General Terms and Conditions of Sale - SMAY sp. z o.o.

Section 1. General provisions
1. These General Terms and Conditions of Sale apply to all contracts of sale of Goods and Services concluded by Smay Sp. z o.o. with its registered office in Kraków at ul. Ciepłownicza 29, registered in the Register of Entrepreneurs of the National Court Register (KRS) under number 000000007764, District Court for Kraków-Śródmieście, 11th Economic Division of the National Court Register, share capital PLN 50 000, NIP (tax number): 678-282-18-88, REGON 356295933, hereinafter referred to as the Seller.

The terms used in these General Terms and Conditions of Sale mean:

a) GTCS - these General Terms and Conditions of Sale;

b) Seller - SMAY sp. z o.o. with its registered office in Kraków at ul. Ciepłownicza 29;

c) Purchaser - the Seller's contractor concluding a purchase/sale agreement with the Seller on the basis of GTCS, not being a consumer;

d) Goods - goods in the Seller's commercial offer; depending on the context in which they are used, the term "Goods" also includes Services provided by the Seller;

e) Working hours - a period of 80 minutes on Mondays to Fridays between 8 a.m. and 4 p.m., except on bank holidays.

2. The Parties may depart from the provisions of the GTCS or modify them by way of an "individual agreement" concluded in writing. The conclusion of the aforementioned agreement shall result in the exclusion of relevant provisions of the GTCS, in place of which the provisions of the new agreement between the Parties shall apply. The Parties shall remain bound by the provisions of GTCS in the remaining scope.

3. Smay sp. z o.o. pursues its business objectives by concluding contracts of purchase and sale of Goods with contractors who are not consumers within the meaning of Article 221 of the Polish Civil Code.

4. Before placing an order, the Purchaser should provide the Seller with copies of registration documents confirming his status as an entrepreneur or another institution conducting business activity in order to demonstrate the possibility of concluding agreements with the Seller (entry in the business register or extract from the National Court Register, tax number certificate, and if the right to represent the Purchaser does not result from registration documents - also a document confirming the authorization of the person placing the order to represent the Purchaser in relations with the Seller, incurring obligations on his behalf and receiving the Goods).

5. The parties of the Purchase Contract may agree that the sale of goods offered by the Seller shall be carried out via the B2B Internet platform. The condition for using this form of shopping is signing a "Trade cooperation agreement via the B2B On-line Procurement System" with the Seller.

Section 2. Orders
1. The Purchaser is obliged to deliver to the Seller the order of the Goods in writing - the fulfilment of this condition is also deemed to be met by sending the order by fax or e-mail. An order within the meaning of these GTCS constitutes an offer to conclude a purchase-sale agreement by the Purchaser.

The order should include:

a) order number,
b) Purchaser's designation, including tax number,
c) detailed description of the type and quantity of ordered Goods,
d) name, surname and signature of the Purchaser's representative, authorized to place orders.

2. The Seller sends an order confirmation by e-mail or fax within 48 hours (two working days). The Seller shall be entitled to make modifications and changes in relation to the order placed by the Purchaser, which shall be included in the order confirmation. Failure by the Purchaser to respond to an order confirmation within 24 hours (one working day) of its dispatch by the Seller shall be deemed acceptance of the terms and conditions of the order as specified by the Seller.

3. Order confirmation by the Seller or issuing an invoice by the Seller shall be tantamount to concluding by the Parties a purchase-sale agreement on the terms specified in GTCS and with the content specified in the order confirmation.

Section 3. Price list and prices
1. Prices of Goods offered by Smay sp. z o.o. are determined by the Seller.

2. All prices listed in the "Price List" are net prices (excluding VAT) in the Seller's warehouse (LOCO prices - Seller's warehouse).

3. The Seller reserves the right to correct the "Price List" without the need to inform the Purchaser of this fact in advance. Current Price List shall be verified by the date of its establishment or the date of the last change.

4. The current "Price List" is always available in the sales office or on the website: www.smay.pl

5. Upon the entry into force of a new "Price List", the previously binding "Price List" shall become invalid, unless the Parties have agreed otherwise in an "individual agreement" confirmed in writing. The new "Price List" shall apply to the Purchaser with respect to the Goods covered by orders placed not earlier than on the effective date of the new "Price List".

6. The Seller reserves the right to change the price adopted in the order and confirm the order in the event of a sudden increase in prices of steel or aluminium by more than 10% in relation to the price of these materials from the date of transaction confirmation.

Section 4. Delivery dates. Contractual penalties.
1. The order delivery date is always specified in the order confirmation.

2. The Purchaser shall be obliged to collect the ordered Goods from the Seller's warehouse within 10 working days from the date of the originally planned realization of the order. Failure to collect the Goods within the specified time limit may result in charging the Purchaser with a handling fee of 0.5% of the net order value for each day of delay in collecting the Goods, but not less than PLN 50.00 net for each day of delay in collecting the Goods; in case of failure to collect the Goods within the specified time limit the Seller shall also be entitled to deliver the Goods to the seat of the Purchaser at his expense and risk.

3. Resignation from the ordered Goods or modification of the order is not possible after 24 hours from the moment of sending the order confirmation by the Seller, and in the case of written acceptance of the order confirmation by the Purchaser - after its signing, and in any case absolutely requires written acceptance...
by the Seller. Cancellation of an order placed in the B2B System or its modification is allowed within 4 working hours from the moment of placing an order in the System.

4. The Seller reserves the right to change the agreed terms and conditions of sale or resign from its implementation exceptionally in justified cases, also after placing an order by the Purchaser and its confirmation by the Seller, in particular when, due to force majeure or other exceptional circumstances beyond the Seller's control, the Seller is not able to meet the conditions of contract implementation. In such a case, the Seller shall inform the Purchaser of the impossibility of performing the order placed and shall indicate a new, proposed deadline or other conditions for the performance of the order.

Section 5. Delivery of goods and delivery by mail order
1. The place of performance by the Seller, i.e. delivery of the Goods, is the Seller's warehouse in Kraków at Ciepłownicza 29 or 78 in Kraków.
2. The Seller may deliver the Goods to the Purchaser to the address indicated in the order, using for this purpose the services of a forwarding company with which it cooperates on a regular basis, or to clearly indicate the Purchaser using the services of another forwarding agent. The Purchaser shall include such information in the order.
3. The costs of delivery of goods to the address indicated in the order shall be borne by the Purchaser, unless the Parties have agreed otherwise.
4. The Seller shall bear full responsibility for the Goods until they are released from the warehouse. Liability, including the risk of accidental loss or damage to the Goods shall be borne by the Purchaser at the moment of handing over the Goods to him from the Seller's warehouse, excluding mail order delivery, when the liability shall pass to the carrier referred to in paragraphs 2 and 3. The responsibility of the carrier begins with the moment of handing over the consignment with the Goods for transport and ends with the moment of its handing over to the Purchaser. The carrier's liability shall be governed by the provisions of the Civil Code, including in particular those governing the contract of carriage and determining the carrier's liability rules (see Article 786 §1 et seq. of the Polish Civil Code). The Seller shall not be liable for any damage to the Goods during transport, especially if the Purchaser fails to meet all formal requirements for the receipt of damaged shipment, and in particular does not file a complaint directly to the carrier.
5. The Purchaser shall be obliged to immediately report complaints concerning damage to shipments, but not later than within 24 hours from the date of receipt of the Goods by the Purchaser.
6. All visible defects, shortages and damage of the consignment delivered by the carrier must be noted by the Purchaser on the consignment note. Shortages, damage and defects which could not be detected with due diligence during delivery shall be reported to the Purchaser immediately after detection, or else the Warrantor shall lose their rights under the warranty.

Section 6. Payment
1. If the Seller grants the Purchaser a trade credit, the Seller may demand from the Purchaser a security for payment of the amount due for the sold Goods, among others in the form of a credit: a) blank promissory note issued by the Purchaser, without protest, together with a promissory note declaration, b) bank guarantees, c) trade receivables insurance.
2. The choice of the form of security shall be made by the Seller in agreement with the Purchaser.
3. The payment should be made in the form of a transfer to the bank account of the Seller indicated in the invoice or in cash at the cash desk.
4. The date of payment shall be deemed to be the date of crediting the full amount of the Seller's bank account or depositing cash at the cash desk.
5. Until the payment of the full amount due constituting the price for the Goods, the Seller shall retain ownership right to the Goods delivered or delivered to the Purchaser. Only when the full settlement of services resulting from the contract, including due contractual penalties and interest for delay in payment of the price, the ownership of the Goods to the Purchaser takes place.
6. In the event of a delay in the payment of the price, the Purchaser shall be obliged to pay statutory interest without notice unless the Seller voluntarily resigns from such interest. The declaration of renunciation of interest must be submitted by the Seller in writing in order to be effective.
7. Failure to pay on time or justified concern about the Purchaser's financial liquidity entitles the Seller to change the terms of sale, demand immediate payment of any liabilities towards the Seller and suspend the execution of remaining orders until the payment of any arrears, also justifies the withdrawal by the Seller from unrealized sales contracts due to the fault of the Purchaser.
8. If the balance of settlements between the Seller and the Purchaser exceeds the agreed amount (the agreed credit limit), for making further purchases the Purchaser undertakes to establish an agreed security for the Seller or will make purchases for cash.

Section 7. Returns
1. Return of the Goods may take place only after prior arrangement and written approval of the Seller.
2. Returned Goods must be unused, undamaged, free from defects and in original packaging.
3. Transport of the returned Goods shall be carried out in full at the expense of the Purchaser.
4. As compensation for the costs incurred by the Seller, 10% of the net value of the returned Goods shall be deducted.

Section 8. Complaints and warranty
1. The warranty terms and conditions are set out in the General Terms and Conditions of Warranty - SMAY sp. z o.o., which are an integral part of these General Terms and Conditions of Sale. General Terms and Conditions of Warranty - SMAY sp. z o.o. Are available www.smay.pl.

Section 9. Confidentiality
1. In cases where the Seller transfers to the Purchaser the technical documentation of the subject matter of the agreement, in particular constituting the commercial or technical secret of the Seller (business secret), the Purchaser shall be obliged to ensure special care in ensuring the confidentiality of such documents.
2. If the Seller suffers losses caused by the Purchaser's failure to ensure the confidentiality of the received documentation, the Seller shall have the right to seek compensation from the Purchaser, without any limits in this respect.
3. The confidentiality clause does not apply to offices issuing the necessary approvals, certificates, etc., but they must be informed of the need for confidentiality.
Section 10. Force majeure

1. The Parties shall allow the possibility of extending the term of performance of the agreement in the event of a protocol finding by the Parties of the occurrence of circumstances beyond the Seller’s control preventing or significantly hindering the commencement or performance of already commenced works, including cases of force majeure, in particular those caused by:
   a) decisions of authorities, courts, administrative bodies prohibiting or ordering the suspension of an investment,
   b) disasters, natural disasters, fires, floods, etc.,
   c) weather conditions which, in accordance with the art of construction or applicable regulations, make it impossible to carry out the investment,
   d) actions of third parties for which the Seller is not responsible,
   e) obstacles arising exclusively from reasons attributable to the Purchaser or assembly work carried out by other companies for which the Purchaser is responsible.

2. The parties also have the right to suspend the performance of the subject of the agreement in the event of force majeure.

3. The Party invoking force majeure should notify the other Party of the fact of the occurrence of force majeure within 3 days from the date of the occurrence of force majeure, or else it will not be accepted, and at the same time provide evidence of its occurrence.

4. In the event of force majeure, the Parties shall agree on new dates for the performance of the subject of the agreement.

Section 11. Final provisions

1. Any disputes that may arise between the Parties in connection with the performance of the agreement, the content of which is shaped by the provisions of these GTCS, will be resolved as far as possible amicably, and ultimately in court.

2. The Seller shall not be liable for damages resulting from non-performance or improper performance of sales contracts consisting in the loss of benefits. The Seller's liability for actual damage resulting from non-performance or improper performance of this Agreement or sale agreements is limited to the sales price of the Goods on the basis of non-performance or improper performance of the sale agreement.

3. The Purchaser assures that the data referred to in § 1 item 4 indicated by him are current and true, and that he will place Orders only if he has sufficient financial resources to perform the proper performance of individual sales contracts.

4. The Purchaser declares that the purchased Goods will not be resold on the territory of Russia. The exclusive right to sell the Goods and use the trademark SMAY sp. z o.o. in Russia is vested in the Closed Joint Stock Company Targowy Dom Inplast with its registered office: Moskiewskaja Oblast, g. Dolgoprudnyj, Lichaczewskij projezd. D. 4 page 1, entered in the Russian commercial register under number OGRN 1117746176525. The following Systems are excluded from this condition of the exclusive right to sell Goods in Russia: Safety Way, iSway, Zodiac, Car Park and their components and accessories.

5. All cases submitted to court shall be settled by the Court with jurisdiction over the Seller's registered office.

6. The Seller reserves the right to make changes to the General Terms and Conditions of Sale. Amendments to the provisions shall become binding on the other Party once they have been delivered to it in a manner customary among the parties in their business relations so that it may become acquainted with them, i.e. by posting them on its website www.smay.pl

7. In matters not regulated by the provisions of these GTCS, the relevant provisions of the Act of 23 April 1964 Polish Civil Code (Journal of Laws of 1964, No. 16, item 93 as amended) and the Act of 15 September 2000 – Polish Commercial Companies Code (Journal of Laws from 2000, No. 94, item 1037 as amended) shall be used.

8. Failure to familiarize the Purchaser with GTCS of Smay sp. z o.o. does not release the Purchaser from their validity.

9. The agreements concluded on the basis of these GTCS exclude the use of templates of agreements used by the Purchaser, in particular the general terms and conditions of purchases.

10. In the event of conflict between the provisions concerning the guarantee contained in the GTCS and the provisions contained in the warranty card handed over to the Purchaser, the provisions of the warranty card shall prevail.

11. These GTCS shall apply accordingly to delivery contracts.

12. These GTCS shall enter into force on 01/07/2019.

13. Annexes to these GTCS: General Terms and Conditions of Warranty - SMAY sp. z o.o. are available at www.smay.pl.