

Sahm Trading CZ s.r.o.

General Commercial Terms for Non-eCommerce Contracts

I.

Definitions

1. **“GCT’s”** - The present General Commercial Terms apply solely to contracts entered into outside the context and setting of electronic commerce.

“CC” – Act No. 89/2012 Sb., Civil Code, as amended.

“Goods” – movable property or other contractual performance offered by the Seller.

“Seller” – Sahm Trading CZ s.r.o., Id.No: 01694103, registered office Podbělohorská 1434/50, Smíchov, 150 00 Praha 5, recorded in the commercial register of the Metropolitan Court in Prague under entry No. C 210426.

“Buyer” – any natural or legal person who enters into the Purchase Contract for the Goods with the Seller in the capacity of a buyer. Under the present GCT’s, the definition of Buyer applies also to any person who accepts any performance or services from the Seller under a contract that is not a purchase contract within the meaning laid down in section 2079 CC (please refer to the definition of the Purchase Contract below). The Buyer must be a business undertaking.

“Parties” – Seller and Buyer.

“Purchase Contract” – contract for the purchase of goods under section 2079 CC et seq entered into between the Seller and the Buyer in signed writing, remotely or via e-mail correspondence, or in any other manner accepted by the Seller. An oral agreement constitutes the Purchase Contract hereunder only insofar as the acceptance of the oral agreement has been confirmed by the Seller in signed writing or electronically (such as by e-mail). Pursuant to the present GCT’s, the definition of the Purchase Contract applies also to any other contract under which the Seller renders performance or services to the Buyer, including any advisory agreements or general agreements. The present GCT’s apply to such other contracts with necessary modifications.

“Seller’s Printed Catalogue” – Seller’s catalogue or one-off offer in a printed form.

“Seller’s Electronic Catalogue” - Seller’s catalogue or one-off offer in an electronic form.

II.

Contract Formation

1. A contract derived from the Seller’s Printed or Electronic Catalogue is formed on the delivery to the Buyer of the Seller’s written or electronic confirmation that he accepts the Buyer’s order, or at the moment of the Seller’s act or action leading up to the consummation of the Purchase Contract.

2. The contract that is *not* derived from the Seller's Printed or Electronic Catalogue is formed on the execution of the written Purchase Contract or on the delivery of the Buyer's acceptance of the offer to the Seller. The Seller's offer may be accepted by the Buyer electronically or in signed writing.
3. Seller's offers are binding only insofar the Buyer accepts them within the time period for which the Seller's considers the offer as binding.
4. In the event of a conflict between the terms stipulated in the Purchase Contract and the present GCT's, the terms of the Purchase Contract prevail. In the Purchase Contract, the parties may expressly exclude the application of the GCT's on a particular contract or may expressly exclude the application of a certain provision or certain provisions of the GCT's. The exclusion of the present GCT's, whether in whole or in part, must be recorded in writing, must be stipulated expressly in the Purchase Contract and applies solely to the particular contract affected.
5. The parties exclude the application of any other commercial terms and conditions.
6. In the event of doubt about the interpretation of the Purchase Contract entered into with a Buyer who is a foreign or domestic business undertaking, the Purchase Contract will be interpreted in accordance with Incoterms 2020 as individually agreed.

III.

Purchase price and shipping fees

1. The purchase price for the Goods supplied by the Seller to the Buyer under the Purchase Contract consists in the purchase price net of VAT and the applicable VAT at the rate valid at the Purchase Contract, insofar as the supply of the Goods represents a taxable supply that is not exempt from VAT.
2. In the absence of a specific agreement to the contrary, the purchase prices listed in the Seller's Printed or Electronic Catalogue valid at the date of the Purchase Agreement are binding on both parties.
3. For Goods that are to be shipped to the Buyer, the Seller will charge the Buyer a shipping fee in addition to the purchase price. The shipping fee will be charged separately in the amount agreed by the parties – or, in the absence of such agreement, at the fair market price. If the purchase price of a single delivery happens to be lower than CZK 5,000 net of VAT, the shipping is always paid for by the Buyer. In the absence of a statutory provision to the contrary, all unforeseeable incidental charges and custom duties as well as newly incurred customs duties, transport charges and increases thereof shall be borne by the Buyer. The Buyer pays both the customs duty and the customs charges.

IV.

Payments, Buyer's default, Seller's withdrawal and set-off

1. The purchase prices and the shipping fees are deemed paid on the date on which the Seller may dispose of the relevant amount; in case of non-cash payments, this coincides with the

date on which the Seller's account has been credited with the relevant amount. The payment costs (such as bank fees) are borne by the Buyer.

2. The Seller accepts bills of exchange in payment of the purchase price of the Goods under the Purchase Contract only if it has been expressly agreed by the parties.
3. If the Buyer defaults on the payment of the purchase price or shipping fee, the Seller may charge the Buyer a late payment interest at the rate of 0.1% of the amount due starting from the first day of delay. This is without prejudice to the Seller's right to damages.
4. A party may withdraw from the Purchase Contract only if the Seller and Buyer thus agree or for a gross breach of contract (under section 2002 CC).
5. The Seller may withdraw from the Purchase Contract under conditions laid down in law and if the goods have not yet been delivered to the Buyer and the Seller proves that:
 - i. The Buyer has defaulted on the payment of the purchase price or shipping fees or a part thereof by more than 30 days;
 - ii. The Buyer previously breached its obligation under the Purchase Contract with the Seller and the Seller consequently suffered damage that the Buyer failed to compensate;
 - iii. The Buyer reported fictitious or incorrect information when entering into the Contract;
 - iv. It is indubitably apparent from the Buyer's order and conduct that the Buyer clearly abuses his rights or acts with dishonest intent.
6. The Seller may set off any claims it has against the Buyer. Only claims of the same kind may be set off against each other. The Seller may also unilaterally set off its outstanding claims against the Buyer's outstanding claims, in which case the date of extinction of both claims shall be the date on which the Seller's expression of intent reaches the Buyer.
7. Any set-off of the Buyer's claim against the Seller's claim or a retention of goods to secure the Buyer's claim against the Seller is prohibited.

V.

Passage of ownership and risk of damage to Goods

1. The Seller and the Buyer agree to reserve the title to the Goods. The Buyer becomes the owner of the Goods only on the payment of the entire purchase price and the shipping fees.
2. The risk of damage to the Goods passes onto the Buyer on the delivery of the Goods.

VI.

Delivery and acceptance of Goods and Seller's default

1. The Seller must deliver the Goods within the time limit set forth in the Purchase Contract or determined in some other manner stipulated in the Purchase Contract. The term of delivery starts to run on the date of the Purchase Contract, or if the Purchase Contract has been entered into as a general agreement, on the conclusion of the individual Purchase Contract. If the parties agree to settle in advance the entire purchase price and shipping fees or to settle a partial advance payment of the purchase price and shipping fees, the term of delivery starts to run on the payment of the advance, whether in whole or in part, on the purchase price and shipping fee.
2. The Buyer must collect the goods at Seller's request in accordance with the terms of the Purchase Contract.
3. For Goods that are to be shipped, the Goods are deemed delivered when handed over to the first carrier for carriage to the Buyer. The Seller's obligation to deliver has been fulfilled duly and timely insofar as the first carrier has been allowed to accept delivery of the Goods, even if the actual acceptance has not taken place through no fault of the Seller. The Seller may arrange delivery to the Buyer who is a business undertaking also under the terms of the individually agreed delivery term under Incoterms 2020.
4. The Seller is not responsible for a late or a failed delivery of the Goods if caused by the carrier, by the Buyer or by any third party other than the Seller. If the Seller fails to deliver the Goods in time through a fault of his own, the Buyer may withdraw from the Purchase after the lapse of reasonable grace period following the scheduled term of delivery. The reasonable grace period may not be shorter than 30 days.
5. The Seller is not responsible for a late or a failed delivery of the Goods caused by force majeure. Force majeure events entitle the Seller to postpone the delivery date of the Goods for the duration of the force majeure event and for the reasonable period required to resume normal business operations. Force majeure events are all events which substantially aggravate or prevent the Seller from delivering the Goods (such as fire, destruction of equipment, war, pandemic, shortage of energy and raw materials or natural disasters etc.), as well as any road obstacles, regardless of whether the circumstances occur at the Seller's, or at the location of the Seller's supplier or its subcontractor.
6. The Buyer must accept the delivery of the Goods at the agreed location and without delay after the Seller's request to do so. If the Goods are to be shipped, the Buyer must accept the Goods without undue delay after the Goods have been delivered to the agreed destination.
7. If the Buyer fails to accept the delivery of the Goods in time or if the delivery of the Goods and the payment of the price coincides with the payment of the purchase price and/or the shipping fees, the Seller may store the Goods at the cost and risk of the Buyer and retain the Goods until such time the Buyer pays the Seller all ensuing costs, the purchase price and/or the shipping fees. The costs of storing the Goods are set at 10% of the purchase price of the Goods net of VAT.
8. The manufacturing and delivery tolerances are set at +/- +/- 5 %, which means that if the actual quantity of the Goods delivered by the Seller differs from the quantity ordered by Buyer by 5% in either direction, this does not constitute a Seller's breach of the Purchase Contract and does not entitle the Buyer to refuse to accept delivery or refuse to pay for the Goods thus delivered, nor gives rise to any other Buyer's claims against the Seller. The

Buyer must therefore always accept and pay for the delivery of Goods delivered within the said manufacturing and delivery tolerances.

9. For Purchase Contracts that have been entered in the form of general agreements for repeated supplies of Goods, a delivery of part of the Goods ordered under an individual Purchase Contract may be postponed by the Seller on account of his insufficient manufacturing and operating capacity provided the Buyer substantially increases the quantity of goods normally ordered and delivered under individual Purchase Contracts. The Buyer must be notified about the postponement of the delivery of part of Goods without delay. A postponement of delivery does not amount to the Seller's default but rather constitutes a delay caused by the Buyer.

VII.

Packaging

The Goods are delivered in normal packaging; special packaging is possible depending on the Seller's capabilities at the Buyer's expense and at the Buyer's express request. Except for pallets, the packaging materials, protective and transportation aids are not returnable. Packaging materials that are not returned to the Seller must be scrapped by the Buyer or disposed of in accordance with applicable laws. If the Seller requests that the Buyer return the packaging materials, protective and transportation aids, the Buyer does not acquire the ownership of such materials and must return the packaging materials, protective and transportation aids to the Seller without undue delay after delivery at the Seller's expense. The supplied pallets will be replaced for the pallets of the same quantity, quality and type, unless the parties agree otherwise.

VIII.

Inspection of Goods

The Buyer must inspect the Goods without delay after the risk of damage to the Goods passes to him. If the Goods are to be shipped, the Buyer must inspect the Goods immediately after they have been delivered to their destination. The Buyer must duly inspect the Goods on receipt; in particular, the Buyer must inspect the integrity of the packaging, check the delivery for any visible damage and check whether the delivery is complete (missing packaging or packet). If the integrity of the packaging has been breached or in the event of any visible damage to the packaging that could affect the Goods, the Buyer may request an inspection of the condition of the Goods and is not required to accept Goods that are found to have been damaged. If the Buyer decides to accept such Goods, he is required to describe briefly the breach of integrity or the damage to the packaging, damage to the Goods or any missing Goods (number of packages, packets) in the delivery or dispensing note upon confirmation of receipt. If the Buyer fails to inspect the Goods with due care and in time and fails to refuse the delivery of the Goods or fails to record his objections regarding the condition of the Goods in the delivery or dispensing note, he may not claim defects detectable during such inspection.

IX.

Liability for defects and Buyer's withdrawal from contract

1. Buyer may claim the Seller's liability for defects only insofar as he informs the Seller about the defect of the Goods without undue delay
 - a) after having discovered the defect;
 - b) after he should have discovered the defect if acting with due care through an inspection performed under Article VIII.;
 - c) and insofar as the defect could have been discovered later if acting with due care.

In the notice of defects, the Buyer must indicate, without limitation, the specific defects he has discovered and how the defects manifest themselves.
2. If the supply of defective Goods amounts to an immaterial breach of Purchase Contract, the Buyer may claim the delivery of replacement or missing Goods or may claim a reasonable discount on the purchase price.
3. If the supply of defective Goods amounts to a material breach of Purchase Contract, the Buyer may claim the delivery of replacement or missing Goods or may withdraw from the Purchase Contract.
4. The Buyer agrees to cooperate with the Seller in the event of defective contractual performance to the extent necessary, particularly in handing the defective Goods or samples thereof over to the Seller.
5. For Goods that are sold at a discount as discarded or second-hand quality etc., the Buyer may not claim for defects associated with the specifications and characteristics that are commonly associated with Goods of similar nature.

X.

General limitation of liability for defects

1. In the absence of a provision to the contrary in the present GCT's, subject to the applicable statutory conditions, the Seller is liable for the damage caused by the breach of his contractual and non-contractual obligations except to the extent of the damage caused by product defects, for which he shall be liable under Article IX of the present GTC, only insofar as the damage has been caused by a wilful misconduct or gross negligence. Barring the wilful misconduct, the Seller's liability also does not apply to damage that could not have been foreseen in a particular transaction under normal circumstances and to damage against which the Buyer has been or normally could be insured.
2. The parties agree that the maximum amount of the compensation payable in the event of breach of Seller's obligations hereunder is equal to the selling price of the Goods to which the Seller's breach relates (defective or missing goods). This rule does not apply to harm caused to the personal rights of an individual or to harm caused by a wilful misconduct or gross negligence and insofar as the weaker party's right to compensation has been excluded or limited.

XI.

Place of supply

1. If the Goods are being shipped, the place of supply coincides with the destination to which the Goods are being shipped. In all other circumstances, the place of supply coincides with the place where the Goods are collected by the Buyer.

XII.

Trade secret, intellectual property

1. Both the Seller and the Buyer must keep confidential all information they learn in connection with the conclusion of the Purchase Contract insofar as the nature of such information indicates, whether expressly or by implication, that the information should be kept confidential. This applies in particular to the information about facts, circumstances and procedures of business or operating nature listed below and to the information about facts that are subject to trade secret, as defined in the Czech Civil Code and to the information about facts and circumstances that amount to intellectual property under applicable law.
2. Confidential information includes, without limitation, any information and procedures of business and operating nature such as glass design, technical drawings, know-how, logos, data, calculations, samples, visualisations, preparations, tools, measuring devices, models, moulds and other things, and design or production documents recorded in writing or electronically, technological descriptions and so forth that are not intended for third parties and that have been entrusted to the Buyer or to the Seller in the course of their business or about which the Buyer or the Seller learned in any other way.
3. Neither Seller nor Buyer may disclose or release to anyone any facts, circumstances and procedures of business or operating nature indicated above. Neither the Seller nor the Buyer may use the foregoing facts, circumstances and procedures of business or operating nature in the course of their profit or non-profit making activities or for any third-party activities.

XIII.

Personal data processing

1. The information about the processing of personal data are available in the standalone Privacy Policy, available at www.sahm.de and www.sahmgastro.cz.

XIV.

Final provisions

1. Neither party may disclose its rights and obligations under the Purchase Contract to a third party without the written consent of the other party.

2. The Buyer accepts the risk of a change of circumstances under section 1765(2) CC. This is without prejudice to the Seller's rights arising in connection with the change of circumstances under section 1765 and section 1766 CC.
3. Pursuant to section 89a of Act 99/1963 Sb., Code of Civil Procedure, as amended, the Buyer and the Seller agree that any disputes arising from the contractual relationship with the Seller and/or under the present GTC's shall be brought before the general court of law having the jurisdiction over the Seller's registered office.
4. If any provision of the present GTC's or the Purchase Contract becomes invalid or unenforceable, this will not affect the validity and enforceability of the remaining provisions of the GTC's or the Purchase Contract. The parties agree to replace the invalid or unenforceable provision with a new provision that will best express the purpose contemplated by the original provision, by the present GTC's and by the Purchase Contract as a whole.
5. The Purchase Contract may be modified only in writing by consecutively numbered amendments. This applies also to the waiver of the signed writing requirement.
6. The contractual relations between the parties and any transactions covered by the present GTC's are governed solely by Czech law. The parties expressly exclude the application of the United Nations' Convention on Contracts for the International Sale of Goods (Vienna Convention). The prevailing language of all contractual relations between the Seller and the Buyer is the Czech language.
7. The present General Commercial Terms come into force and effect on 1.5.2022 and replace any previous GTC's that regulate the legal relationships governed by the present GTC's.