

**PREOL, a.s. GENERAL COMMERCIAL  
TERMS AND CONDITIONS  
OF SALE OF GOODS  
in effect from June 25, 2018**

**1. INTRODUCTORY PROVISIONS**

- 1.1 These PREOL, a.s. GENERAL COMMERCIAL TERMS AND CONDITIONS OF SALE OF GOODS (hereinafter referred to as "GCTC") shall apply to legal relations established when selling the goods of PREOL, a.s., with its registered office at Lovosice, Terežinská 1214, post code 410 02, Company ID No.: 26311208, registered with the Commercial Register kept by the Regional Court in Ústí nad Labem, Section B, File No. 1729 (hereinafter referred to as the "Seller") if the parties expressly agree to apply them in a purchase agreement, general purchase agreement or purchase order (hereinafter referred to as the "Purchase Agreement" or "Agreement").
- 1.2 The Purchase Agreement, annexes to the Purchase Agreement and these GCTC together form a complete and compact Purchase Agreement which represents a summary of the parties' rights and obligations in relation to delivery of goods according to the terms and conditions of the Purchase Agreement. Should there be any discrepancy or conflict between the Purchase Agreement, annexes to the Purchase Agreement and these GCTC these documents shall take precedence in the following order: Purchase Agreement, annexes to the Purchase Agreement and these GCTC. These GCTC shall take precedence over those statutory provisions which are not mandatory.
- 1.3 The Purchase Agreement shall be considered concluded at the moment when the parties agree in writing on all elements specified in the Agreement. Should any party make comments regarding supplementation or change of the other party's proposal, such comments shall be considered the party's new proposal.

**2. METHOD AND PLACE OF DELIVERY**

- 2.1. The place of delivery shall be agreed in the Agreement. Unless agreed otherwise the place of delivery shall be the Seller's warehouse as notified to the Buyer by the Seller.
- 2.2. All provisions concerning sale, transport and changes of the title to the goods shall be governed by the latest version of international rules for interpretation of delivery clauses INCOTERMS® 2010.
- 2.3. If the Buyer fails to deliver transport instructions for delivery of goods to the Seller on a due and timely basis the Seller is entitled:
- a. to despatch goods to the common place of delivery and to select means of transport after providing written notification to the Seller. If there is no common place of delivery the Seller is entitled to dispatch goods:
    - in case of rail transport to the railway station at the place of the Buyer's registered office or, if there is none, at the place closest to the Buyer's registered office,
    - in case of truck transport to the address of the Buyer's registered office and
    - in case of shipping to the port at the place of the Buyer's registered office or, if there is none, at the place closest to the Buyer's registered office, or
  - b. to unilaterally withdraw from the Agreement, the withdrawal taking effect at the moment of delivery of the written notice of withdrawal to the Buyer. In such case the Seller is entitled to claim compensation for any damage incurred thereby, including lost profit, from the Buyer.
- 2.4. If specified in the Agreement, the goods may be sent from the Seller's site of performance to the designated site. In the event that carriage is to be executed using the Buyer's own transport, or by means of the Buyer's a contractual carrier, the Buyer is required to comply with the "Safety standard PREOL" and to submit to the Seller (i) a list of licence plate numbers of vehicles, which shall be used to execute carriage of the goods, (ii) the date the goods shall be taken receipt of by the Buyer or the Buyer's contractual carrier and (iii) the necessary documents concerning the individual vehicles. The Seller shall send the relevant PIN code, necessary for the Buyer or the Buyer's contractual carrier to be able to take receipt of the goods, to the Buyer by e-mail. The Buyer continues to be liable for handling the PIN code specified in the previous sentence and the Seller is not liable in the event that the PIN code is misused.

- 2.5. Due and timely delivery of the goods by the Seller is conditioned by provision of Buyer's necessary cooperation in accordance with the Purchase Agreement and these GCTC. In case of the Buyer's delay in fulfillment of any of his obligations following from these GCTC or from provisions of the Agreement or if the Buyer makes it impossible in any way for the Seller to deliver goods the Seller's obligation to delivery goods in due time is met provided that no later than on the last day of the agreed delivery period the goods are ready for dispatch or handover at the place of delivery and the Seller has sent a notice thereof to the Buyer.

**3. PURCHASE PRICE, TERMS OF PAYMENT AND PURCHASE PRICE SECURITY**

- 3.1. The Buyer undertakes to pay to the Seller the purchase price specified in the Purchase Agreement according to an invoice issued by the Seller.
- 3.2. The Seller shall issue an invoice which shall serve as an accounting document pursuant to Act No. 563/1991 Coll., on Accounting, as amended, and it shall contain the essentials of a tax document pursuant to Act No. 235/2004 Coll., on Value Added Tax, as amended, or possibly pursuant to other legal regulations.
- 3.3. The invoices shall be due as specified in the Purchase Agreement. If no due date is specified in the Purchase Agreement, invoices issued by the Seller shall be due within 30 days of their issue date.
- 3.4. Payment is considered made if the whole invoiced amount is credited to the Seller's bank account. If, due to the Buyer's mistake, payment is remitted to another bank account of the Seller than as specified in the invoice and therefore the Seller incurs additional costs, the costs shall be paid preferentially from the credited sum. The remaining amount shall be considered the outstanding part of the original debt.
- 3.5. In case of default by the Buyer regarding payment of any of the amounts according to the agreement, the Seller is entitled to request and the Buyer is obligated to pay default interest on the amount due each year at the repo rate set by the Czech National Bank for the first day of the calendar half-year in which the default occurred increased by eight percentage points. The Parties agreed to exclude the application Art. 1971 of the NOZ. The Seller is entitled to damages resulting from failure to meet a monetary debt even if it is covered by default interest.
- 3.6. If the Buyer is in default in payment of any amounts from the Purchase Agreement or any other contracts concluded with the Seller the Seller is entitled to stop further deliveries of goods under the Purchase Agreement with immediate effect and to withdraw from the Purchase Agreement. The failure to deliver according to the previous sentence shall not be regarded as violation of the Agreement and the Seller shall not be responsible for any damages incurred thereby.
- 3.7. Should export of the goods hereunder to a Member State be exempt from VAT pursuant to applicable provisions of Act No. 235/2004 Coll., the Value Added Tax Act, as amended, the Buyer shall provide evidence to the Seller on the goods delivery to another Member State by a declaration of the Buyer or a third person duly authorized thereto, or by other means of evidence, about the goods having been delivered to another Member State.

**3.8. PURCHASE PRICE SECURITY**

- 3.8.1 The parties may agree on a credit limit for the Buyer in the Purchase Agreement. The Seller will release goods according to the Buyer's purchase orders up to this credit limit.
- 3.8.2 The credit limit is equal to the sum of Seller's outstanding claims from supplies of goods, VAT inclusive. The Seller's future claims against the Buyer from accepted purchase orders or otherwise concluded Purchase Agreements according to which the Seller is obliged to deliver goods to the Buyer in the future shall also be included in the credit limit.
- 3.8.3 If a credit limit is determined in the Agreement the Buyer is obliged to provide a security up to the amount of the agreed credit limit in the form of a pledge, guarantee (to be accepted by the Seller according to Art. 2018 Par. 1 NOZ) or blank promissory note, i.e. a

note issued by the Buyer and co-accepted by a natural person. A note issued in this way, with the note sum and due date not filled in, shall be deposited at the Seller's registered office. The Seller is entitled to fill in the note if the Buyer fails to meet his liabilities from the Agreement or from supplies of goods and to present the note to the Buyer for payment.

3.8.4 Should the Buyer settle the deposit, the interests and costs associated with claiming any receivable of the Seller, the settlement will be first accounted to the costs already determined, then default interest, then interests and finally the deposit. The Parties agreed to rule out application of Art. 1932 Par. 2 NOZ.

3.8.5 In case of the Buyer's default in payment of the purchase price or Buyer's delay in fulfillment of any other Buyer's obligation as specified in the Agreement or these GBTCS the Seller is entitled to use the security, i.e. to ask the surety to perform, to enforce the right of lien or to fill in the note sum in the blank promissory note up to the total amount of the Buyer's debt from the Agreement as of the date of filling in the note, i.e. up to the amount of outstanding purchase prices for supplies of goods with accessions, contractual penalty, claim for damages or other possible sanctions. The note shall be due on the seventh calendar day from the date of filling in the note.

#### **4. TITLE AND RISK OF DAMAGE TO GOODS**

4.1. The Buyer shall acquire the title to goods upon full payment of the purchase price according to the conditions of the Purchase Agreement.

4.2. The risk of damage to goods shall pass to the Buyer according to the conditions of the delivery clause INCOTERMS® 2010 as agreed in the Purchase Agreement. Any damage to goods incurred after passing of the risk of damage to goods to the Buyer does not relieve the Buyer from the obligation to pay the purchase price to the Seller.

#### **5. QUALITY**

5.1. The Seller is bound to deliver the goods in the quantity, quality and workmanship required by the Purchase Agreement and to arrange for the goods to be packed and ready for transportation in the manner specified in the Purchase Agreement.

#### **6. WEIGHT, VOLUME, TOLERANCE AND CONTRACTUAL PENALTY**

6.1. Weight weighing by certified measuring devices is deciding for both parties. In case of any dispute the Seller and the Buyer undertake to exchange relevant information on measuring devices used and they shall prove certification of the used measuring device by relevant documents. On track scales and street weights the goods must be weighed under conditions of the so-called static weighing regime.

6.2. The Seller's obligation to deliver the agreed volume of goods to the Buyer and the Buyer's obligation to take the agreed volume of goods shall be considered met if the volume of actually delivered and taken goods differs from the volume of goods agreed in the Purchase Agreement by the maximum of 5%.

6.3. If the Seller delivers to the Buyer a volume of goods smaller than agreed in the Purchase Agreement and reduced by the tolerance pursuant to Article 6.2 of GCTC the Seller undertakes to pay a contractual penalty to the Buyer in the amount of 2% of the price of the undelivered volume of goods reduced by the tolerance pursuant to Article 6.2 of GCTC.

6.4. If the Buyer takes from the Seller a volume of goods smaller than agreed in the Purchase Agreement and reduced by the tolerance pursuant to Article 6.2 of GCTC the Buyer undertakes to pay a contractual penalty to the Buyer in the amount of 2% of the price of the untaken volume of goods reduced by the tolerance pursuant to Article 6.2 of GCTC.

6.5. Upon payment of the contractual penalty according to the foregoing provisions the obligation to deliver or take the remaining volume of goods with respect to which the contractual penalty is paid shall cease to exist unless the Seller and the Buyer agree otherwise in writing.

6.6. The obligation to pay the contractual penalty in accordance with the foregoing provisions does not rise if the breach of obligations of any of the parties resulted from the effect of an extraordinary unpredictable and insurmountable obstacle or force majeure.

6.7. Should any of the parties withdraw from the Purchase Agreement the already incurred right to payment of the contractual penalty according to the foregoing provisions shall remain unchanged.

6.8. Any agreed contractual penalty according to the relevant provisions of the Purchase Agreement and/or these GBTCS shall not deprive the damaged party of the right to compensation for damage caused by

such breach of a contractual obligation by the other party and it shall not release the party breaching its obligation from the obligation to compensate such damage in excess of the contractual penalty.

#### **7. LIABILITY FOR DEFECTS OF GOODS**

7.1. The Goods are faulty when

- Lacks properties, which the Parties agreed on in the Agreement, should such agreement be missing, properties the Seller or Manufacturer described or the Buyer expected due to the character of the goods and based on advertisement published by them,
- The goods are not suitable for the purposes, mentioned in the Agreement, in case the purpose is not mentioned in the Agreement, then for purposes stated by the Buyer or for which the goods of this type are usually used,
- The quality or the version of the goods does not match the agreed sample or master, if the quality or version were determined based on an agreed sample or master,
- The goods are not in appropriate quality, measure or weight, packaging,
- The goods does not match requirements of appropriate legislativ. The Buyer is obliged to credibly prove defects of the goods to the Seller.

7.2. The Buyer is obliged to inspect the goods without undue delay after their delivery to the place of destination. The Buyer is obliged to record any defects detectable during the goods inspection in the carrier's bill of lading or bill of delivery and to inform the Seller in writing no later than within 7 calendar days from carrying out the inspection. The Buyer is obliged to notify the Seller of any defects that may be discovered by laboratory analysis, in writing, within 14 calendar days from carrying out the analysis however no later than within 30 days from delivery of the goods to the place of delivery. The Seller shall not be liable for any defects notified later.

7.3. Within a filed complaint the Buyer must prove to the Seller claimed weight differences, packaging damage, quality defects or goods destruction also by a document certified by an independent inspecting company (an expert third party). If the Buyer detects any damage of the means of transport or circumstances suggesting loss of goods he is obliged to ask the carrier to re-weigh the consignment and if a deviation from the weight specified in the shipping document is ascertained he is obliged to request drawing up the relevant report (in case of rail transport – commercial record of Czech Railways) and to file a complaint with the carrier. Weight differences of consignments transported on rail are settled according to the Transport Rules of Czech Railways.

7.4. The Seller shall notify the Buyer of the suggested complaint settlement or reject the complaint within 5 working days of receipt of the Buyer's written notice of discovered defects. The Seller is entitled to reject the complaint even after this deadline should the complaint prove to be unjustified.

7.5. The Buyer is obliged to store the goods in respect of which he claims defects, separately from other goods and he may not treat the goods in a manner preventing checking of defects claimed by the Seller. The Seller is entitled to send his representatives to the Buyer in order to check objections or complaints and the Buyer is obliged to allow the Seller's representatives to inspect the goods with respect to which the Buyer claims defects.

7.6. If the Seller accepts the written complaint as a justified one the Buyer may request delivery of goods as a compensation for missing or defective goods or a discount from the purchase price. The Buyer may withdraw from the Agreement only if he Purchase Agreement was fundamentally breached by delivery of defective goods. However the right to withdraw from the Agreement shall not arise if the Buyer is not able to return the goods in the condition in which he received them.

7.7. In case of delivery of substitute goods or in case of the Buyer's withdrawal from the Purchase Agreement the Buyer is obliged to return the goods to the Seller in the condition in which he took the goods over from the Seller. Without a Seller's express written approval the Buyer is not entitled to return the goods to the Seller before the complaint proceedings are finished.

7.8. If the Buyer breaches his obligation of timely inspection of the goods or notifying the Seller of the defects according to these GBTCS the

Seller is entitled to refuse the complaint and Buyer's rights from liability for defects shall not arise.

7.9. Should it be necessary to prove existence of defects of the goods via an expert evaluation the costs of such evaluation shall be borne by the party ordering such expert evaluation, the party having the right to claim reimbursement of those claims by the other party if the complaint is settled for its benefit.

## 8. WITHDRAWAL FROM THE PURCHASE AGREEMENT

8.1. The Seller and the Buyer are entitled to withdraw from the Purchase Agreement, in addition to other instances stipulated by these GCTC, if the other party fundamentally breaches its obligations from the Purchase Agreement. In particular the following shall be considered a fundamental breach of contractual obligations:

- Buyer's default in payment of the purchase price or any amounts due according to the Purchase Agreement or these GCTC exceeding 30 days.
- Seller's delay in delivery of the goods exceeding 30 days.
- Buyer's delay in taking the goods exceeding 30 days.

8.2. Withdrawal from the Purchase Agreement shall take effect when the written notice of the party withdrawing from the Purchase Agreement is delivered to the other party. A notice of withdrawal from the Purchase Agreement shall specify the reason for withdrawal.

8.3. By withdrawal from the Purchase Agreement all parties' rights and obligations from the Purchase Agreement shall terminate except for the right to compensation for damage and to payment of the contractual penalty and provisions of the Purchase Agreement and these General Commercial Terms and Conditions concerning choice of law, settlement of disputes between the parties and regulations concerning rights and obligations of the parties in case of Purchase Agreement termination. If the debt was secured, withdrawal does not affect the security.

## 9. COMPENSATION FOR DAMAGE

9.1. The Contractual Party, which breaches any obligation arising from the Purchase agreement, it is obliged to reimburse the other Party the damages, it caused by its breach of obligation, or a person, whose interest the fulfilment of the agreed obligation should obviously serve.

9.2. Damages exceeding those which the obliged party envisaged as a result of possible breach of its contractual obligations at the time of entering into the Purchase Agreement or which could be envisaged considering facts which the obliged party knew or should have known with due care at the time specified above shall not be compensated. The foregoing shall not apply if the damage was caused intentionally. Doesn't apply for damages caused intentionally or by gross negligence.

9.3. The obligation to compensate damage shall not arise if the obliged party's failure to fulfill an obligation was caused by actions of the damaged party or by lack of cooperation to which the damaged party was bound. The party that breached an obligation is not obliged to compensate the other party for damage caused thereby provided if it documents the breach of obligation was caused by the effect of an extraordinary unpredictable and insurmountable obstacle or force majeure.

9.4. Should any party breach any obligation from the Purchase Agreement and should the other party or both parties incur damage as a result thereof the parties shall make every effort and use all means in order to reach amicable settlement of compensation for such damage.

9.5. Should any of the parties withdraw from the Purchase Agreement the right to compensation for damage incurred as a result of any breach of an obligation shall remain unchanged.

## 10. FORCE MAJEURE

10.1. obligation from the Purchase Agreement, except for the obligation to pay the purchase price, provided that such failure or delay was caused by of an extraordinary unpredictable and insurmountable obstacle and prevented the obliged party from fulfillment of its obligation (hereinafter referred to as "**Force Majeure**"). Neither an obstacle arising from personal circumstances of the liable party or arising at the time, when the malefactor was in default of the agreed obligation, nor obstacle the liable party was obligated to overcome does not exonerate him from fulfillment of the obligation.

10.2. For the purposes of the Purchase Agreement in particular the following shall be considered Force Majeure provided that they meet the prerequisites specified in the foregoing paragraph:

- breakdown or serious defect of Sellers production facilities or those of the Seller's supplier of raw materials or semi-finished products, or
- natural disasters, fires, earthquakes, landslides, floods, deluges, windstorms or other atmospheric disturbances and phenomena of great extent, or
- wars, uprisings, revolts, civil unrest or strikes, or
- decisions or regulatory actions of public authorities, regulations, restrictions, bans or other interventions of a state, state administration bodies or self-government.

10.3. The party that breached, breaches or expects, considering all known facts, to breach its obligation from the Purchase Agreement as a result of an event of Force Majeure it is obliged to immediately inform the other party of such breach or event and to make every effort to avert such event or its effects and to eliminate them.

10.4. Should the Force Majeure last for more than 90 days any of the parties may withdraw from the Purchase Agreement.

## 11. NO EXCLUSIVITY

11.1. No provision of the Purchase Agreement or these GCTC is or will be interpreted or understood as the Seller's granting any exclusivity to the Buyer for a certain area or certain customers of the Buyer.

## 12. CHOICE OF LAW

12.1. The legal relation or the rights and obligations of the parties under the Purchase Agreement, their security, changes and termination shall be governed exclusively by the laws of the Czech Republic, in particular by Act No. 89/2012 Coll, Civil Code, as amended, (hereinafter referred to as "NOZ").

12.2. Application of the UN Convention on Contracts for the International Sale of Goods of 11 April 1980 and rules of international private law is excluded.

## 13. RESOLUTION OF DISPUTES

13.1. Should any dispute arise between the parties with respect to the Purchase Agreement, its application or interpretation the parties shall make every effort to settle such dispute amicably.

13.2. If the effort for amicable settlement of the dispute fails any of the parties is entitled to submit the dispute for decision to the court of jurisdiction in rem, with local jurisdiction according to the Seller's registered office.

## 14. OTHER PROVISIONS

14.1. The latest version of the safety data sheet is available on the PREOL website - [www.preol.cz](http://www.preol.cz).

14.2. The Buyer is obliged to immediately inform the Seller of any change of membership of his statutory body and of any change of the controlling person within the meaning of the applicable legal regulations and he shall do so no later than within 14 days from the moment when such change occurs. In case of any breach of this obligation the Seller shall become entitled to compensation for damage incurred directly or indirectly as a result of the breach of this Buyer's obligation.

14.3. The Seller reserves the right to withdraw from the Agreement in writing in the event that the Seller considers the change of membership of the Buyer's statutory body or Buyer's controlling person a high-risk one. The withdrawal shall take effect at the moment when the notice of withdrawal is delivered to the Buyer.

14.4. The Seller is entitled to assign his rights and obligations from the Agreement to any third party.

14.5. The Buyer agrees not to provide, provide or otherwise make accessible to a third person or use for itself or other person, will not use in violation of the purpose of the Agreement, any information with competitive significance, determinable, appraisable and in appropriate business circle usually unavailable to the Buyer, made available by the Seller directly or indirectly, in material or immaterial form or he will learn in relation with fulfillment of obligations according to the Agreement (hereinafter only „confidentiality“).

14.5.1 The Buyer agrees, in case of confidentiality breach, to pay the Seller the contractual penalty of CZK 100,000 for each individual breach.

- 14.5.2 The obligation of confidentiality does not apply to information,
- a. The Buyer received prior to signing the Agreement, without breaking any legal obligation,
  - b. The Seller provided himself to a third party or published prior to signing the Agreement or during its effect,

- c. Which became publically available prior to signing the Agreement or during its effect without breach of confidentiality by any of the Parties,
  - d. The Seller will expressly, in writing, at the time of provision or availability, designated as information, to which the confidentiality does not apply, and
  - e. Provision of which is necessary for the purposes of delivery of the Agreement, but only to provide such information to approved subcontractors of the Buyer and under the condition, that such subcontractor will be bound to protect the information at least to the same degree as the Buyer.
- 14.6. The Agreement may only be amended or supplemented by numbered written attachments signed by both Contracting parties. The Contracting parties rule out acceptance of an offer containing an attachment or deviation and insist on full accordance with the whole contents of the written attachment and its prerequisites being attained.
- 14.7. The Parties accept the danger of changing circumstances within the meaning of the provision of Art. 1765 Sec. 2 of the NOZ.
- 14.8. The Parties agreed to exclude application of Art. 1798-1801 NOZ.
- 14.9. The Parties hereby declare and confirm by their respective signature that none of them feels as and is not considered the weaker party in comparison with the other Party and that they had the opportunity to familiarize themselves with the text and content of the agreement, they understand it and that they want to be bound by it and that they mutually sufficiently discussed the agreement before signature.
- 14.10. These GCTC shall apply to all deliveries of the Seller's goods. Possible purchase terms and conditions specified or pre-printed in the Buyer's purchase order as well as any other terms and conditions contained in the Buyer's purchase order which are in conflict with these GCTC shall not apply to the contractual relationship established by the Agreement.