties exclude the Supplier's statutory liability for warranty under Article 558 § 1 of the Polish Civil Code, and the Recipient may file a complaint only under the terms of this point.
2. In the case of quality and quantity defects in the Goods, the Recipient shall be obliged to file a complaint in writing under pain of nullity no later than 14 days from the date of delivery of the Goods, attaching pallet labels, samples or photos of the defective Goods and the protocol referred to in point 6 section 9 above. After the expiration of this period, the Recipient's rights to file a complaint shall expire.
3. The Recipient shall immediately allow the Supplier to inspect the Goods and check the reported defects at the Recipient's premises. If the Goods complained about have defects referred to in section 2 above, the Supplier shall be obliged to propose a method of resolving the complaint, at its option, by making a replacement delivery free of charge, removing the defect free of charge or reducing the price.
4. Any defects or inconsistencies of the Goods, referred to in section 2, entitle the Recipient to make a complaint only about the defective Goods - in particular, defects in parts of the goods do not entitle the Recipient to make a complaint about the entire Goods covered by the delivery.
5. The Recipient shall be informed in writing about the method of settlement of the complaint within 14 days from the date of receipt of the complaint by the Supplier, unless it will not be possible to consider the complaint within this period.
6. Correcting invoices shall be issued by the Supplier after obtaining from the Recipient the return of the Goods under complaint and acknowledgement of the complaint by the Supplier.
7. Submission of a complaint shall not suspend the deadline for payment for the delivered Goods.
8. The delivery in which the amount of defective Goods (including shortage of Goods) does not exceed 1% of the Goods delivered under the order shall not be subject to complaint.
9. The Goods which were made in accordance with the design and specifications approved by the Recipient shall not be subject to complaint.
10. Goods that have lost their properties as a result of improper storage at the Recipient, in accordance with the following storage conditions, shall not be subject to a claim:
  - The Goods shall be stored in covered, dry and ventilated warehouses,
  - The Goods shall not be exposed to direct sunlight in order to avoid color discoloration,
  - The optimum storage temperature of the Goods in the warehouse is from 5°C to 25°C, and the humidity is from 40% to 60%,
  - Do not allow rapid changes in temperature and humidity in the storage area of the Goods.

## **8. Return of pallets**

1. In case of delivery of Goods on returnable pallets (other than disposable and re-invoiced), the Recipient shall return them to the Supplier.
2. The number of pieces of returned pallets will be monitored by the Supplier.
3. Only pallets in good condition (unbroken, clean, without traces of foreign substances) will be counted in the pool of returned pallets.
4. The deadline for returning pallets is 30 days from the date of delivery. In case of failure to return/release the pallets by the Recipient within the period referred to in the preceding sentence, the Recipient will be charged for the cost of the unreturned pallets in accordance with the Supplier's Price List currently in force.

## **9. Terms of payment**

1. The date and method of payment by the Recipient shall be indicated each time on the invoice.
2. The Supplier reserves the right to change the Price List at any time. In the case of Contracts for cyclic services rendered by the Supplier / Master Contracts, the change of the Price List requires the notification of the Recipient - in any form - in order to be effective. The change in the Price List is effective starting from orders placed in the month following the month in which the Recipient received notification of the change in the Price List. If the Customer does not accept the change in the Price List, he is entitled to terminate the Contract with immediate effect within 14 days from the date of receipt of the notification on the change in the Price List. The new Price List shall apply to orders placed until the date of termination of the Contract - with respect only to orders placed in the month following the month in which the Recipient received notification of the change in the Price List.
3. Failure by the Recipient to pay within the indicated period shall entitle the Recipient to withhold subsequent Deliveries, and the Recipient shall have no claims on this account.
4. The date of payment shall be the date on which the Supplier's account is credited.
5. The Supplier declares that it has the status of a large entrepreneur under the Law on Prevention of Excessive Delays in Commercial Transactions.

## **10. Punching dies and printing plates, graphic materials**

1. The Supplier reserves the ownership and copyright of all die-cuts and printing plates, graphic files, as well as drawing documentation and other similar materials related to the delivered Goods, which were not provided by the Recipient. This does not apply if the Recipient has been charged by the Supplier for the cost of die-cutting dies and plates (in the form of a sales contract, re-invoice of costs, addition of costs to the package price) on an individually agreed basis. In this case, their ownership shall pass to the Recipient, and the Recipient may entrust them to the Supplier for safekeeping in order to use them for future orders.
2. If the Recipient provides the Supplier with a graphic design of the Goods or materials for such graphic design, the Recipient shall bear full responsibility for their content, graphic representations, shape, etc. The Recipient declares that the content of the graphic design or materials for the performance of such a design may not infringe on the rights of third parties, especially copyright, rights to protected characters, trade name, patents, industrial designs, etc.
3. The Supplier undertakes to store the die-cutting tools and plates free of charge, for 1 year after their last use. After the expiration of this period, the tools will be liquidated, and the cost of their restoration in case of placing a new order for the Goods will be charged to the Recipient.

## **11. Confidentiality**

1. The Parties mutually undertake to maintain the confidentiality of information provided by the other Party in connection with negotiations aimed at concluding the Contract as well as in connection with the content of the Contract and cooperation based on the Contract. This obligation shall not apply if the necessity to disclose the information arises from the provisions of applicable law, the information is generally known, or the information is provided in the course of professional legal services and consulting activities related to the conducted business activity.
2. If either Party is obliged under applicable law to disclose confidential information then it shall be obliged to immediately provide the other Party with information on the fact of disclosure, the addressee of the information and the scope of the information provided.
3. Subject to section 1, sentence 2 above, the Parties undertake not to communicate or disclose information of a confidential nature (within the meaning of section 1) or its source, either in whole or in part, to third parties without obtaining the prior express written consent of the other Party. The Parties shall be responsible for maintaining the secrecy referred to in this point also by any persons, in particular their employees, with the help of whom they execute the Contract and subcontractors,

if any. The Parties undertake to take appropriate steps to comply with the rules on confidential information by such persons.

4. The obligation set forth in section 1 above shall bind the Parties during the term of the Contract and for 15 years from the date of completion of its execution.

## 12. Data protection

1. In accordance with the provisions of Regulation (EU) 2016/679 of the European Parliament and of the Council of April 27, 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data and repealing Directive 95/46/EC, hereinafter: RODO, the Supplier informs that:
  - (a) is the controller of the Recipient's personal data,
  - (b) the Supplier's data protection officer is Tomasz Banasik, data protection officer can be contacted via the following address e-mail: [iod@top-packaging.pl](mailto:iod@top-packaging.pl),
  - (c) the Recipient's personal data will be processed by the Supplier solely for the purpose of executing the Contract, i.e. on the basis of Article 6(1)(b) RODO, and may also be processed in order for the Supplier to perform its obligations under the law, in particular tax law, i.e. Article 6(1)(c) RODO, and to protect the Supplier's rights under the Contract, i.e. Article 6(1)(f) RODO,
  - (d) The Supplier will process the Recipient's personal data for a period no longer than the period necessary to fulfill the purposes indicated in point (c),
  - (e) The Recipient's personal data may be transferred for processing to other entities with which the Provider conducts business (sub-suppliers), such as an IT services company, a hosting provider, a courier or forwarding company, a postal operator, a law firm or a solicitor's office, as well as other entities in the Provider Group,
  - (f) The Recipient has the right of access to the content of its data, the right to rectification, the right to data portability, the right to object and the right to withdraw consent for the processing of personal data, as well as the right to erasure of personal data when the processing of the data does not result from a legal obligation or the exercise of public authority, and the right to request restriction of data processing,
  - (g) The Recipient has the right to lodge a complaint with the President of the Office for Personal Data Protection in the situations specified in Article 77 (1) of the RODO,
  - (h) Provision of personal data by the Recipient is not mandatory - however, failure to provide personal data will result in the inability to conclude or perform the Contract.
2. Section 1 points (c) - (e) above also applies to personal data of the Recipient's representatives and employees responsible for contacting the Recipient and performing the Contract. The purpose and scope of the entrustment of the aforementioned personal data for processing arises from and is limited solely to the execution of the Contract. Personal data of employees and representatives were provided by the Recipient and include, among others: name, telephone number, business address, e-mail address, official position. The data was obtained from the Recipient.
3. The Recipient represents that it has fulfilled and undertakes that it will fulfill, on behalf of the Supplier, the Supplier's information obligations - provided for in Article 13 or Article 14 of the General Data Protection Regulation - with respect to natural persons whose personal data it has provided or will provide to the Supplier in connection with the performance of this Contract, including in particular its employees and representatives. The Supplier undertakes to provide the Recipient with the information necessary to fulfill the information obligations referred to in the preceding sentence, beyond the scope of information already provided or known to the Recipient, upon the Recipient's express request. The Supplier declares that it will process the data referred to in this section for the purpose of performing this Contract and for the purpose of asserting or defending against claims arising therefrom, based on the provision of Article 6(1)(f) of the General Data Protection Regulation, for the duration of the Contract and until the expiration or limitation of claims arising therefrom.

**13. Information obligation of the Supplier with respect to management of packaging and packaging waste**

1. The Supplier declares that as an entrepreneur introducing packaging, as referred to in Article 1 section 2 point 6) of the Packaging and Packaging Waste Management Act of June 13, 2013 (Journal of Laws 2023 .160 t.j. of 2023.01.20), (hereinafter: the Packaging Act) shall comply with all obligations under the Packaging Act, in particular those set forth in Articles 11 and 12 of the Packaging Act, as well as those under Directive 94/62/ EC of the European Parliament and of the Council of 20 December 1994 on packaging and packaging waste (hereinafter: the Directive) to the extent that they have been implemented by the Packaging Act.
2. The Supplier declares that the Recipients are entitled to the rights indicated in the Packaging Act, and in relation to Recipients outside the territory of Poland to the rights indicated in the content of the Directive to the extent to which it has been implemented into individual national legal orders.

**14. Force majeure**

1. The liability of a Party that due to Force Majeure is unable to perform the Contract shall be excluded for the duration of the Force Majeure.
2. Force Majeure shall mean an event whose occurrence is beyond the control of the Parties and which they cannot prevent. In particular, war, states of emergency, natural disasters, epidemics, quarantine restrictions, embargoes, revolutions, riots and strikes shall be considered as Force Majeure. A shortage of labor, materials and raw materials shall not be considered Force Majeure unless caused by Force Majeure.
3. The Party affected by Force Majeure shall immediately notify the other Party of the occurrence of circumstances constituting Force Majeure within 14 days from the occurrence of the circumstances of Force Majeure, or else lose the right to invoke such circumstances. The notification must be in writing under pain of nullity.
4. The performance by the Party affected by the force majeure of its contractual obligations shall be suspended for the duration of the force majeure to the extent that the force majeure affects the ability to perform the Contract.
5. In the event that the force majeure continues for more than 1 month, the Parties undertake to negotiate in good faith for further performance or to terminate the Contract by mutual agreement of the Parties. If the Parties fail to reach an agreement as a result of the negotiations, each Party shall be entitled to terminate the Contract with immediate effect, in which case each Party shall be obligated to return the performance received from the other Party, but only to the extent that such performance is equivalent to the performance not performed by the other Party as a result of the force majeure.

**15. Applicable law. Limitation of damages**

1. The Supplier's liability for claims arising out of or in connection with the Contract, regardless of the legal basis, shall be limited to damages in the form of actual losses resulting from the Supplier's willful or negligent misconduct and shall not include lost benefits
2. The Contract shall be governed by Polish law and shall be interpreted in accordance with Polish law.
3. To the extent not regulated in the Contract GTD, the provisions of the Polish Civil Code and other special laws shall apply.

## **16. Jurisdiction of the Court**

Any disputes related to the performance of the Contract as well as those arising thereunder shall be settled by a common court having jurisdiction over the Supplier's registered office.