



## Purchase Order General Terms and Conditions

### 1. Definitions

The following words used herein shall have the following meanings unless the context otherwise requires:

- **"Company"** AGROTRADE INVEST Sp.z.o.o;
- **"Intellectual Property"** means intellectual property rights including, without limitation, all patents, registered designs, copyrights, database rights, design rights, semiconductor chips, topography rights, trademarks, service marks, trade secrets, confidential information and rights in unpatented know-how
- **"Price"** means the price of the Products as specified in the Sales Contract;
- **"Products"** means the commodity supplied by the Company as specified in the Sales Contract;
- **"Buyer"** means the Buyer of the Products as specified in the Sales Contract;
- **"Sales Contract"** means a sales contract or a confirmation issued by the Company and accepted by the Buyer relating to the supply of the Products to the Buyer; and
- **"Specifications"** means the quality, quantity, packing and any other specifications relating to the Products as set out in the Sales Contract. All references made to trade terms herein or in the Sales Contract shall be interpreted in accordance with Incoterms 2010 as published by the International Chamber of Commerce ("Incoterms 2010").
  - **General**
    - All sales of Products by the Company to the Buyer shall be subject to these Terms and the terms set out in the relevant Sales Contract. No offer to sell or supply any commodity shall be binding upon the Company unless a Sales Contract has been issued by the Company in relation thereto and accepted by the Buyer. In the event of conflict between these terms and the terms in the Sales Contract, The terms in the Sales Contract shall prevail.
    - The Company's agents and representatives have no authority to make any oral representations, statements, warranties, conditions

or agreements that conflict with these Terms or the terms of the Sales Contract.

- Subject to the availability of adequate stocks, the company shall supply the Products to the Buyer in accordance with the Buyer's orders to the best of the Company's ability. Each order for the Products (whether or not subject to the same Sales Contract) shall constitute a separate contract, and any default by the Company in relation to any one order shall not entitle the Buyer to treat any other order for Products as terminated.
- All Products supplied by the Company pursuant to this Agreement shall conform in all respects to the Specifications. The Buyer may only vary the Specifications with the prior written approval of the Company. Any additional costs incurred by the Company in relation to the variation of the Specifications shall be borne solely by the Buyer.
- Subject to Clause 2.4 above, all orders for the Products are final and binding on the Buyer and the Company will not accept returns or variations to the Sales Contract without the Company's prior written consent.
- The Buyer shall at its own expense be responsible for obtaining and maintaining in force all licenses, permits, consents, approvals, certificates, registrations and authorisations or other requisite documents as required by any law, if any, from appropriate federal, provincial, municipal or other governmental or administrative bodies, to permit the supply of the Products to the Buyer as contemplated herein.
- The Company shall not be under any obligation to continue the supply of the Products and the Company shall have the sole and absolute discretion in determining whether to accept any order for the Products and/or issue any Sales Contract in respect thereof.

## **2. Payment**

- All payments made by the Buyer to the Company shall be in the currency as stated in the Sales Contract unless otherwise mutually agreed between the companies.
- All payments by the Buyer to the Company shall be made in the manner and by the date specified in the Sales Contract. Where payment by letter of credit is stipulated, payment must be made by confirmed irrevocable letter of credit established for the credit of the bank that the Company nominates, and be irrevocable, confirmed and without recourse and otherwise in the form satisfactory to the Company and issued by a bank accepted by the Company.
- If the Company requires the Buyer to post security for payment, the Buyer shall post such security before the Products are loaded for shipment.

- The Price of the Products is exclusive of all taxes (including sales taxes, goods and services taxes, value added taxes and customs duties) which shall be borne by the Buyer.
- The Buyer may not withhold payment or make any deduction or set-off from any amount owing to the Company without the Company's prior written consent.

### **3. Delivery and Shipment**

- The Buyer shall issue delivery instructions sufficiently in advance to allow the company to deliver the Products and/or to obtain delivery and shipment based on the trade terms as specified in the Sales Contract (as interpreted in accordance with Incoterms 2010). If the Buyer fails to issue delivery instructions sufficiently in advance, the Company may invoice the Products on the delivery date and demand payment as if the Products had been delivered on that date.
- Where delay in delivery is due to the fault of the Buyer as a result of his failure to produce a letter of credit, payment by other means and/or import license at least thirty (30) days (or such other period as may be stated in the Sales Contract) before the contractual month of the shipment, or for any other reason whatsoever, the Company shall be entitled to cancel the contract without any liability to the Buyer or to continue delivery of the Products.
- Should the Company elect to continue with the delivery of the Products, the Buyer shall reimburse the following amounts to the Company:
  1. interest calculated at the rate of 10% per cent, per annum for the period between the day of shipment as stated in the Sales Contract and the date of actual shipment; and
  2. any additional costs incurred by the Company as a result of the aforesaid delay including but not limited to exchange risk, storage and insurance for the Products.

### **2. Title to Products**

- i. Notwithstanding any terms in Incoterms 2010 regarding the passing of title and risk, title to the Products shall remain vested in the Company and shall not pass to the Buyer until payment of the Price has been received in full by the Company. Full payment of the Price shall include, without limitation, the amount of any interest or other sum payable hereunder or in the Sales Contract. Until title to the Products passes to the Buyer, the Products shall be subject to the following conditions:
  1. the Company shall have authority to retake, sell or otherwise deal with and/or dispose of all or any part of the Products;

2. the Company, its agents and employees shall be entitled at any time and without prior notice to enter upon any property upon which the Company reasonably believes the Products to be stored to inspect or remove such Products; and
  3. the Buyer shall store or mark the Products in a manner reasonably satisfactory to the Company indicating that title to the Products remains vested in the Company.
- ii. Notwithstanding the vesting of title in the Company as aforesaid, the risk of loss or damage shall pass to the Buyer upon delivery in accordance with Incoterms 2010.

## **2. Warranties and limitation of liability**

- i. The company hereby warrants that the Products comply with the Specifications described in the Sales Contract. All warranties expressly made in the Sales Contract are made to the best of the Company's knowledge but this does not release the Buyer from the responsibility to make its own examinations and tests. Save as otherwise expressly set out herein or in the Sales Contract, the Company makes no other representation or warranty in respect of the Products (including but not limited to any representation or warranty relating to the price information and/or technical specifications set out in the Company's price lists and/or brochures).
- ii. The Buyer shall inspect the Products Within eight (8) days following receipt of the goods and shall inform the Company forthwith of any damage or defects in the Products. The Buyer shall be solely liable for any damage or defects if notice thereof is not received within thirty (30) days of delivery and the Buyer shall have no claims against the Company in respect or any such damage or defect.
- iii. Following notification of the defects, the Company, its agents or employees are entitled to inspect the products and the Buyer shall provide them access to the Products. The Buyer shall provide proper storage for the Products until inspection has taken place.
- iv. Notwithstanding anything to the contrary in the Sales Contract, the Company shall no liable to the Buyer or any third party by reason of any implied warranty, condition or other terms or any duty at common law unless expressly stated in the Sales Contract for any loss or damage howsoever arising out of or in connection with the supply of the Products.
- v. In no event shall the Company be liable for any special, consequential, incidental, punitive, exemplary or indirect losses or damages whether in contract or tort arising from the supply of the Products or the performance or non-performance of its obligations hereunder.
- vi. Without prejudice to the generality of the foregoing, the Company's total liability to the Buyer for any claim arising out of

any Product supplied shall be limited to the Price of the relevant Product.

### **3. Non-Disclosure of information**

- i. The Buyer acknowledges that from time to time it may have access to certain information (whether written or oral) relating to the Products or the intellectual Property of the Company or the affairs of the Company or its customers which is not generally known to the public including without limitation price quotations, lists of the Company's customers and confidential or commercially sensitive methods and know how.
- ii. The Buyer agrees with and undertakes to the Company that it shall not, without the prior written consent of the Company, disclose such information to any third party or use such information for the Buyer's own benefit or for the benefit of any other person or in any way exploit such information, nor will the Buyer provide any person with a copy of or disclose to any person the contents of any document containing such information.

### **4. Termination**

- i. The Buyer may not terminate any order after the Company has issued a Sales Contract.
- ii. The Company may cancel any order for Products if (a) the Buyer commits any continuing or material breach of any Term or term in the Sales Contract and, in the case of such a breach which is capable of remedy, fails to remedy the same within two (2) weeks after receipt of a written notice giving full particulars of the breach and requiring it to be remedied; or (b) a Force Majeure Event (as defined in Clause 10) occurs.
- iii. In the event that an order for Products is cancelled by the Company due to a breach by the Buyer of a Term or term in the Sales Contract, the Buyer shall reimburse the Company for any costs incurred as a consequence of such cancellation, including without limitation, packaging and re-packaging costs, storage costs, financing costs, foreign exchange losses, loss of profits and any diminution in the value of the Products due to price movements.

### **5. Technical Advice**

- i. Where any technical advice is given by the Company in connection with the supply of Products, no obligation or liability is assumed by the Company for any technical advice so given. The Buyer accepts such technical advice entirely at its own risk based on its own judgment and not in reliance upon any warranty or representation by the Company.
- ii. The Company's technical documentation comprises its Intellectual Property. The Buyer may not alter such documentation for any purpose whatsoever.

### **6. Force Majeure**

- i. The Company shall not be liable to the Buyer for any non-performance of its obligations hereunder or in the Sale Contract if such non-performance is due to the interruption of operations of the Company or third parties, failure of suppliers to deliver, lack of raw material or energy, strikes, riots, walk-outs, lockouts, labour shortages, power shortages, fires, wars, acts of God, earthquakes, storm, floods, explosions, accidents, protests or demonstrations, delays in transportation, breakdown of machinery, inability to obtain necessary materials in the open market, unavailability of equipment, governmental regulations restricting normal operations, shipping delays, material adverse effect or any other reason or reasons beyond the control or and not reasonably foreseeable by the company ("Force Majeure Event") in Ukraine and/or country(ies) where the Company is importing from.
- ii. If the delivery of the Products is delayed by reason of any Force Majeure Event, then the time for delivery of the Products shall be extended by a period of time equal in length to the period of such delay and the Buyer shall accept such delayed delivery in full satisfaction of his rights hereunder.

## **7. Miscellaneous**

- i. Unless provision for arbitration is provided in the Sales Contract, these Terms and terms in the Sales Contract are governed by and are to be construed in accordance with the laws of the Ukraine and the Buyer hereby submits to the non-exclusive jurisdiction of the Ukraine courts.
- ii. These Terms and the terms in the Sales Contract set forth the entire agreement and understanding between the parties hereto in connection with the subject matter herein and supersedes and cancels in all respects all previous agreements and undertakings among the parties hereto in relation to such matters, whether written or oral.
- iii. Notwithstanding that any provision of these Terms and the terms in the Sales Contract may prove to be illegal or unenforceable, the remaining provisions shall continue in full force and effect, if any provision of these Terms and the terms in the Sales Contract or any part thereof shall become or be declared illegal, invalid or unenforceable for any reason whatsoever, including, without limitation, by reason of the provisions of any legislation or other provisions having the force of law or by reason of any decision of any court or other body or authority having jurisdiction over any or both of the parties, such terms or provisions shall be divisible from these Terms and the terms in the Sales Contract and shall be deemed to be deleted provided always that the parties hereto hereby undertake to attempt, in good faith, to substitute therefore a legal, valid and enforceable provision or term which achieves, to

the greatest extent possible, the economic, legal and commercial objectives of the illegal, invalid or unenforceable provision or term.

- iv. Any waiver of any breach of these Terms and the terms in the Sales Contract shall not be deemed to apply to any succeeding breach of the provision or of any other provision of these Terms and the terms in the Sales Contract. No failure to exercise and no delay in exercising on the part of any of the parties hereto any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies provided in these Terms and the terms in the Sales contract are cumulative and not exclusive of any rights or remedies otherwise available (whether at law or in equity) to the parties hereto.
- v. Nothing herein shall constitute a partnership or establish a relationship of agent or any other relationship of a similar nature between or among the parties hereto.
- vi. These Terms and the terms in the Sales Contract have been made and is made solely for the benefit of the parties hereto and their respective successors and permitted assigns. Nothing herein is intended to confer any rights or remedies on any persons other than the parties to it and their respective successors and permitted assigns. Nothing herein is intended to relieve or discharge the obligation or liability of any third persons to any party hereto.
- vii. A person who is not a party hereto (other than a permitted assignee to whom rights have been assigned in accordance with the above) shall have no right under the Contracts (Rights of Third Parties), to enforce any of the terms herein.
- viii. No purported variation of these Terms and/or the terms in the Sales Contract shall be effective unless made in writing signed by the parties.