



General Terms And Conditions Of Sale And Supply

1. Scope of Application

1. The below General Terms and Conditions of Sale and Supply (GTCSS), constituting general terms and conditions of contracts in the understanding of Article 384 of the Civil Code, apply to contracts of sale and contracts of supply (hereinafter the 'Contracts') of goods delivered by company under the name HYDRO EXTRUSION POLAND spółka z ograniczoną odpowiedzialnością with its seat in Trzcianka (hereinafter called the 'Seller' or 'Hydro') to buyers and of Goods (hereinafter the 'Buyer'). These GTCSS do not apply to Contracts made with consumer in the understanding of the Civil Code.
2. These GTCSS shall be communicated to the Buyer as an integral part of the trade offer prepared by the Seller, communicated to the Buyer during negotiation, or attached, as an integral part (annex), to any Contracts executed by signing a separate contract document. Also notifying the Buyer of the availability of these GTCSS on the Seller's website shall be deemed to be successful communication of these GTCSS to the Buyer: www.hydroextrusions.com/TrzciankaENG.
3. Acceptance of these GTCSS by the Buyer during one purchase order for the Goods shall also mean the Buyer's acceptance to be bound by these GTCSS also in respect of any future purchase orders.
4. These GTCSS shall apply to the extent their application has not been excluded by the Parties in writing under the pain of nullity. Any variation from these GTCSS shall be effective solely where arising from the Seller's offer constituting an offer in the understanding of the Civil Code or explicitly accepted by the parties of the Contract in writing.
5. Should any discrepancies occur between these GTCSS and the general terms laid down by the Buyer, solely these GTCSS shall apply. These GTCSS shall apply as of 01.08.2017.
6. Any sales catalogues, technical specifications, price lists and advertising materials concerning the Goods are solely of an informative nature and do not constitute an offer in the understanding of the Civil Code. They constitute only an invitation to negotiate.

2. Quotations and orders

1. Unless otherwise indicated in the Seller's offer, such an offer does not constitute an offer in the understanding of the Civil Code.
2. Unless otherwise agreed the Contract is made by the Seller's acceptance of the purchase order (hereinafter the 'Confirmation of the Purchase Order'). The Confirmation of the Purchase Order is the Seller's response to the Buyer's Purchase Order or the Seller's response to the Buyer's acceptance of the Seller's offer.
3. The Contract shall be deemed to be made when the Seller's statement, referred to as the Confirmation of the Order reaches the Buyer. The Confirmation of the Purchase Order includes confirmation of the significant contents of the Parties' understanding as to the contents of the Agreement and contains the contents of or reference to these GTCSS. Sending the Confirmation of the Purchase Order by fax or e-mail shall be deemed sufficient.
4. In entering into the Contract the Buyer thereby guarantees that the Buyer is in good economic standing (in particular the payment of the price of the sale/supply of the Goods is not doubtful due to the Buyer's economic standing).
5. Where the Seller remains in a permanent business relationship with the Buyer, any absence of the Seller's immediate response to the purchase order shall not count as the Parties' entry into a contract of supply.
6. Where the supply is varied or cancelled by the Buyer, the Buyer shall reimburse the Seller for any costs incurred by the Seller by virtue of performance of the supply, pay the Seller's remuneration in proportion to the part performed, and pay the Seller a contractual penalty of 10% of the value of the purchase order.
7. The payment of the contractual penalty shall not deprive the Seller of the right to pursue compensation under general rules from the Buyer.
8. The Seller shall have the right – upon notifying the Buyer in writing or by e-mail, and with no unfavourable legal effects in terms of dues to the Buyer, compensation damages in particular – to terminate or suspend the delivery in part or in whole at own discretion, or, upon the Buyer's consent, to proceed with the delivery on modified terms and conditions, if, for reasons attributable to the Seller, the cost of delivery increase, the delivery be delayed, or prove impossible, and also if the Buyer have delayed payments or fail to collect the Goods manufactured to a previous order or in case the Seller conclude that the Buyer's financial standing had deteriorated to an extent justifying a supposition that the Buyer would not meet its contractual obligations or in a case as described in detail under the paragraph 4 item 5 of the GTCSS.
9. Under circumstances described hereunder, the Seller shall also have the right to make any further deliveries conditional to the following: an advance payment for the delivery in question, or the coverage of any outstanding payments (in part or in whole) for previous deliveries or an asset security instrument as appropriate.

3. Prices and Payment terms

1. Prices within the meaning of these GTCSS are prices that take into account the Incoterms® 2010 EXW (ExWorks) delivery.
2. The Seller may make the implementation of production conditional on an advance payment from the Buyer. The Seller may require an advance payment from the Buyer even where not explicitly so stipulated by the Parties in the contract.
3. In the event of a significant variation or cancellation of the performance of the supply by the Buyer, including any order to prepare the implementation of production of special profiles, notwithstanding any right to be reimbursed for the costs and require remuneration, the Seller shall have the right to keep the advance payment received.
4. Unless otherwise agreed. The Buyer shall pay the price of sale/supply of Goods prior to the Goods' being released. In the event of a sale with an extended payment deadline the Seller undertakes to issue a VAT invoice for the entire value of the Goods within a time no longer than 7 days after the Goods are released, and the Buyer undertakes to pay the invoiced amount within a time indicated in the invoice.
5. Where the payment deadline is not kept, the Seller shall charge interest at for delay in commercial transactions.
6. Where the payment deadline is not kept, any payments shall in the first instance be credited against interest due.
7. The Buyer shall not be authorized to withhold the payment on account of any complaints made by the Buyer or other claims relating to the performance of the supply to which the invoice refers. The Buyer waives the right to set off mutual debts owed to the Buyer against debts owed to the Seller as attested in invoices for supplies.

4. Deliveries

1. The delivery shall be made under Incoterms® 2010 rules, i.e. on the basis of the delivery rule chosen by the Parties. Should the Parties hereto not select a specific rule, the delivery shall be completed EXW (ExWorks).
2. The Seller shall not be liable to the Buyer for any delays in the transport of products, including delays taking place for causes on the carrier's part.
3. Where the Buyer receives the goods directly at the Seller's, the Buyer shall pick up the products within 5 days after the day of notification of the delivery date.
4. The Seller shall have the right to withhold the shipment of the products and immediately so notify the Buyer where in the Seller's judgment the means of transport does not fulfil the necessary technical requirements.
5. In the event of delay in the Buyer's receipt of the products, the Seller reserves the right to charge the costs of storing the products at the rate of 10% of the value of products per year. Where the Buyer does not receive the Goods within 21 (say: twenty one) days after the date of notification of readiness for receipt, the Seller shall call upon the Buyer to receive the supply immediately, setting another deadline of 7 (say: seven) days. Upon the futile lapse of the aforementioned deadline the Seller shall have the right to break up the Goods for scrap and charge the Buyer with the costs of the entire Supply (value of the purchase order) minus the value of the scrap, and to charge additional contractual penalty of 10% of the order price.
6. While receiving the Goods, the Buyer should confirm the correctness of the supply on the supply document used by the Seller by signing the aforementioned document through a person authorized in the understanding of the Contract. On the Buyer's side, in particular the workers performing the actual receipt of the Goods shall be authorized to sign the supply documents. Where the Goods are received from the carrier, the Buyer shall examine the shipment in order to determine any visible damage during transport. Where such damage is found, a trade record must be made with the carrier's participation. If at the time of delivery the state of the Goods was not questioned and the damages could be found at the time of unpacking, but not later than within 7 days of unpacking, the further unpacking should be discontinued and the representative of the Seller shall be required to write down the trade record in the Buyer's warehouse.
7. The Seller reserves the right to surpluses or shortages of the products up to 15% of the quantity included in the contract. In such a case, the Buyer shall pay for the delivered quantity of goods in accordance with the price agreed.

8. Where the Seller is performing services on material entrusted by the Buyer, for technological and production reasons the Seller reserves the possibility of loss of up to 5% of the material entrusted.
9. The weight of the products as marked in drawings in kilograms per meter is indicative and not binding on the Seller.
10. The Seller shall be bound by the plant tolerance of product dimensions and shapes as based on European standards unless other figures have been agreed.
11. Unless otherwise agreed, the agreed price shall be indexed proportionally to the price of aluminium as listed by the London Exchange on the day of purchase as well as billet premium price.
12. Any change of foreign exchange rates, increased customs fees, insurance premiums, transport fees or other fees as occurring after the supply contract and resulting in an increase of the cost of performance of the supply shall be borne by the Buyer and shall not require variation of the contract.
13. Where goods are supplied in returnable packaging, the Buyer undertakes to return the packaging within 21 days after the day of delivery. Where the above returnable packaging will not be returned in the aforementioned time window, the Seller shall charge the Buyer for the costs of the baskets, issuing an appropriate VAT invoice.
14. On each last business day of a month any Buyer in possession of the returnable packaging shall state the quantity of returnable packagings in writing (e-mail or fax).

5. Retention of title

1. Until the total price is paid in the amount set as in the Order Confirmation, the Supplier reserves the title to the delivered goods being the subject of that order.

6. Warranty / Notice of defects / Liability

1. The Seller grants to the Buyer a 1-year warranty for the Goods delivered (Warranty). The Buyer shall have the right to report defects of the delivery within the aforementioned period, after which time the Buyer shall lose the right to make complaints.
2. Any reservations as to the quality of the products delivered (complaint) should be submitted immediately upon discovery and prior to any use of the product no later than 14 (say: fourteen) days following discovery of the defect.
3. The Seller undertakes within 14 (say: fourteen) days after the submission of the complaint to examine the Goods complained about and/or notify the Buyer of the complaint being accepted or declined. Any deviations to the properties of the Goods being subject to the delivery from the properties of the previously presented to Buyer samples or specimens that are not reference samples, do not constitute the defects of the Goods.
4. Pursuant to these GTCSS the Seller shall remove the defect of the product or deliver products free of defects. The method of satisfying the complaint shall be decided by the Seller.
5. The Parties exclude the Seller's liability to the Buyer under statutory warranty for physical defects of the goods in the understanding of Article 558 of the Civil Code in connection with Article 612 of the Civil Code and stipulate that the Seller's liability to the Buyer for damages shall be restricted to damage caused by intentional fault.
6. In the event of an unjustified complaint claim, the Seller may charge the Buyer for the costs incurred in processing the complaint.
7. Subject to any contrary provisions of these GTCSS, the Seller's liability to the Buyer for lost profit, contractual losses and any other consequential damages shall be excluded.

7. Tools and Design Documentation

1. The Seller shall manufacture the Goods in accordance with the provisions of the contract. Permissible variations from the contents of the contract are defined by the GTCSS.
2. Where products are manufactured according to the Buyer's design, the Buyer shall attach design documentation with the purchase order unless the supply is performed on the basis of the Seller's design documentation.
3. Where the supply is performed on the basis of the Buyer's design documentation, the Seller shall not incur any liability arising from a defective design documentation unless damage is caused by the Seller's intentional fault. Where the supply takes place according to the Buyer's guidelines regarding the production method or technology the Seller shall not incur any liability thereunder, and in particular the Seller shall not incur any liability for inadequate performance unless damage is caused by the Seller's intentional fault.
4. The Seller is not liable, in particular it is not liable for any damages, for the fact that the delivered Goods do not meet the intended purpose of the Customer, in particular for the correctness of the final design.
5. Tools, matrices and other appliances necessary for the implementation of the production of profiles shall be produced by the Seller. The cost, deadline and terms and conditions of preparation and implementation of the production of profiles shall be determined in the offer. Any costs of implementation of production shall not be refundable.
6. Tools, matrices and other appliances shall be the Seller's property; however, the Seller shall not have a right to sell any profiles produced using such tools or matrices to third parties without the Buyer's prior consent.
7. Where the supply /sale for the Buyer is not performed throughout a period of 4 (say: four) years, the Seller may break up for scrap the tools, matrices and other appliances used for such production. Should the performance of the supplies be resumed, any additional costs of implementation (relaunch) of production shall be borne by the Buyer. The Seller is entitled to extend the above period or to charge the Buyer for the storage of Tools.

8. Copyright / Industrial Property Rights

1. Should goods be delivered against documentation supplied by the Seller, any rights created in the course of contract delivery – copyrights and industrial rights in particular, including, but not limited to patents, design and industrial design rights, and trademarks, shall remain the Seller's property.
2. Should goods be delivered against documentation supplied by the Buyer, the Seller shall not in any way be held liable for any infringement of copyrights or industrial rights or any rights owned by third parties. Should such aforementioned rights be violated or threatened by violation, the Buyer shall be obliged to cover all and any related claims.
3. The Buyer hereby declares and represents as follows:
 - a) That it is entitled to copyrights to the Work, or that it had signed a licensing agreement concerning the Work with its author – i.e. concerning the aluminium profile and the design drawings used for purposes of current or future aluminium profile manufacturing, as described and interpreted by the Copyright and Related Rights Law of February 4th 1994 (hereinafter referred to as "the Work").
 - b) The Work is not in violation of third party rights and is free of appropriations; furthermore, it does not entail any other circumstances as could potentially expose the Seller, whether directly or indirectly, to a liability to third parties for reasons of using the Work.
 - c) The technical solution in the form of the aluminium profile ordered does not violate any broadly understood intellectual or industrial property rights owned by third parties, industrial property rights in particular (as described and interpreted by the Industrial Property Law of June 30th 2000), i.e. patent, protection, or registration rights in particular;

9. General Provisions

1. The Polish law shall apply to these GTCSS and any Contracts. The court of law with jurisdiction over the Seller's registered place of business shall be competent for purposes of resolving all and any disputes arising from the application of these GTCSS and/or related Contracts delivery. The Seller shall also have the right to file a legal suit with the court of law with jurisdiction over the Buyer.
2. In the event of these GTCSS being amended during the term of the Agreement, the Seller shall notify the Buyer of the amendments made. Where the Seller does not receive, within 10 business days after the Buyer's receipt of the letter notifying the GTCSS change, a statement to the effect of non-acceptance of the amendments, such amendments shall be deemed to have been accepted by the Buyer. The modification clause contained in this paragraph creates a right to amend these GTCSS solely for important causes and does not create a right to make any amendments leading to violation of the essence of the Contract binding the parties or to change the principal elements of such a Contract.
3. The Polish language version shall be recognised as prevalent.