

## **I. General Terms and Conditions**

- 1.1 These General Terms of Delivery (hereinafter the "GTD") form an integral part of all purchase agreements concluded between BANES, spol. s r.o., with its registered office at Na Písech 705 392 01 Soběslav, entered in the Commercial Register kept on file at the Regional Court in České Budějovice, File No. C 2212, as the Seller (hereinafter the "Seller") and the buyer (hereinafter the "Buyer").
- 1.2 The contact details of the Seller can be found on the website <http://www.banes.cz/>, in the "Contacts" section.

## **II. Definition of terms**

For the purposes of the GTD:

- 2.1 "Purchase Price" corresponds to the price stated in the Purchase Agreement.
- 2.2 "Purchase Agreement" corresponds to a purchase agreement within the meaning of Section 2079 et seq. of the Civil Code concluded between the Seller and the Buyer, the subject matter of the purchase agreement is the Seller's obligation to deliver the Goods to the Buyer and the Buyer's obligation to pay the Seller the Purchase Price.
- 2.3 "Buyer" means the consumer or entrepreneur.
- 2.4 "Buyer – Entrepreneur" is a person who independently carries out on its own account and responsibility a gainful activity in a trade or similar manner with the intention to do so consistently in order to make a profit. An entrepreneur is also considered to be any person who concludes contracts related to its own business, production or similar activities or in the independent exercise of its profession, or a person acting by proxy or on behalf of the entrepreneur. For the purposes of the GTD, an entrepreneur is defined as a person who acts in accordance with the previous sentence in the course of its business. If the Buyer states its identification number in the order / form or other communication with the Seller, it acknowledges that the rules for the Entrepreneurs stated in the GTD shall apply to him.
- 2.5 "Buyer – Consumer" is a person who, outside the scope of its business activity or outside the independent exercise of its profession, concludes an agreement with the Seller or otherwise deals with the Seller.
- 2.6 "Civil Code" corresponds to the Act No. 89/2012 Coll., The Civil Code, as amended.
- 2.7 "INCOTERMS 2010 Conditions" corresponds to the set of international rules issued by the International Chamber of Commerce in Paris for the interpretation of trade clauses in foreign trade.
- 2.8 "Website" means the web interface <http://www.banes.cz/>, the functionality of which is to display, select and send the inquiry form.
- 2.9 "Goods" means the items offered by the Seller for sale to the Buyer, both through the listed offer and through the Website, which are concurrently the subject of sale.

## **III. Introductory provisions**

- 3.1 By signing each Purchase Agreement, the Buyer declares that it had the opportunity to become acquainted with the GTD, the Buyer accepts all the terms and conditions of these GTD, irrevocably and without reservations, unless otherwise agreed in the Purchase Agreement. By signing the Purchase Agreement, the Buyer also waives the application of the Buyer's own general terms and conditions.
- 3.2 The Buyer's order confirmed by the Seller corresponds to the Purchase Agreement to which these GTD apply. The Seller excludes the acceptance of an offer with an amendment or deviation made by the Buyer within the meaning of Section 1740 para. 3 of the Civil Code.
- 3.3 These GTD replace all of its previous versions and the Seller may modify them at any time. The Purchase Agreement shall be always governed by the GTD effective as of the date of sending the offer to the Buyer, or the date of Seller's confirmation of an order / demand placed by the Buyer unless it was preceded by an offer sent by the Seller.

#### **IV. Terms of delivery**

- 4.1 The Seller shall fulfill its obligation to deliver the Goods by handing it over to the Buyer. A delivery note shall form a part of the delivery of the Goods to the Buyer. The Seller's registered office shall be the place of performance of the obligation to hand over the Goods to the Buyer unless agreed otherwise in the Purchase Agreement.
  - a. Unless dispatch of the Goods has been arranged, the Seller shall ask the Buyer to take over the Goods at least three (3) days before the expected date of the hand-over of the Goods within the agreed delivery period. If the Buyer fails to take over the Goods for reasons not occurring on the side of the Seller, the Seller's obligation to deliver the Goods will be considered fulfilled, all risk of damage to the Goods shall pass to the Buyer, and the Seller shall be entitled to store the Goods at the expense of the Buyer. The Seller shall notify the Buyer thereof without undue delay and inform the Buyer of the storage costs.
  - b. If the Seller has arranged dispatch of the Goods, the Seller's obligation to deliver the Goods shall be considered fulfilled at the moment of the hand-over of the Goods to the first carrier at the agreed place, or at the destination according to the transport arrangements specified in the Purchase Agreement, according to the usual practice and at the expense of the Buyer. At the moment the Goods are handed over to the first carrier for transport to the Buyer, the Goods shall be deemed taken over by the Buyer, including the transfer of the risk of damage to the Goods. The Seller shall notify the Buyer of the dispatch of the Goods, and it is not the responsibility of the Seller to insure the Goods. In the event that the Buyer fails to provide the Seller with any dispatch arrangements, the Seller shall choose the way of transport itself, at its discretion with regard to its possibilities and economical transport.
- 4.2 Meeting the due date of performance by the Seller is dependent on the proper and timely cooperation of the Buyer. If the Buyer is in default of the provision of proper and timely cooperation, the date of delivery shall be postponed by such a period of default. The Buyer shall accept the goods on such an extended period.
- 4.3 The interpretation of the delivery terms specified in the Purchase Agreement shall be governed by the Civil Code and the INCOTERMS 2010 Conditions.
- 4.4 If the Buyer imports the Goods into a country other than the Czech Republic, the Buyer shall be responsible for obtaining all permits, licenses, customs clearance and any licenses relating to the delivery and transport of the Goods, and thereby the Seller shall not be liable for any such obligations.

#### **V. Means of transport**

- 5.1 The obligation of the Seller to identify the Goods shall be considered fulfilled by completing in the transport and delivery documents accompanying the Goods.
- 5.2 The Goods will be packed (equipped for transport) in a manner customary in the trade relations for the transport of goods in Central European weather conditions. Additional packaging shall be paid by the Buyer separately (special packaging, containers, etc.).
- 5.3 The Seller reserves the right to partial performance.
- 5.4 The Seller reserves the right to deliver the Goods in a modified structure or craft form compared to the ordered form, if such changes do not affect the functional use of the Goods, and provided that such Goods are manufactured according to the documentation of the Seller.
- 5.5 The Seller undertakes to deliver the Goods within the delivery period. However, the Seller shall not be liable for any delay; in particular, the Seller is not liable for damages occurring in case of delay. If the Goods are not delivered within sixty (60) days after payment of the total Purchase Price (this period does not include the time when the Buyer is in delay with the take-over of the Goods), and unless otherwise agreed, the Buyer may withdraw from the Purchase Agreement without the right to any compensation. All amounts already paid will be refunded to the Buyer within thirty (30) days after the termination of the Purchase Agreement.

- 5.6 The Buyer shall not make any changes or modifications to the delivered Goods or mark them otherwise than as indicated by the plant. Nor shall the Buyer label the Goods in any way which may give the impression that it is a different product than the one supplied.

## **VI. Purchase price and terms of payment**

- 6.1 The Purchase Price shall be determined without taxes, customs duties, insurance and transportation costs, which will be charged separately to the Buyer (even for partial performance), usually in the contractor invoice (the content of which shall be determined by the Seller) unless agreed otherwise by the Seller and Buyer.
- 6.2 The Seller is entitled to require a deposit of 40 % of the total Purchase Price. The deposit may be charged at any time after the conclusion of the Purchase Agreement. If during the term of the Purchase Agreement reasonable doubts arise as to whether the Buyer duly fulfills its obligations (in particular to properly pay the entire Purchase Price) and if the Buyer does not provide reasonable assurance at the Seller's request, the Seller may require a deposit of 100 % of the total Purchase Price.
- 6.3 Unless agreed otherwise in individual cases, invoices (tax documents) for the delivered Goods shall be due within fourteen (14) days of the date of sending the invoice to the Buyer by bank transfer to the account of the Seller specified in the tax document. Payment by bill of exchange, cheque or other means than by bank transfer to the Seller's account is possible only with the written consent of the Seller. Payment shall be deemed to have been made when the respective payment is credited to the bank account of the Seller.
- 6.4 If the agreed deposit or full Purchase Price is not paid, the Seller has the right to suspend the commencement of manufacturing, purchase of material and other preparatory and implementation activities, including further performance, without the Buyer having any right to any compensation for damaged caused by such a delayed performance.
- 6.5 The Buyer is not entitled to withhold or refuse payment of the Purchase Price or a part thereof in due time due to the incorrectly issued tax document (invoice) by the Seller. In such a case, the Buyer is obliged to immediately notify the Seller in writing, and the Seller shall issue and deliver the corrected tax document (invoice) without undue delay.
- 6.6 Filing a complaint does not give the Buyer the right to suspend any payments to the Seller.
- 6.7 Payments received by the Seller from the Buyer shall always be used first to cover the outstanding obligations of the Buyer and only then for the purpose specified in the payment documents.
- 6.8 In the event of default in payment of the Buyer's obligations, the Buyer undertakes to pay the Seller interest on late payment amounting to 0.05 % of the debt incurred for each day of delay if the Buyer is in default for a period of up to 30 days and amounting to 0.5 % of the outstanding amount for each day of delay if the Buyer is in default for more than 30 days.
- 6.9 The Seller is entitled at any time to assign all account receivable or any part thereof from the Buyer that is overdue to a third party. The Buyer may only assign its accounts receivable from the Seller with the written consent of the Seller.
- 6.10 The Seller is entitled to set off any of its accounts receivable from the Buyer against the accounts receivable of the Buyer from the Seller based on the Purchase Agreement. The Buyer may only set off any of its accounts receivable from the Seller against the accounts receivable of the Seller from the Buyer under the Purchase Agreement with the written consent of the Seller.
- 6.11 If the price is determined in the agreement in a foreign currency and the CZK exchange rate or the exchange rate of the Czech National Bank changes by more than  $\pm 3$  % as of the date of performance of the Purchase Agreement, the Seller may change the price of the Goods by a percentage corresponding to the change in the exchange rate exceeding 3 %.

## **VII. Acquisition of title / Retention of title**

- 7.1 The Goods, which are subject to the Purchase Agreement shall remain the property of the Seller until the Purchase Price is paid in full.

- 7.2 The Buyer is entitled to dispose of the Goods subject to the ownership retention only for its own use. In particular, the Buyer shall not resell or pledge the Goods to a third party. The Buyer is entitled to process or modify the Goods, the price of which has not been paid in full, or to combine such Goods with other items. Upon processing, modifying or combining with other items which are not the property of the Seller, the Seller becomes, until the date of full payment of the price of the Goods, a co-owner of the resulting new item with a share corresponding to the ratio of the value of the modified, processed or combined Goods to the value of the new item.

#### **VIII. Liability for defects**

- 8.1 The Buyer is obliged to inspect the Goods and submit a written report of defects to the Seller without undue delay after delivery of the Goods to the Buyer (but no later than eight (8) days from the receipt of the delivery in case of incorrect quantity and no later than six (6) months from the receipt of the delivery in the event of other defects), otherwise the right of the Buyer arising from the liability for defects cannot be exercised in court proceedings. Report of defects of the Goods shall contain: the name of the Buyer, address, telephone, e-mail (if available), tax document number, detailed description of the defect including a photo, if possible, and a description of how the defect occurred.
- 8.2 Upon receipt of the report of defects, the Seller shall inform the Buyer of the following procedure, depending on the type of Goods, and in particular where or whether shall the Buyer deliver the defective Goods. It is required, that the Buyer presents a tax document (invoice) on the purchase of the defective Goods. In case the Goods need to be returned to the Seller, the Buyer shall secure the Goods in such a way to avoid damage during transport. The Buyer acknowledges that in case of failure to comply with this obligation, the claim may not be accepted.
- 8.3 The Seller is obliged to settle the claim without undue delay, at the latest within one month from the date of its delivery or the date of the hand-over of the claimed Goods. Depending on the type of defects and the nature of the Goods, in accordance with the laws in force in the Czech Republic, accepted complaints shall be resolved by repairing, replacing the Goods or returning the paid Purchase Price (respectively). Only parts that are defective due to construction or manufacturing flaws may be replaced free of charge. The Buyer is entitled to a full replacement of the Goods only if the authorized representative of the Seller recognizes the Goods as irreparable. The Seller shall not accept any structural defects in the case of Goods manufactured according to technical documentation provided by the Buyer.
- 8.4 If the claim is accepted, the Seller shall, within the period specified in the preceding paragraph, request the Buyer to collect the repaired or replaced Goods or send the Goods to the Buyer at its expense by mail to the address specified by the Buyer. If the claim is not accepted by the Seller, it shall notify the Buyer thereof within the time period specified in the previous paragraph. Together with the notice of non-acceptance of the claim, the Seller shall inform the Buyer of how much the replacement or repair of the Goods would cost.
- 8.5 The Buyer shall notify the Seller without undue delay upon receipt of a notice of non-acceptance of the complaint whether it requests the replacement or repair of the Goods for consideration, otherwise, the Buyer is obliged to collect the Goods or inform the Seller of the address to which the Goods shall be delivered within the exact period. The cost of returning the Goods to the Buyer, in this case, shall be borne by the Buyer.
- 8.6 The Seller shall not be liable for defects resulting from normal use and wear of the Goods, its functional properties or for defects caused by improper handling or maintenance, as well as for defects caused exclusively by the Buyer or external events.
- 8.7 Minor and insignificant defects shall not postpone the obligation of the Buyer to take over the Goods and pay the Purchase Price.
- 8.8 The Buyer is not entitled to repair or provide a repair by a third party.

**IX. Exclusion and Limitation of Liability**

- 9.1 The damage caused to the Buyer and thus the Seller's liability shall in no case exceed the Purchase Price of the Goods for which the latter is responsible. The Contracting Parties hereby exclude the liability of the Seller for a lost profit of the Buyer or third parties at its entirety.
- 9.2 The Seller is not liable for any damage or delay in performance or for any claims arising therefrom due to force majeure that is particularly due to unusual weather conditions, unusual traffic problems, strikes, etc., i.e. situations over which the Seller has no effective control.
- 9.3 The implications of any changes in performance made at the request of the Buyer, especially the extension of the subject of the Agreement, shall be charged to the Buyer, in particular in the event of a price increase, extension of the deadline for completion, etc. Similarly, in the event of modifications made to the Goods by the Buyer, the liability of the Seller shall be excluded.

**X. Withdrawal from the agreement**

- 10.1 The Buyer has the right to unilaterally withdraw from the obligation specified in the Purchase Agreement prior to the delivery of the Goods provided that a severance payment equaling the actual cost of producing the Goods is paid, but at least of the amount of 30 % of the Purchase Price of the Goods excluding VAT.
- 10.2 A breach of any obligation under the Purchase Agreement constitutes a material breach of the Agreement and simultaneously a reason for withdrawal from the Purchase Agreement if the Contracting Party has notified the other Contracting Party in writing of a breach of its obligation and the other Contracting Party has not fulfilled its obligation in additional period of three (3) workdays.
- 10.3 The Buyer has no right to withdraw from the Agreement or demand the delivery of a new item if the Buyer cannot return the item in the state in which it was received. This does not apply,
  - a. if the condition has changed as a result of an inspection to determine the defect of the item;
  - b. if the Buyer has used the item before the defect was discovered;
  - c. if the impossibility of returning the item in an unaltered state was not caused by the Buyer's action or omission; or
  - d. if the Buyer sold the item before the defect was discovered or changed the item in normal use; if this happened partially, the Buyer shall return to the Seller what can be returned and give the Seller compensation to the extent to which the Buyer benefited from the use of the item.
- 10.1 If the defect is not reported by the Buyer in due time, the right of the Buyer to withdraw from the Purchase Contract shall be lost.

**XI. Miscellaneous**

- 11.1 The Seller shall be bound by its draft Purchase Agreement for thirty (30) days after its delivery (submission) to the Buyer unless the draft provides otherwise. Unless the Seller receives the written consent of the Buyer to the draft within this period, no agreement shall be established.
- 11.2 The Buyer agrees to assign to the Seller all claims resulting from any resale or transfer of the Goods subject to ownership retention, including all the accounts receivable. The Buyer is obliged to immediately inform its debtors of the assignment of receivables and simultaneously to immediately send to the Seller all the documents concerning these facts and to provide the Seller with complete information so that the Seller may properly exercise its claims. The Buyer is also obliged to return all goods subject to ownership retention to the Seller.
- 11.3 All information on weight, dimensions, technical characteristics, prices, specifications and other parameters of the products listed in catalogs, brochures, records, promotional articles, price lists, etc., is intended for information purposes only. This information is binding on the Seller only if it is explicitly stated in the Purchase Agreement.

- 11.4 The Seller is and shall remain the exclusive owner of all drawings, models and all documentation with which the Buyer might have become acquainted in the course of performance of the Agreement or which the Buyer obtained, with the exception of the documentation provided by the Buyer. This information may only be used by the Buyer, solely in connection with the purchase agreements entered into with the Seller. This documentation is confidential and may not be reproduced, copied or transferred to any third party without the express prior consent of the Seller. At the same time, the Buyer is obliged to maintain the confidentiality of all matters with which it became acquainted in the course of cooperation with the Seller, except those matters that the Seller has designated for publication. **In the event of a breach of the obligation under this Article, the Buyer agrees to pay to the Seller a contractual penalty of CZK 50,000 (in words: fifty thousand Czech crowns) for each individual breach of the obligation.** Payment of the contractual penalty shall be without prejudice to the Seller's right to claim compensation for damage.
- 11.5 The Contracting Parties agree on the exclusion of the application of Section 1978 para. 2 of the Civil Code, which states that any futile expiry of the additional deadline shall result in automatic withdrawal from the agreement.
- 11.6 The persons entering into the Purchase Agreement must be authorized to act on behalf of the Buyer or be authorized for such an act. By providing their signatures, such persons declare that they are authorized to act on behalf of the Buyer and they acknowledge that they will bear all possible consequences, in particular damages, if such a declaration proves to be false.
- 11.7 In case of a conflict between the conditions of the Purchase Agreement and the GTD the provisions of the Purchase Agreement shall take precedence over the GTD. Inapplicability of certain provisions of these GTD due to any inconsistency with the Purchase Agreement shall not result in the inapplicability of the remaining provisions of the GTD.
- 11.8 The provisions of the Purchase Agreement and these GTD shall take precedence over the provisions of law, except for those of a mandatory nature.

## **XII. Governing law and dispute resolution**

- 12.1 These GTD and the Purchase Agreement shall be governed by and construed in accordance with the laws and regulations of the Czech Republic. The Vienna Convention on the International Sale of Goods (1980) shall not apply.
- 12.2 If the parties fail to settle any dispute concerning the Purchase Agreement amicably, such a dispute shall be settled by the competent Czech court. In such a case, the Contracting Parties agree that the territorial jurisdiction shall be the District Court at the Seller's registered office, if the substantive jurisdiction of the District Court is given in the particular case and the Regional Court in Prague, if the substantive jurisdiction of the Regional Court is given in the particular case.

Place: Soběslav  
Date: 23 August 2019  
Name: Ing. Pavel Baloun  
Function: Managing Director  
Valid from 1 September 2019

I hereby confirm that I have read these General Terms of Delivery as a Buyer or Buyer Representative and have understood all terms and conditions thereof and that I do not consider any of the provisions to be surprising or otherwise deviating from general business practice. In particular, I specifically state that the amount of the contractual penalties agreed is reasonable, and I agree to the exclusion / limitation of the Seller's liability for damage (including damage caused by delay) and the limitation of the Seller's liability for defects.