

General Terms of Sale

§ 1. Definitions

1. For the purpose of these general terms of sale conditions, the following names and definitions shall apply:

- 1) **GToS** – the said General Terms of Sale
- 2) **The Seller** - SMULDERS Sp. z o.o. with its registered office in Rakoniewice, ul. Starowolszyńska 4, 62-067 Rakoniewice, Poland, with share capital of PLN 50 000, National Court Register Number KRS 0000165832, District Court in Poznań (Sąd Rejonowy Poznań-Nowe Miasto i Wilda w Poznaniu), VIII Commercial Division of the National Court Register, NIP (Tax Identification Number) 851-28-31-607, REGON (National Business Registry Number) 812626171;
- 3) **The Buyer** – includes natural persons, organizational units without legal personality, which under the special provision shall have the capacity to incur liabilities, corporate bodies – purchasing Goods at the Seller's, within the scope of the business activity conducted by the Seller,
- 4) **Goods** – movable assets, offered for sale by the Seller,
- 5) **Agreement** – a sale agreement concluded between the Seller and the Buyer, following the order for Goods placed by the Buyer, being a confirmation of acceptance of the order by the Seller upon the conditions indicated in the Agreement and in these GToS.
- 6) **Party/Parties** – The Buyer or the Seller or both parties jointly
- 7) **Customer** – The Buyer, being a natural person, who purchases Goods for private purposes, not connected with any business activity. A farmer, who purchases Goods for the purposes of the run arable farm shall not be considered a Customer, provided it is not stated otherwise within the binding provisions of law, applicable to the sale of Goods;
- 8) **Working days** – all days of the week, except for Saturdays, Sundays and statutory holidays pursuant to the Polish law.

2. Whenever these GToS require, for the performance of any activity (submitting any statement), a written form, a submission of the said statement shall be valid when done via email or facsimile transmission.

3. The GToS shall govern the Goods terms of sale by the Seller, within the scope not covered by the Agreement.

4. The acceptance of Goods terms of sale other than stipulated herein, shall each time require acceptance by the Seller made in writing.

5. In case of any discrepancies between the GToS and the Agreement, the provisions of the Agreement shall prevail.

§ 2. Order placement, acceptance and fulfillment procedure

1. The Seller's offers including data specifying the amount and dimensions of Goods or pictures are only for reference purposes and are approximate. If the Buyer wishes to preserve the exact Goods' parameters, the Buyer shall state that clearly in the order.

2. The sale of Goods is completed by the Seller on the basis of written orders of the Buyer (hereinafter called „order/orders”), including at least: the indication of the Buyer, the type of the Goods ordered, the amount and the manner of collection of Goods as well as the signature of the person authorized to represent the Buyer.

In the case of regular customers and in other special situations, orders might be placed orally. Oral orders shall be confirmed in writing. Each party shall be entitled to confirm in writing any order placed in a spoken form. If the other party does not submit any reservations in reference to such a written order, made by the first Party, within 3 working days following the receipt of a confirmation in writing, it is then considered that the other Party fully accepts the conditions of the Agreement resulting from the contents of such written confirmation.

3. The Seller shall accept orders for fulfillment solely in the form of concluding an Agreement. The Agreement shall be concluded following:

- 1) executing and signing the Agreement comprising the parties' agreements in reference to the Goods terms of sale,

or

- 2) acceptance by the Seller in writing of the terms of an order placed by the Buyer,

- 3) Oral arrangements between the Parties of significant terms of orders within circumstances stipulated in 2.2.

4. In the event when the specification of Goods (including appearance, dimensions and other parameters) has not been precisely specified within the content of the order, or when the order has been placed orally (point 2), then it is assumed that the Goods have been performed in accordance with the Order, if the Buyer within 10 days following the transfer of Goods does not report in writing any reservations concerning the inconsistency between the order and the Goods received. No submission of claims shall cause the Buyer lose the right to submit any said claims at a later date.

§ 3. Dates and terms of Goods delivery

1. The dates for the delivery of Goods are agreed upon at the acceptance of the order. The dates of delivery may also be indicated in the order. The date of delivery shall be contingent upon the production possibilities of the Seller. If the order does not specify the date of delivery, the delivery is conducted within the regular course of the activity of the production plant of the Seller or according to the current arrangements between the Parties.

2. The date of delivery shall be prolonged by the period of the obstacle if:

- 1) the delay shall result from any circumstances which could not have been predicted on the day of the conclusion of the Agreement,
- 2) the delay results from circumstances independent from the Seller i.e.:
 - a) force majeure, also including: cyclone, flood, earthquake, volcano eruption, water waves of significant height,
 - b) war, civil war, revolution, riots, terrorist attack, strike, road and port blockade, border crossing blockade,
 - c) Introduction or a change of the provisions of law which prevent the Seller from the completion of the contract according to the legal status as of the date of the conclusion of the Agreement, including: prohibitive customs duty, embargo, import/export ban.
- 3) The delay is a result of an action or nonfeasance of the Buyer.

3. Unless provided otherwise in the Agreement, the delivery of Goods shall take place in accordance with the EXW terms and conditions (Incoterms 2000) – the plant of the Seller in Rakoniewice – Polska.

I, the undersigned Rafał Długosz, a duly sworn translator of Polish in Poland and in the Netherlands, hereby certify that the foregoing English text is a true and faithful translation of the attached Polish document submitted to me.

Lubawka, 13 March 2013 Ref. No. 1074 / 2013



Rafał Długosz

Certified translation from Polish

4. The parties may agree that, upon additional payment, the Seller shall deliver the Goods to the place indicated by the Buyer. In such case, the total amount of costs connected with the delivery, including the costs of loading and unloading of Goods, packing and insurance shall be borne by the Buyer, while the risk of accidental loss or damage of the Goods shall be transferred to the Buyer at the moment of the collection of Goods pursuant to the provisions of point 5. The choice of the route and the means of transport shall be made by the Seller.

5. In the case indicated in point 4, the Buyer shall indicate in the Agreement a person authorized to confirm the receipt of the Goods. In the case of not indicating such a person, it shall be assumed that a person collecting the Goods at the place indicated by the Buyer as the place of delivery is entitled to collect the Goods. The person collecting the Goods at the place indicated by the Buyer as the place for delivery shall confirm the receipt with a signature and, as possible, shall indicate the authorization (as the Buyer, the Buyer's representative or as the Buyer's employee, etc.). In case of doubt, the Seller may in each case require the confirmation with a document that the person collecting the Goods is authorized to collect the Goods and may suspend the transfer of Goods till the receipt of such authorization. Shall the confirmation not be received during a specified period of time, the Seller shall be authorized to allow the Goods to be stored by a trustworthy person, or to store the Goods by the Seller at the risk and expense of the Buyer. In case of doubts, the costs of storage of Goods shall be set at the average rates binding at the place where the Goods were actually stored. In such case the Buyer shall reimburse to the Seller the costs of transport of Goods to the place of storage.

6. The delivery date shall be deemed preserved if before the lapse of the period the Buyer is informed about the readiness to transfer Goods or if the Goods are delivered by the Seller's means of transport to the Buyer. In the case of circumstances justifying transferring the Goods for storage pursuant to point 5, the Seller shall not be in any case burdened with any delays in the delivery of Goods.

7. In the event of delay on the part of the Buyer in collection of the ordered Goods for more than 10 days, the Seller, independently from the price, may require from the Buyer a reimbursement of the lump sum costs of storage at the amount of 1% of the gross amount of the Goods uncollected in due time for each day of delay following the said 10-day period. If the damage for the Seller exceeds the amount of the stipulated lump sum costs, the Seller shall be entitled to a supplementary compensation up to the whole amount of the loss suffered.

8. In case of an unjustified refusal to collect the Goods, the Seller shall, at the Seller's discretion, have the right to demand from the Buyer to collect the Goods and to properly perform the Agreement, as well as to demand to cover the costs of storage of Goods (point 7), or to withdraw from the Agreement and to charge the Buyer with a contractual penalty at the amount of 80% of the price of Goods. In the event when the damage suffered by the Seller exceeds the amount of the specified contractual penalty, the Seller shall be entitled to a supplementary compensation up to the entire amount of the loss suffered.

§ 4. Warranty

1. The Buyer shall not be entitled to warranty (inconsistency of Goods with the Agreement), if the Buyer does not report in writing any defects of the Goods within 2 months following their discovery. If any defect threatens to cause damage on the part of the Buyer or third parties, the Buyer may use the Goods at his own risk and liability, with the exclusion of the Seller's liability in such respect.

2. The Seller shall be liable for the inconsistency of Goods with the Agreement only in the case of its recognition before the lapse of two years following the transfer of Goods to the Buyer.

3. The provisions of this paragraph shall not be applicable to Customers for whom the warranty for defects does not apply.

§ 5. Guarantee

1. The Seller shall issue the Buyer with a 12-month guarantee for the quality of Goods. The guarantee course starts its run at the date of collection of Goods by the Buyer.

2. The guarantee encompasses only defects of Goods that are present at the moment of the transfer of Goods to the Buyer.

3. The guarantee shall not cover defects that result from improper use of Goods, including application in conditions that are different from the conditions specified for the use of Goods, defects resulting from the interference with the Goods by the Buyer or third parties, as well as defects resulting during transport, loading, unloading, assembly of Goods by the Buyer or third parties for which the Seller shall not be liable. The guarantee shall not cover any defects resulting from assembly if the assembly was performed by the Buyer and also when the assembly was performed by the Seller following the instructions provided by the Buyer.

4. Within the guarantee period the Seller shall remove defects of Goods within the shortest period possible; however, not later than within 14 working days following the written notification about the defect. In the case of defects that are difficult to be removed or such when such removal would be connected with excessive costs, the Seller may, at his own discretion, repair the Goods or replace the Goods with Goods that are free from any defects.

5. The Buyer may demand replacement of Goods if the Goods have been repaired at least 5 times.

6. The guarantee shall be valid only upon the prior submission of written complaint by the Buyer. The complaint shall be sent not later than within 3 days following the occurrence of the defect on pain of losing guarantee rights referring to defects covered by the complaint.

7. The Seller shall not be liable for damage caused for the Buyer resulting from the fact that during the completion of guarantee claims (i.e. during repairs or during the period till the date of the replacement of defective Goods with Goods free from defects) the Buyer could not use the Goods.

8. Obvious defects of Goods shall not be covered by the dates of the guarantee and dates of defect notification stipulated hereinabove. All and any obvious defects shall be reported to the Seller in writing within three days following the collection of Goods on pain of losing the respective rights.

§ 6. Sale price and payment conditions

1. The price for Goods shall be stipulated in the Agreement and denominated in Polish zloty (PLN) or in a foreign currency. The price shall not cover any costs, including the costs of insurance, reloading, transport and packaging of Goods, if in accordance with the Buyer's request the Goods are packed in a manner different from the standard one applied by the Seller to Goods of a given kind, as well as tax on Goods and services, customs duty other than administrative fees, unless the Agreement states otherwise.

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2. In the case when the price is denominated in a foreign currency and the payment is made in PLN, or when the price is denominated in PLN and the payment is made in a foreign currency, the transaction shall be settled with the use of the average exchange rate of the National Bank of Poland on the day of payment indicated on the VAT invoice.

3. The settlement manner for the Goods purchased shall be stipulated by the Agreement and the following settlement methods shall be allowed:

- 1) advance payment covering 100% of the price for Goods made at the conclusion of the Agreement or on a specified date following the conclusion of the Agreement but before the transfer of Goods;
- 2) advance payment of the % of the price of Goods stipulated in the Agreement, payable on a set date before the transfer of Goods; payment of the remaining part of the price – on a date set by the Parties at the collection of Goods;
- 3) Payment of the whole amount following the collection of Goods by the Buyer, within the period set by the Parties (applicable only to regular Clients)

The Buyer shall not be entitled to settle the amount due for payment for the sold Goods in the form of deduction of the Buyer's claims against the Seller.

4. Unless the Agreement states otherwise, the payment date for the Goods shall be 14 days following the issue of an invoice, provided the Tax Law provisions do not require issuing an invoice following the payment. In the latter case, payment is made on a date set by the Parties and the Seller shall issue an invoice for the payment received within the period stipulated by the provisions of the tax on Goods and services. The invoice defined herein shall also comprise pro forma invoice.

5. In the event the Buyer shall not be obliged to make an advance payment, caution money etc. before the transfer of Goods, then the Seller may require from the Buyer to place deposit (warranty) for securing compensation claims of the Seller for failure to perform or improperly perform the Agreement by the Buyer, and in particular as a security for the reimbursement of the costs of the performance of Goods.

6. The Buyer shall make a cash or non-cash payment for Goods, i.e. by a bank transfer to the Seller's bank account indicated in the invoice or provided in any other manner by the Seller. In the event of noncash payment, the payment date shall be the date when the Seller's bank account is credited with payment. The costs of noncash payment shall be borne by the Buyer.

7. The ownership right of the Goods sold, till the payment of the whole price by the Buyer, remains with the Seller. Upon the payment of the whole price, the ownership right of Goods shall be transferred to the Buyer without the necessity to place any additional declarations of intent in this respect.

8. In the event of any delay in payment on the part of the Buyer, the Seller shall have the right to suspend further delivery till the payment of the remaining part by the Buyer.

9. The Seller shall allow individual discounts for regular Clients or in the event of sale of large parts of Goods.

10. In the event when the Buyer's registered office or place of residence is within the territory of a member state of the European Community other than the Republic of Poland, and the Buyer is registered in the country of residence or of the registered seat as a payer of tax on goods and services and possesses VAT no. for the purpose of making transactions within the Community (EU VAT), and the sale in question is subject to the VAT rate binding in Poland amounting to 0%, the Buyer shall pay the VAT rate binding in his own country. The Seller shall apply the VAT 0% rate if, before issuing the invoice, the Buyer informs the Seller that the Buyer meets the conditions stipulated above and provides the Seller with the EU VAT no.

11. The Buyer shall not have the right to use the Seller's EUVAT for any purpose other than the one directly connected with the registration of purchase done at the Seller's in accordance with relevant tax provisions. In the event of an unauthorized use of the EU VAT by the Buyer, the Seller may demand from the Buyer to pay a contractual penalty at the amount of EUR 500 for each unauthorized use. The Seller may also request a supplementary compensation exceeding the amount of the penalty if the loss suffered exceeds the amount of the penalty.

12. If following the conclusion of the Agreement, the prices of the raw materials used for the production of Goods increase significantly, the Seller shall have the right to increase the prices accordingly. If in such case the increase exceeds 10%, the increase of the price shall be subject to the Buyer's approval.

§ 7. Civil liability for damage

1. The Seller shall be liable towards the Buyer for nonperformance or improper performance of the Agreement only for financial damage caused intentionally and only with the scope of real damage.

2. The Seller shall not be liable towards the Buyer or any third parties for damage caused by the Goods for the Buyer or third parties or in the event of Goods designed for the animal use (in particular external boxes for horses, stalls, enclosure and treadmills for horses) – also for animals, if:

- 1) the Goods were performed according to the specifications provided by the Buyer;
- 2) The standard Goods were modified in accordance with the Buyer's guidelines (e.g. by an assembly of additional elements as hooks, stalls or other construction elements).
- 3) the Goods were used for purposes other than specified in the Agreement, the instruction manual and being not compatible with the products' characteristic features;
- 4) The Goods were use with the breach of safety regulations and the Seller's warning; This particularly applies to placing animals whose weight and size as well as other physical features are inconsistent with the technical parameters of Goods; safety regulations and warnings placed by the Seller on Goods or on the package;
- 5) The Buyer or any other person modified the Goods;
- 6) The Buyer shall purchase the Goods within the business activity conducted, for the purpose of further sale.

3. The Seller shall inform and the Buyer shall accept the fact the Goods designed only for the use of animals possess technical parameters which provide safety of use only for animals of specified size and weight and/or other physical features. Before the application of Goods, the Buyer shall check if the size and weight or other features of animals that are to be placed within the Goods comply with the parameters of the Goods.

4. The Buyer must apply the safety regulations and warnings provided by the Seller and placed on Goods or their packaging. The Buyer shall use the Goods in accordance with their purpose, stipulated in the Agreement, instruction manual, and in case there is no manual – in accordance with the purpose resulting from the parameters of the Goods.

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5. In the event when the Buyer purchases the Goods with the purpose of further sale for the benefit of third parties, then the entity introducing the Goods to the market pursuant to art. 449(3) of the Polish civil code (or analogous provisions, which are binding at the territory of other countries and were not excluded under § 9.3 hereof) shall be the Buyer.

6. It shall be assumed that the Buyer uses the Goods in accordance with their purpose with the exclusion of the Seller's liability if the Buyer does not report to the Seller any justified stipulations in reference to the safety of introduced modifications, stipulated in point 2, at the latest during the collection of Goods.

§ 8. Intellectual property rights.

1. The models, designs and advertising material of Goods or any other documentation used for the production or sale of Goods (hereinafter jointly called Materials) shall be the subject of intellectual property rights and shall be subject to Polish and international provisions concerning the protection of intellectual property rights, including protection resulting from the Polish law on copy rights and related rights as well as the Polish law on industrial property.

2. The Seller shall be entitled to all intellectual property rights connected with the Materials.

3. The Buyer shall not be assigned with any intellectual property rights to Materials on account of the sale of separate (items of) Goods. In particular, the Buyer shall not be authorized to produce and/or distribute products which reproduce the Goods, neither in whole nor in part.

4. The provisions of point 1-3 shall not be applicable if the Seller produces Goods according to the design provided by the Buyer. If the Goods are made partially on the basis of designs/models of the Seller and partially on the basis of the Buyer's guidelines, then the Seller and the Buyer shall co-own the intellectual property rights to Materials constituting the basis for the production of Goods proportionally to the Seller's and Buyer's contribution in creating the Materials. As a co-owner of the Materials, the Seller may use them in an unlimited scope, including:

- 1) production, on the basis of such Materials, of Goods meant for other Buyers;
- 2) modification of (amendment of) Materials for the purpose of producing other versions of Goods;
- 3) assignment, at one's own discretion, of trade names to Goods produced on the basis of the Materials;
- 4) use of intellectual property rights to Materials within the respective scope, including assigning the rights of use to third parties or transferring the rights to third parties.

The Buyer shall not be entitled to any remuneration for the use of Material mentioned in this paragraph by the Seller, on account of the disposal of the Materials.

§9. Final provisions.

1. The GToS shall constitute an integral part of the Agreement unless the Agreement provides otherwise. The Seller shall provide the Buyer with the GToS during the conclusion of the Agreement. The said provisions shall be tantamount to the indication in writing of the way the Buyer may get acquainted with the valid version of the GToS (e.g. by providing the Internet address where the GToS are available on the Internet).

2. All and any amendments and supplements to this Agreement as well as withdrawal from the Agreement shall be made in writing on pain of nullity.

3. The law binding for the sale of Goods conducted under the Agreement and the GToS shall be the Polish law.

4. Any Agreements concluded under the GToS shall not be governed by provisions of the Convention of the UN dated 11 April 1980 on contracts for the international sale of Goods (Journal of Laws of 1997, No. 45, item 286).

5. The Buyer shall not assign any rights that the Buyer is entitled to against the Seller on account of the sale of Goods (irrespective of the legal form of the assignment) without prior written consent of the Seller.

6. Whenever the Agreement or the GToS refers to delivery, the term shall be understood as the provision of information, a document or any other object to the second party in person with the confirmation of receipt, by facsimile transmission or a registered mail – depending on the nature of the Goods delivered and the will of the delivering party. If the Agreement or the GToS provides for the delivery date, then the date is deemed obeyed, if before the lapse of the period:

1/ The party has received a confirmation of personal collection done by a person authorized to receive correspondence;

2/ The addressee is served with a registered mail sent by the Party; if the addressee does not collect the dispatch addressed properly during the first advice note, or does not collect the dispatch at all, the reliable date shall be the date of the first advice note, or

3/ The party sends the document via facsimile transmission to the other Party, which the party will be able to prove with a relevant printout from the facsimile device.

7. The Buyer shall be inform the Seller in writing about the change of the address on pain of deeming delivered the document sent via a registered mail to the previous address with the provision that the document shall be deemed served within the lapse of 30 days following the mailing date at the post office.

8. All and any disputes between the Seller and the Buyer related to the nonperformance or improper performance of the Agreement shall be settled by a relevant court of local jurisdiction for the registered office of the Seller, with the provision that in the event when the petitioning party is the Seller, the Seller shall have the right to refer the case to a court of local jurisdiction for the registered office of the Buyer.

9. The GToS shall come in force on 1 January 2004 and shall be binding for all and any agreements concluded after the date.

Rakoniewice, 1 January 2004

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