

## **General terms and conditions of purchase performed by FIBRAIN Sp. z o.o. in Rzeszow**

**No. OWZ\_2013\_PL-v.1**

### **GENERAL TERMS AND CONDITIONS OF PURCHASE**

applicable in FIBRAIN Sp. z o.o. with its registered office in Rzeszów, ul. Wspólna 4A, 35-205 Rzeszow, KRS 0000286619, NIP 5170231184

#### **1. GENERAL PROVISIONS**

1.1. These General Terms and Conditions of Purchase shall apply to the orders placed by FIBRAIN Sp. z o.o. in Rzeszow, hereinafter referred to as "the Customer", and shall respectively concern the purchase and sale or delivery of materials, raw materials, parts, prefabricated, products or devices, hereinafter referred to as "the goods" by the entity hereafter referred to as the "Supplier".

1.2. The order number should be cited on the notice of delivery, invoice, delivery note, acceptance protocol, and all other transaction documents.

1.3. Acceptance for performance of each order should be confirmed in writing, by the Contractor, within 3 days of receipt thereof. As a written confirmation shall be deemed a paper document, fax or e-mail sent by the Supplier to the Customer. Lack of a written confirmation by the Supplier in the above period, shall be deemed by the Purchaser as a tacit acceptance by the Supplier to perform the order under the conditions specified in the order and in accordance with the General Terms and Conditions of Purchase. Confirmation or acceptance of the order shall imply acceptance hereof, what at that time shall bind the Supplier, and the Supplier's statement that these General Terms and Conditions of Purchase shall prevail over any General Terms and Conditions of Sale, should they be applicable to the Supplier

1.4. The General Terms and Conditions of Purchase shall be posted on the following website [www.fibrain.com](http://www.fibrain.com)

#### **2. TERM OF DELIVERY**

2.1 The terms of deliveries shall be the terms specified in the order and they shall indicate term of delivery of the goods to the place of delivery specified in the order. These terms must be strictly observed.

2.2 In the event of a threat to fail to meet the term of delivery, the Supplier shall be required to notify, in writing, the expected period of delay and the reasons for occurrence thereof. In the absence of the above information, or failure to provide information that the delivery shall not be possible to be completed on time, may form the basis for cancellation of the order by the Customer, including the consequences arising out of Section 3.5 hereof.

2.3 The Customer reserves the right to withdraw from the whole or part of the order that was not performed within the period specified in the order, without the obligation to pay any compensation. At the same time, the Customer reserves the right to seek from the Supplier damages for improper performance of the order, under general principles set out in the Civil Code and the reimbursement of costs incurred for the replacement performance of the order.

#### **3. TERMS OF DELIVERY**

3.1 The ordered goods shall be delivered by the Supplier to the place specified in the order. The Delivery may be rejected should it not be accompanied by a delivery document issued by the Supplier, including the order number, specification of the goods shipped, quantity, details regarding the package, weight and place of acceptance and approvals, certificates and guarantee cards.

3.2 The Supplier shall be liable for any damages resulting from any delay, loss or damage caused by improper labeling, packaging and identification of the shipment

3.3 The delivery of the goods ordered shall be deemed as performed, in terms of fulfillment of the conditions of delivery and passing of risk of accidental loss or damage to the goods from the Supplier to the Customer, at the time of a documented defect-free acceptance of the subject matter of the delivery by the Purchaser, at the agreed place.

3.4 The Purchaser shall be authorized to return to the Supplier, at its own expense and risk, each shipment delivered before the date of delivery or to charge the Supplier the relevant costs of storage. The risk of damage or loss shall be incurred by the Supplier.

3.5 The liability for failure or improper performance of the order shall be established in the form of contractual penalties in the following cases and amounts:

The Supplier shall pay the Customer the following contractual penalties:

- 3.5.1 for withdrawal from performance of the order by the Customer for reasons attributable to the Supplier or by the Supplier for reasons beyond the control of the Customer - 10% of the value of the order;

- 3.5.2 for exceeding term of delivery, in the amount of 0.6% of the value of the order for each day of exceeding, this shall also apply to the intermediate terms;
  - 3.5.3 for delay in removal of defects found during the acceptance of the subject matter of the order or within the guarantee and warranty for defects period in the amount of 0.4% of the value of the order for each day of delay, calculated from the expiry of the period to remove the defects indicated by the Customer.
- 3.6 The Customer shall have the right to deduct the accrued contractual penalties from the remuneration of the Supplier.
- 3.7 In case of delay of the Supplier in performing the subject matter of order or failure by the Supplier to perform the obligations set out in Section 2.2 of the General Terms and Conditions of Purchase, the Customer may - without giving up the right to charge a penalty and additional compensation - exercise one or more of the following rights:
- 3.7.1 require the performance of the order in whole or in part;
  - 3.7.2 make a purchase from another supplier, at the expense and risk of the Supplier;
  - 3.7.3 withdraw from the order for reasons attributable to the Supplier, without setting additional time, upon written notice to the Supplier.
- 3.8 Should the contractual penalty not cover the incurred damage, the Customer may seek additional compensation under the general binding rules.

#### **4. GUARANTEE AND WARRANTY**

The orders performed by the Contractor shall result in providing guarantee and warranty for the goods for the period specified in the order.

4.1 The guarantee period shall run from the time and date specified in the order, and should the order not specify that information, for a period of 24 months from the date of delivery. The liability under the guarantee shall be in accordance with the provisions of the Civil Code. The Customer shall notify the Supplier of any found defects of the delivered goods. The defects found upon acceptance and within the guarantee period shall be removed by the Supplier within the period prescribed by the Purchaser. The Customer shall, in accordance with its choice, reserve its right to return all defective goods, at the expense of the Supplier, including the request of reimbursement of the payment made for them, or request of their replacement or repair. The Supplier shall take all and any necessary steps to ensure that the replacement or repair of faulty goods is performed at its own expense, and with due diligence. Should the Supplier fail to remove the notified defects within the prescribed time limit, the Customer shall be entitled to remove the defect in place of the Supplier, at its expense, subject to prior written notice delivered to the Supplier. The above shall not affect any rights of the Customer for the contractual penalties, additional compensation and to withhold payment of invoices of the Supplier, and shall not relieve the Supplier from any liability under the guarantee.

4.2 Irrespective of the right under the guarantee, the Supplier shall be liable towards the Customer under the warranty for defects, in accordance with the Civil Code.

#### **5. PRICE**

The Prices included in the order shall be fixed and not subject to change, cover the goods delivered to a specified place of delivery at the expense of the Supplier.

#### **6. SUBJECT MATTER OF THE DELIVERY**

The subject matter of the delivery must be performed in accordance with the content of the order, applicable standards and regulations, for which the Supplier shall provide the necessary documents, approvals and certificates together with delivery of the purchased goods.

#### **7. TERMS OF PAYMENT**

7.1 Subject to compliance of the delivered goods and invoice with the specification and clauses of the order, the payments shall be made by the Customer in the form of a bank transfer into the bank account of the Supplier indicated on the invoice, within 90 days from the date of delivery to the registered office of the Customer of an invoice together with the defect-free acceptance protocol of goods, unless it was agreed otherwise in writing.

7.2 In each case, the base of issuing of an invoice shall be a fault-free acceptance protocol, proof of delivery or bill of lading signed by representatives of the Parties.

#### **8. CONFIDENTIALITY**

8.1 Any information directly resulting from these General Terms and Conditions of Purchase, as well as information obtained by the Contractor in connection with the performance of the order, including but not limited to any organizational, commercial and technical information regarding the Customer and not accessible to the public, shall be considered by the Supplier as a confidential information, and shall not be disclosed to third parties. This obligation shall not apply to situations in which the obligation to provide information results from the absolutely applicable laws.

8.2 In particular, the Supplier agrees to treat as confidential the information relating to trading volumes, prices, discounts, product specifications, logistics agreements, technological data, under pain of cancellation of the order by the Customer for reasons attributable to the Supplier

8.3 The Supplier represents that it shall not use any confidential information for purposes other than for performance of the order, and it shall provide an adequate protection to that information, relevant to its confidential nature. The obligation to keep such information confidential shall remain in force after the performance of the order and may be waived only under the written consent of the Customer, to be valid.

#### **9. ADDITIONAL PROVISIONS**

9.1 In case of extension of the scope of the order, the Supplier shall deliver additional or replacement goods under commercial terms and conditions applicable to the performance of a given order (unit prices, discount). The Customer reserves the right to return a part of the order and to limit its scope. Any possible return of the subject matter of the order or limiting of its scope shall occur by using the unit prices adopted in the performance of the order.

9.2 The Supplier shall release and hold harmless the Customer from any liability for any claims of third parties, regarding any patent, license or proprietary formulas in connection with the delivered goods, parts and materials. In the case of proceedings conducted with respect to such claims, the Supplier shall, at its own expense, provide a direct defense of the Customer.

#### **10. DISPUTES**

In the event of a dispute concerning the interpretation or performance of the order and hereof, which the parties are unable to amicably resolve, the competent conclusive authority shall be a court of law competent to the registered office of the Customer.

#### **11. MISCELLANEOUS**

11.1 Without the prior written consent of the Customer, the Supplier shall not be entitled to transfer to another person or encumber any rights resulting from performance of the order.

11.2 These Terms and Conditions of Purchase shall form an integral part of the order placed by the Customer to the Supplier. In the event of any conflict or inconsistency, the content of the order shall prevail.

11.3. If the Parties concluded another agreement with each other, including regulations of the rules for placing and performance of the orders, in the event of a conflict of the provisions of the agreement with the General Conditions of Purchase, the provisions of that agreement shall apply. Should the Supplier provide the Customer with a guarantee for the goods for a period exceeding the period of the guarantee arising from these Terms and Conditions of Purchase, in part regarding duration of the guarantee, the provisions of that guarantee document shall apply, unless otherwise expressly agreed in writing.

11.4 No terms and conditions other than the Terms and Conditions of Purchase, Orders and any other documents incorporated by reference, shall be binding on the Customer, unless it is expressly accepted in writing. No terms and conditions included in the orders confirmations, previous offers and other documents issued by the Supplier shall be binding on the Customer, even if not explicitly rejected.

11.5 All and any amendments and additions to the General Terms and Conditions of Purchase shall be in writing to be valid.

11.6 In matters not covered by the General Terms and Conditions of Purchase the provisions of the Polish law shall apply.

FIBRAIN Sp. z o. o.

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