

General terms and conditions - purchase contract (SALE)

§1 Scope of validity, form

(1) These General Terms and Conditions (GTC) apply to all business relationships of the company DELBAG s.r.o., with registered office Slovanská 781, 463 12 Liberec XXV, company ID: 075 15 910 and the company Hengst Filtration s.r.o., with registered office Slovanská 781, 463 12 Liberec XXV, company ID: 107 44 002 (hereinafter "DELBAG" or "seller") with legal and natural persons, or other entities based in the territory of the Czech Republic, Slovakia, Hungary and Poland (hereinafter referred to as "buyer"), both parties hereinafter referred to as "parties" or "contracting parties".

(2) These GTC apply specially to purchase contracts that relate to movable items ("goods"), regardless of whether the seller produces the goods itself or buys them from its suppliers.

(3) For contractual relations in matters of the purchase contract and other related contractual relations between the above-mentioned entities, these General Terms and Conditions apply exclusively, without having to refer to them again. Deviating, contradictory or additional general terms and conditions of the buyer shall become part of the contract only when and to the extent that the seller has expressly agreed to their use in writing.

Any reference by the buyer, by which the buyer would oblige the seller to use its terms and conditions, is excluded. These General Terms and Conditions apply at the latest when the subject of the contract is taken over by the buyer as accepted, even if the buyer had previously referred to its terms and conditions. The validity of any other terms and conditions cannot be inferred from the manner of execution of the contractual relationship.

(4) Individual, separately concluded arrangements and agreements with the buyer (including side agreements, amendments and changes) take precedence over these GTC in any case. The written contract or written confirmation of the seller is decisive for the content of the agreements concluded in this way, unless otherwise agreed between the parties, or unless the buyer proves otherwise.

(5) Legally relevant declarations and notifications of the buyer regarding the contract (e. g. setting deadlines, notification of defects, withdrawal from the contract, etc.) must be made in writing, i. e. in written form (e.g. by letter, e-mail). The related legal regulations and other evidence, especially in case of doubts about the legitimacy of the person making the claim, remain unaffected.

(6) References to the legal provisions mentioned in these General Terms and Conditions have only a clarifying meaning. Even without such a reference, all relevant legal provisions affecting the contractual relations of the parties are valid and effective unless they are amended or expressly excluded by these GTC.

§2 Conclusion of the contract

(1) The seller's price offers are non-binding, unless otherwise stated in the offer. This applies even if the seller has provided the buyer with catalogues, technical documentation (e.g. drawings, plans, calculations, references to DIN standards), other product descriptions or documents (also in electronic form), to which the seller reserves ownership and copyright rights.

(2) The order of goods by the buyer is considered a binding offer to conclude a contract. Unless otherwise stated in the order, the company DELBAG is entitled to accept this binding offer to conclude a contract within two weeks of its receipt.

(3) Acceptance can be confirmed either in writing (e.g. by confirming the order) or by shipping the goods to the buyer.

§3 Delivery period and delivery delay

(1) The delivery time shall be agreed individually or shall be determined by the seller when confirming the order.

(2) The seller is not responsible for delays in deliveries and performance due to force majeure, labour disputes, riots, embargoes, import and export restrictions, delays or refusal of required import and export permits, their cancellation or revocation, as well as official measures, acts of terrorism or their threats, pandemics and other unforeseeable, unavoidable and serious events, even if they occur at the seller's suppliers or their subcontractors, even in the case of bindingly agreed dates and deadlines. This also applies if these events occur at a time when the seller is in delay. The above-mentioned reasons entitle the seller to postpone the delivery or service for the duration of the obstacle, including a reasonable time for starting operations. The seller can refer to the above-mentioned circumstances only if the seller immediately informed the buyer about the obstacles. Other legal rights of the buyer and seller are not excluded by this provision.

(3) The occurrence of the seller's delay in the delivery of goods is determined according to legal regulations. In any case, the buyer is obliged to send a written reminder to the seller. If the seller is late with the delivery of the goods, the buyer can demand a flat-rate compensation for damage caused by the delay. The flat-rate damages amount to 0.5% of the net price (delivery value) for each completed calendar week of delay, but in total no more than 5% of the value of the delayed delivery. The seller reserves the right to prove that the buyer has not suffered any damage or that the damage is significantly lower than the above-mentioned lump sum.

(4) The buyer's rights according to § 8 of these GTC and the seller's legal rights, especially in the event of the exclusion of the obligation to perform (e. g. due to the impossibility or inadequacy of the delivery or subsequent performance), remain unaffected.

§4 Delivery of goods, transfer of risk, acceptance, delay in acceptance of goods

(1) The delivery condition is EXW (Ex Works, Incoterms 2020) from the relevant production facility, which is also the place of delivery and any subsequent fulfilment. At the request of the buyer and at its expense, the goods shall be sent to another destination (sale with delivery to a place other than the place of fulfilment). Unless otherwise agreed, the seller is entitled to determine the type of transport itself (especially the transport company, transport route, packaging).

(2) The risk of damage to property passes to the buyer at the latest when the goods are handed over. In the case of a sale with shipment to a place other than the place of performance, however, the risk of damage to the goods passes to the buyer at the moment of handing over the goods to the forwarding company, carrier or other person or entity intended for transport. If direct acceptance of the goods was agreed between the parties, then the moment of the transfer of the risk of damage to the property by taking over the goods occurs. Handing over or taking over the goods is considered to have taken place even if the buyer is in delay with taking over. In all other respects, the provisions on the purchase contract according to the Civil Code shall be applied appropriately to the taking over of the subject of the contract. The parties agree that they exclude the provisions of § 2120 (1) Act No. 89/2012 Coll., the Civil Code.

(3) If the buyer is late with the takeover, if it does not cooperate or if the delivery of the goods is delayed for other reasons for which the buyer is responsible, the seller is entitled to demand compensation for the incurred damage including additional costs (e. g. storage costs).

(4) Performance according to the contract is provided by the seller on the condition that there are no obstacles to performance resulting from national or international regulations, especially regulations on export control and embargoes. The buyer is obliged to provide all information and documents necessary for export or transport, see § 4 (1). If the required permits are not provided, the seller has the right to withdraw from the contract or from individual deliveries or obligations to provide services within the scope of the affected deliveries. Possible claims for damages from the buyer are limited in accordance with § 8.

§5 Prices and payment terms

(1) Unless otherwise agreed in individual cases, the seller's prices valid at the time of the conclusion of the contract apply, according to EXW (Ex Works, Incoterms 2020), from the relevant place of production, plus legal VAT.

(2) In the case of a sale with delivery to a place other than the place of performance (§ 4 (1)), the buyer bears the costs of transport from the place of performance and the costs of any transport insurance requested by the buyer. All duties, fees, taxes and other public charges are paid by the buyer.

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(3) The purchase price is payable immediately after delivery of the issued invoice and delivery, or collection of goods, unless otherwise agreed in writing between the parties. However, the seller is entitled at any time, even within the ongoing business relationship, to demand partial or full payment of the purchase price from the buyer before the delivery of the goods or part of them. The seller shall notify the buyer of this reservation no later than with the confirmation of the order.

(4) After the agreed deadline for the payment has expired, the buyer is in delay. For the period during which the buyer is in delay with payment, part of the purchase price, or other payable costs, the buyer is obliged to pay interest on late payment at the currently applicable legal interest rate. This does not affect the seller's right to claim compensation for damage caused by the delay.

(5) The buyer has the right to set off its claims against the seller or the right of retention only if its claim is undisputed or has been legally decided. In case of product defects, the buyer's rights are not affected, especially according to § 7 (6), sentence two of these GTC.

(6) If, after the conclusion of the contract, it becomes clear (e.g. by filing a motion to initiate insolvency proceedings against the buyer, the buyer's entry into liquidation, etc.) that the payment of the purchase price is threatened by the buyer's insolvency, the seller is entitled to refuse fulfilment and, if necessary, after the expiry of the additional period (§ 1977 of the Civil Code) withdraw from the contract. In the case of contracts for the sale of individual items of an irreplaceable nature (made-to-order products), the seller may notify the buyer of withdrawal from the contract immediately; in this case, the parties exclude the use of the provisions of § 1978 and § 1979 of the Civil Code.

§6 Reservation of ownership

(1) The seller reserves the right of ownership to the sold goods until full payment of all due claims of the buyer against the seller, including from previous business relationships, or contracts. In case of agreement to pay the purchase price in instalments, the seller is the owner of the item until full payment of the purchase price.

(2) The goods subject to the reservation of ownership may not be pledged to third parties before full payment of the buyer's claims, nor may they be provided as collateral to third parties. The buyer is obliged to inform the seller immediately in writing if a motion to initiate insolvency proceedings is filed against it or if third parties have access to goods owned by the seller or if the seller has other rights to them (e.g. a lien).

(3) In the case of the buyer's actions in violation of the contract, especially in the case of non-payment of the due purchase price, the seller is entitled to withdraw from the contract in accordance with the legal provisions, and/or demand the release of the goods on the basis of the reservation of ownership. The request to return the goods does not necessarily mean withdrawal from the contract on the part of the seller; the seller is entitled to demand only the return of the goods and reserve the right to withdraw from the contract. If the buyer does not pay the due purchase price, the seller can exercise these rights only if the seller has previously unsuccessfully set a reasonable deadline for the payment to the buyer or if the necessity of setting such a deadline results from the law.

(4) Until the appeal in accordance with point (c), the buyer is entitled to further sell and/or process the goods during the duration of the reservation of ownership in the course of ordinary business dealings. In this case, the following provisions shall also apply.

(a) The reservation of title applies in full to products created by processing, mixing or combining the seller's goods, while the seller is the manufacturer. If, in the case of processing, mixing or merging with the goods of third parties, their ownership remains preserved, the seller shall receive a co-ownership share in proportion to the invoiced values of the processed, mixed or merged goods. In other respects, the same rights apply to the resulting product as to goods delivered with the reservation of ownership.

(b) In accordance with the previous paragraph, the buyer hereby assigns to the seller as a principal all claims against third parties arising from the resale of the goods or the entire product or, where appropriate, in the amount of the seller's co-ownership share. The seller hereby accepts this assignment. The buyer's obligations listed in paragraph 2 also apply to the assigned receivables.

(c) The buyer is entitled to collect the claim simultaneously with the seller. The seller undertakes that as long as the buyer fulfils its payment obligations towards it, then until the buyer becomes insolvent, the seller shall not enforce the claim and shall not apply the reservation of ownership by exercising the right according to paragraph 3. In such a case, however, the seller can demand that the buyer informs it about the assigned claims and debtors, provides all the information necessary for enforcement, hands over the relevant documents and informs the debtors (third parties) about the assignment. In addition, in this case, the seller is entitled to cancel the buyer's right to resell and process the goods with reservation of ownership.

§7 Buyer's rights from defective performance

(1) Legal provisions apply to the buyer's rights from defective performance (including incorrect/incomplete delivery and incorrect assembly/installation, or faulty instructions and legal defects), unless otherwise specified. In all cases, special legal provisions for consumer protection remain unaffected. If the defective goods were further processed by the buyer or another entrepreneur, e. g. by building it into another product, all rights of the buyer due to defective performance by the seller expire at the time of processing.

(2) The basis of the seller's responsibility for defects is primarily and exclusively the agreement on the characteristics of the goods (including accessories and instructions) - if such an agreement exists. All product descriptions and manufacturer's specifications that are the subject of a separate contract apply as an agreement on the characteristics of the goods, including those that are referred to, for example, by a link to publicly accessible catalogues, specifications and data sheets on the seller's website.

If the property of the goods is not agreed upon, the purpose of use of the goods foreseen by the contract is used to assess whether it is a defect. If the purpose of use of the goods has not been agreed upon, the legal provisions are decisive in this regard. The seller assumes no responsibility for the public statements of the manufacturer or other third parties (e.g. advertising claims) that the buyer did not notify the seller of being decisive for its purchase. Furthermore, the seller is not responsible for the fact that the goods lose their properties due to the nature of the material or as a result of the method of use according to recognized rules, or if it was used after the maximum storage period has expired, as well as for deterioration due to improper or careless handling, improper storage, transportation, modification, application, processing or mixing of non-agreed inappropriate materials, excessive stress, inappropriate use, and further as a result of extraordinary natural influences.

(3) In the case of goods with digital elements or other digital content, the seller is obliged to provide and, where appropriate, update the digital content only if this is explicitly stated in the agreement on the properties according to paragraph 2 of these GTC. In this regard, the seller does not assume any responsibility for the public statements of third parties.

(4) The seller is not responsible for a defect that the buyer had to have known with the usual attention when concluding the contract (§ 2103 of the Civil Code). The buyer's claims for defective performance assume that it has fulfilled its legal obligations regarding the inspection of the goods and complaints about defects (§ 2104, § 2105 and § 2112). In case of goods intended for installation or other further processing, the item/goods must be inspected in any case immediately before processing. If the defect becomes apparent upon acceptance, inspection of the item or at any time later, the buyer is obliged to immediately inform the seller in writing. In any case, obvious defects shall be reported in writing within 7 working days of acceptance, and defects that were not detected during its inspection, within the same period after their detection. If the buyer does not perform a proper inspection of the item or does not notify the seller of the defect in writing, the seller's responsibility for a defect not properly notified or not notified in time is excluded in accordance with legal provisions.

(5) If the delivered item is defective, the seller has the right to choose the method of removing the defect, namely by repair or delivery of a new item without defect (exchange). If the type of right from defective performance chosen by the seller for the buyer is disproportionate in a specific case, the buyer can reject it. However, the seller has the right to refuse any additional performance.

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(6) The seller is entitled to condition its obligation of additional performance until the moment when the buyer pays the due purchase price. However, the buyer is entitled to retain a reasonable part of the purchase price corresponding to the value of the defective part of the goods.

(7) The buyer is obliged to provide the seller with a reasonable amount of time needed for additional performance, in particular for the delivery and inspection of the claimed goods. In case of a replacement delivery, the buyer is obliged to return the defective item to the seller in accordance with legal provisions. The subsequent fulfilment does not include disassembly of the defective item or its re-installation, if the seller was not originally obliged to install the item.

(8) The costs necessary for the purposes of inspection and subsequent performance, in particular the costs of transport, travel, labour, material and possibly the costs of disassembly and installation, are borne by the seller only to the extent of its legal obligations only in the case that the product had a demonstrable defect. Otherwise, the seller can demand compensation from the buyer for the costs incurred as a result of an unauthorized demand to remove the defect (especially inspection and transport costs).

(9) In urgent cases, e.g. if the safety of operation is at risk or in order to prevent disproportionate damage, the buyer has the right to remove the defect itself and demand compensation from the seller for the necessary costs. The buyer is obliged to inform the seller about such a procedure immediately, if possible in advance. The buyer does not have the right to remove the defect itself, if the seller would be entitled to refuse the corresponding additional fulfilment according to legal provisions.

(10) If the additional fulfilment has failed or if the reasonable deadline set by the buyer for the additional performance has passed unsuccessfully, the buyer may withdraw from the purchase contract or demand a reduction in the purchase price. However, in the case of an insignificant defect, the buyer does not have the right to withdraw from the contract.

(11) The claims of the buyer for damages or compensation for unnecessarily incurred costs exist even in the case of defects only in accordance with §8, otherwise they are excluded.

§8 Additional liability

(1) If nothing else follows from these GTC, including the following provisions, the seller bears legal responsibility in the event of a breach of contractual and non-contractual obligations.

(2) In case of intentional culpability and gross negligence, the seller is responsible for the damage - regardless of the legal reason - within the scope of liability for culpability. In the event of simple negligence, the seller is liable, subject to legal limitations of liability, only (a) for injury to life and health, (b) for damages resulting from the breach of an essential contractual obligation (obligation, the fulfilment of which is a prerequisite for the proper performance of the contract and the observance of which the contractual partner regularly relies on and can rely on); in this case, however, the seller's liability is limited to the compensation of foreseeable, usually occurring damage.

(3) The limitation of liability resulting from paragraph 2 also applies to third parties, as well as in the case of breach of obligations by persons (including for their benefit), for whose fault the seller is responsible according to legal provisions. The limitation of liability does not apply if the defect was fraudulently concealed or a warranty was assumed for the property of the goods and the buyer's claims according to the law on liability for damage caused by a product defect.

(4) The buyer may withdraw from the contract due to a breach of an essential contractual obligation, which does not lie in a defect in performance, only if the seller is responsible for the breach of obligation. In all other respects, the relevant legal provisions apply.

(5) The seller is not responsible for the occurrence of non-property damage, except in cases where this liability is stipulated by law.

(6) The seller is responsible for property damage up to the value of the delivered goods, with the exception of cases stipulated by law. This limitation also applies to subsequent damages incurred by the buyer or third parties as a result of damage caused by the breach of a contractual or non-contractual obligation by the seller.

§9 Limitation period

(1) Regardless of § 629 of the Civil Code or taking into account § 630 of the Civil Code, the general limitation period for claims from material and legal defects is one year from the shipment of the goods. If takeover has been agreed, the limitation period begins at the time of takeover.

(2) The above-mentioned limitation periods also apply to the buyer's contractual and non-contractual claims for compensation for damages arising as a result of a defect in the goods.

(3) If a shorter or longer period is agreed to the disadvantage of the weaker party, the agreement of § 9 (1) in terms of the duration of the limitation period shall not be taken into account.

(4) Regarding the length of the limitation period according to § 9 (1) is also not taken into account if it is a right to performance resulting from damage to freedom, life or health or a right arising from a deliberate violation of duty.

§10 Copyrights, industrial property rights

(1) The buyer and its customer shall be compensated by the seller in the event of undisputed or legally established claims resulting from infringement of copyright and industrial property rights, if the infringement was not caused by the buyer, in particular by its design of the goods (i.e. drawing, project, etc.) or connection or use with other products. The seller's obligation to assume claims is limited in accordance with § 8 of these GTC. Another prerequisite for the seller's obligation to take over the claims is that the seller shall be entitled to conduct the appropriate legal dispute at its request.

(2) The seller is entitled to release itself from the obligations assumed in paragraph 1 by (a) securing the necessary licenses for the allegedly infringed copyrights and industrial property rights, or (b) providing the buyer with adequately modified goods or parts thereof, which, in the event of exchange for the infringed subject of delivery or its part will eliminate the violation of rights to the goods.

§11 Choice of law and jurisdiction

(1) These GTC and the contractual relationship between the seller and the buyer are governed by the Czech legal system with the exclusion of private international law, in particular the UN Convention on Contracts for the International Sale of Goods.

(2) The court competent for hearing any disputes is the general court of the seller. The superior statutory provisions on the exclusive jurisdiction of the court remain unaffected.