

## **General Terms and Conditions of Hexpol Compounding, s.r.o.**

IČ: 26447461, registered office at Uničov, Šumperská 1344, postal code 783 91, registered in the Commercial Register maintained by the Regional Court in Ostrava, Section C, insert 27563

**as of 01.03.2015**

### **1. Extent of the Application and Validity of these General Terms and Conditions and Applicability of Czech laws**

These General Terms and Conditions (Hereafter referred to as “GTC”) are an integral part of every purchase contract wherein Hexpol Compounding, s.r.o., registered office at Uničov, Šumperská 1344, postal code 783 91, registered in the Commercial Register maintained by the Regional Court in Ostrava, Section C, insert (Hereafter referred to as “Hexpol” or “Seller”) sells its products to a customer, (Hereafter referred to as “Buyer”), (Seller and Buyer also referred to hereafter jointly or severally as a “Party” or “Parties”).

These GTC govern the business relationships and also define the mutual rights and duties of the Parties in accordance with § 1751 section 1 of Law no. 89/2012 Sb. of the Civil Code, as amended in its latest version.

The Parties may govern their rights and duties differently than is stated in these GTC only if expressly included in the purchase contract. If the Parties govern their rights and duties in the purchase contract expressly in a way that this way can be considered as the complete legal regulation of the rights and duties of the parties then this regulation included in the purchase contract prevails over these GTC.

If before concluding a written purchase contract the Parties did any negotiations, whether oral or written, or concluded some agreements which were not incorporated into the concluded written purchase contract, all these agreements become void by concluding the purchase contract.

In the event that the Buyer would be using in the course of its business activities its own general terms and conditions, the Seller and Buyer hereby agree that these general terms and conditions of the Buyer shall not apply to the business relationship between the Seller (Hexpol Compounding, s.r.o.) and the Buyer specified in any purchase contract, except if the Parties expressly agree within said purchase contract to include all or part of the general terms and conditions of the Buyer.

The rights and obligations of the parties of any purchase agreement and of the Parties of these GTC, between HEXPOL (as seller) and any buyer, are governed by Czech law, especially Act no. 89/2012 of the Civil Code, as amended to the latest version. In accordance with provisions of § 2079 Act no. 89/2012 of the Civil Code, as amended to the latest version, Seller undertakes to surrender the subject of the Purchase Contract (Hereafter also referred to as the “Goods”) to Buyer, and allow Buyer to acquire title to the Goods, and Buyer hereby agrees to take the Goods from Seller and to pay Seller the purchase price.

The use of any conflicting standards of international private law or the UN Vienna conventions for the international sales of goods is hereby excluded, unless the Parties specify otherwise in the concluded purchase contract.

## **2. Offer to Conclude a Contract and its Acceptance**

Seller is not bound by a general offer of his goods or services given to an unspecified number of parties, however Seller is bound by an offer to conclude a contract to a specified Party (or parties) which was made in a certain and understandable way and it is obvious from this that Seller wants to be bound by this offer in case of its acceptance. If not stated by Seller or the offer otherwise, the Seller is bound by an offer for 14 calendar days from the delivery of the offer to the other Party (or parties).

Sending by E-mail to the other Party notification of acceptance of the particular offer of the draft contract by the last day of the period is hereby considered acceptable for the timely adoption of the draft contract.

If the specification of the product compound, recipe, measurements, weights, drawings, or images are a part of the offer made by the Seller, then those specifications are stated by the Seller for information purposes only, but the exact and binding specifications of these parameters shall be included in the concluded purchase contract.

The purchase contract must be in writing, however not all the relevant expressions of will need to be included in the same document.

## **3. Delivery of Goods, Security for Transportation, Place of Performance**

The deadlines for the delivery of the Goods (the subject of the purchase contract) shall be exactly specified by the parties in the concluded purchase contract. The agreed deliver terms may be exceeded by the Seller only for the reason that the Buyer did not pay the Seller by the agreed due date any payment which the Buyer was to pay to the Seller.

The agreed date of delivery in the case stated above shall be extended for the period of time in which the Buyer making payments is in arrears, unless the Parties agree otherwise. In this case the Seller is not in default in meeting its commitments to supply the object of purchase. Also the delivery term shall be extended for the duration of any force majeure.

The place where the goods are to be delivered is according to the will of the parties governed by the particulars of INCOTERMS 2010. The Parties agreed that in case of using EXW or FCA, the place where the goods should be transferred is the seat of the Seller, or it is the place which is expressly stated in the purchase contract.

Loading of Goods according to agreed EXW or FCA terms can be done according to the will of the Parties, mainly in the stated working hours of the Seller, which means working days from Monday to Friday from 6 a.m. to 10 p.m. In the Purchase Contract the Parties may expressly conclude that even in case of the equivalents of EXW or FCA, the place of delivery of the Goods will be done at the place and time stated by the Buyer.

The Parties may expressly state in the purchase contract that even in the case of EXW or FCA terms, the delivery of the Goods shall be completed at the place and at the time specified by the Buyer. In this case the Buyer shall pay the Seller a separate payment over and above the purchase price for this service, and the time of fulfillment of the obligation of the Seller means the time of the delivery of the Goods at the agreed place and time. If the

Buyer fails to provide adequate cooperation for the fulfillment of the obligation of the Seller, then the Buyer shall pay the Seller all associated costs prior to delivery of the Goods.

If the purchase contract concludes the Seller's duty to deliver the product by a particular date or within a particular time frame, the Seller is entitled to perform on any day within this period within the office hours of the Buyer. If the purchase contract concludes the duty of the Seller to deliver the product in a certain time period which is on a particular date stated by the Buyer, the Buyer shall inform the Seller in a written form about the particular day of delivery or removal of the Goods in writing at least 5 working days in advance. In case the Buyer defaults concerning the acceptance of the Goods, the Seller may store the Goods at the expense of the Buyer. The Buyer shall pay to the Seller all costs associated with this, based on the invoice issued by the Seller.

The Seller shall inform the Buyer about the storage of the Goods and shall ask the Buyer to accept the Goods within the additional time of 3 working days. If the Buyer does not accept the goods even at this additional time, the Seller may terminate the purchase contract or withdraw from the purchase contract, and the Buyer shall pay the Seller a contractual penalty of 100 percent of the purchase price according to the purchase contract, and also the costs for disposal of the goods at 60 EURO per ton. The Parties hereby agree that if the payment stated above is to be paid in CZK, the amount will be re-calculated according to the exchange rate published by the Czech National Bank on the day of invoicing.

The Seller shall deliver the Goods in the usual packaging for the protection of the Goods during transport. The Buyer shall inform the Seller about any damage to the Goods during transport (that was caused by insufficient packaging) immediately upon acceptance of the goods. Early removal of the Goods from the container or removal of the protective cover from the goods done not in accordance with the instructions of the Seller excludes liability for defects in the rubber compound resulting from changes in the chemical, physical or other properties or specifications of the Goods which resulted from this interference with the Goods.

The Buyer shall respect the recommended storage conditions stated on the label of every packing, and the Buyer shall also respect every expiration date stated on the label of every packing.

In case of using packaging containers which are stated by the Seller to be returnable, these containers are in the exclusive ownership of the Seller. The Buyer shall return these packaging containers in an undamaged condition as quickly as possible, at the latest in the period of one month after receiving the Goods, and at the same time respect the maximum limits of packaging containers as set by the Seller. The limits may be changed each month by the Seller based on the purchased amount of goods and the availability of particular types of packaging containers.

In case of delay in the Buyer returning the returnable packaging or in case of not keeping within the stated maximum limits of packaging containers, the Buyer, after prior warning by the Seller, shall pay the Seller based on the issued invoice the following price per invoiced package unit:

- a) Metal barrier pallet Gitter Box: 125 EUR/unit
- b) Plastic Box: 250 EUR/unit

The Parties hereby agree that if the payment stated above is to be paid in CZK, the amount will be re-calculated according to the exchange rate published by the Czech National Bank on the day of invoicing.

The Parties agreed that the Seller may ask the Buyer to pay a deposit for using the returnable packaging. The Parties hereby agree that if the returnable packaging containers are not returned by the Buyer properly and on time, then the Seller may keep the deposit paid by the Buyer as the contractual penalty. In this case those returnable packaging containers become the property of the Buyer.

Furthermore, due to a lack of the returnable packaging containers which was caused by the default of the duty of the Buyer as stated above, the Seller may change the type of packaging to non-returnable and invoice the Buyer for the extra costs, or the Seller may postpone the stated terms of delivery of the Goods of new orders until the time when the Buyer has fulfilled his obligations related to return of the returnable packaging. Buyer, by the acceptance of these general terms and conditions gives its consent and agreement to the above.

#### **4. Price and Payment Terms, Securing Commitment**

Buyer shall pay the price of the Goods stated in the purchase contract together with possible legal costs and instalments stated in the Purchase Contract or according to the price list which is effective at the time of the delivery of the goods. The Seller is entitled to invoice also for VAT according to law. In case the purchase contract specifies the amount of Goods only approximately, or the nature of the production of the Goods require such, then the Seller may deliver the goods with the deviation of +/- 100 kg of the amount of goods stated in the purchase contract. The buyer shall in this case pay the price according to the Goods actually delivered.

The Buyer shall pay the purchase price or its part based on the invoice issued by the Seller. The Seller may issue the invoice and deliver the invoice to the Buyer at the time of the delivery of the Goods. If according to the purchase contract the purchase price is to be paid by the Buyer before the delivery of the Goods, then the Buyer shall pay the purchase price on the basis of the "proforma invoice" (which the Seller is entitled to issue after concluding the purchase contract) within the period stated in this proforma invoice. The Seller in such case may decline to deliver the goods until after the payment of the purchase price.

The tax document (invoice) should include the requirements of a tax document and business documents, unless indicated by the Parties or the formalities prescribed by applicable law, minimally: order or designation of the confirmed order or number of the purchase contract, date of taxable performance - the day of delivery.

The day of fulfillment of the obligation of the Buyer to pay the Seller the purchase price is considered to be the day when the purchase price is credited to the account of the Seller stated on the invoice. In case the Parties agree to payment of the purchase price in installments, the Seller may ask or require the payment of the whole price including VAT if a single installment is not paid by its due date. This right may be exercised by the Seller at any time prior to the next installment due date.

In case the Buyer is in default with fulfillment of the duties to pay the purchase price, the Buyer shall pay to the Seller a penalty of 0.1 % per day, plus any damages. The Seller's right to contractual or statutory interest on arrears, as well as damages and compensation for transport and storage costs are not affected by this provision.

In the event of Buyer's default in meeting his due commitments towards Hexpol Compounding s.r.o., the Seller may require, and the Buyer shall give to the Seller, a guarantee of the commitment in the form of a blank Bill of Exchange issued by the Buyer in which the amount to be paid is not filled in.

The Buyer at the same time grants the Seller the irrevocable right of agency to fill in the amount. The Seller may fill in the blank Bill of Exchange such that the amount to be paid corresponds with the real amount of the total due debt at the time of filling in the Bill of Exchange, which is the due purchase price or its part, unpaid penalties, interests, and other costs specified by this GTC. The Seller is required to return unused blank Bills of Exchange to the Buyer in an official way upon the receipt of buyer's payment of the secured debt.

## **5. Transfer of the Right of Ownership and the Risk of Losses**

Buyer acquires ownership of the object of purchase upon full payment of the agreed purchase price together with all associated amounts. Buyer acknowledges that until this moment Buyer is not entitled to sell or dispose of the Goods, eg. To pass on to any third party. Risk of damage to the goods passes to the Buyer, however, at the time of delivery.

The risk of losses to the Goods transfers to the Buyer at the time of delivery and acceptance of the Goods by the Buyer, or at the moment when the Buyer fails to fulfill his obligations to provide adequate cooperation for the delivery of the Goods, or he fails to fulfill the duty to properly accept the Goods, whichever is earlier.

## **6. Guarantees and Liabilities for Damages**

The Seller is responsible for the Goods to be delivered in the quality and performance according to the technical specification of the Seller.

The seller is also responsible for quantitative defects. If it appears from the contract or the nature of the object of purchase, that amount is only approximate, then Seller will determine the exact amount. The Parties agree that the deviation shall not exceed the greater of either one batch or five percent of the amount specified in the accepted purchase order.

The Buyer shall immediately after delivery of the Goods check the Goods with special care so as to be able to report all possible defects to the Seller.

The announcement of possible obvious defects, mainly of quantity and packaging, by the Buyer must be made to the Seller at the latest within the period of 3 working days from the time of accepting the Goods, and it needs to be made in a written form. The Buyer shall state all the discovered defects in detail and, if possible, provide photo documentation. The Buyer may apply the guarantee after this five working days period only about defects that were not possible to discover even by proper expert inspection. The Buyer shall apply the guarantee towards the Seller in the same period of 3 working days from their discovery even

in case of defects discovered later, in the same way as it is stated for obvious defects. Obvious defects are considered to include amount, type, or quality of the Goods.

The Buyer may exercise his product guarantee rights as stated in the valid Czech Civil Code, as amended, and the Buyer may only claim the properties of the Goods, which is based on a violation of the technical specifications of the Goods.

If the Seller is responsible for quantitative defects, the Buyer has the right to the following claim:

- In the case of quantitative defects the Buyer has the right for the Seller to supply the missing goods.

The warranty period is specified in the technical specifications, and according to the will of the parties it is never longer than the expiration date of the Goods. The Seller shall print the expiration date on the label of each package of Goods.

For the purposes of the most efficient handling of Buyer claims, the Buyer agrees to send to the technical department of the Seller the following:

- Specific details of the Goods - compound description, order number, lot number and delivery date.
- Description of the defect in the Goods – in particular its nature and extent, and if necessary the manner of manifestation.
- A representative sample of the rejected Goods and corresponding finished parts made from the Goods.

In the event that the Seller finds that the Buyer's claim/complaint is justified, the Parties shall agree whether the claimed Goods will be sold at a discount, returned, or disposed of by the Buyer. The Buyer shall not dispose of the claimed Goods without prior consent from the Seller. The Buyer shall protect all returning Goods from any and all contamination and vulcanization, and shall return the Goods as quickly as possible, using the same safeguards and procedures as the Seller uses for new Goods. If these conditions are not fulfilled, the Seller may reduce, in whole or in part, the compensation of the claim by the value of the damage to the Goods. The Parties agree that, if possible, Goods returned to the Seller should be loaded along with the returnable containers onto the vehicle bound for the Seller.

The Seller is not liable for defects resulting from improper storage or handling of the Goods, improper processing the Goods, or their improper use.

The Buyer shall notify the Seller of any exercise of its rights concerning defective performance or the quality guarantee, at the latest on the last day of the warranty period, specifically the expiration date of the compound. In the event that the Buyer does not exercise its right concerning the Seller's liability for defective performance or the quality guarantee within this deadline, its claim to liabilities of the Seller concerning the defective performance or quality guarantee expires and all claims are void.

The Seller shall respond to a claim of the Buyer within 30 days from the date of the announcement of the particular defect.

In the event that at the time the Buyer lodges a claim concerning guarantee of quality or defective performance while the Buyer is in default concerning payment of invoices for all or part of the purchase price, the Seller may postpone any remedy until either the Buyer pays the Seller all due debts or Buyer pays said amounts to a barrister's escrow account, from which the barrister shall transfer the funds after the defects have been remedied, or it will be transferred as a discount from the purchase price. The Seller has this right only if the remedy does not apply to defects in goods which threaten the Buyer or third parties with serious damages to their lives, health, or environmental hazard.

Any other liability of the Seller that is not mentioned in these GTC or in the Czech Civil code is hereby expressly excluded.

## **7. Force Majeure**

Force Majeure is an extraordinary, unpredictable, objectively unavoidable circumstance or condition which occurs independently from the will of the liable Party, which objectively prevents that Party from fulfilling its obligations, if it can be reasonably assumed that the liable Party could not have prevented or overcome the obstacle or its results, and furthermore, that the liable Party could not have been reasonably expected to foresee this obstacle.

Force Majeure is mainly natural disasters, acts of war, epidemics, shortages of materials, strikes, and so on.

In the case of that a Force Majeure occurs and prevents the Seller from fulfilling its contractual duties, the Seller may prolong adequately the delivery conditions for the time for which the obstacle lasts, or he may withdraw from the contract, in either case without incurring any penalties to the Buyer. In case the Seller does not deliver the Goods even in the adequately additional period, the Buyer may withdraw from the contract. As an adequate additional period for fulfillment of the duties, the Parties shall consider the minimum period to be 5 months.

## **8. Withdrawal from the Contract**

The Seller may withdraw from the purchase contract in cases stated by the Czech Civil Code and also under the following conditions:

- If the Buyer breaches the ownership right reservation
- If the Buyer becomes insolvent or enters insolvency or bankruptcy proceedings, or if the Seller has reason to believe that such a condition is imminent.
- If the Buyer breaches his duties arising from these GTC or a concluded purchase contract, mainly if he is in default of payment of the purchase price longer than 15 days or he is in default in providing appropriate co-operation to the seller longer than 15 days.
- If the Buyer breaches the provisions of these GTC or the purchase contract, and this breach continues despite notification of the breach and warnings by the Seller, and after setting a reasonable deadline.

The Buyer may withdraw from the contract in particular cases stated by the purchase contract.

Withdraw from the purchase contract may be done only by a delivered letter with acknowledgement of receipt sent to the headquarters of the other Party, or by demonstrable delivery of withdrawal into the official Czech computerised notification “data box” of the other Party, stating the reason for withdrawal from the contract. If such a document is not actually delivered to the other party even after a 10-day period after sending of said document; both parties shall consider the document to have been duly delivered. In case of withdrawal from the purchase contract, all rights and obligations of the parties expire according to the terms of the purchase contract.

Withdrawal from the purchase contract has no effect on existing claims for damages, contractual penalties or interest on arrears, which arose due to breaching duties under this contract. Furthermore, agreements concerning choice of law dispute settlement and agreements which, according to the Parties’ will or based on their features, shall last even after termination of the contract, and are not affected by a withdrawal from the purchase contract.

## **9. Other Provisions**

The Buyer shall at his own risk and expense arrange all required import licenses and other official authorisations, to arrange all customs declarations necessary for the importation of the Goods, and to pay all customs duties, taxes, fees and other expenses related to the import of the purchased Goods. The Buyer is not entitled to transfer or pledge any of the claims under this Agreement, not even partially, to any third party without the prior written consent of the Seller. The Buyer shall not offset any of his claims against the Seller. The Buyer shall inform the Seller of any changes concerning his VAT registration which affects or may affect the purchase price regarding the purchase contract. In case of breaching such duty, the Buyer shall pay to the Seller a penalty of 10% of the sales price of the subject of the purchase contract.

## **10. Ownership Rights**

The Buyer by his signature at the end of these GTC confirms that it is aware that all recipes of the delivered goods are the exclusive sole property of the Seller and thus the Buyer is not entitled to learn these recipes, and further confirms that the Buyer shall respect that in case that the recipe was developed by the Seller according to the requirements of the Buyer, the recipe remains the sole property of the Seller. The Seller is also in this case the sole legal entity entitled to dispose of the recipe. In case that the Buyer would by accident get to know the recipe, the Buyer shall report this to the Seller, and the Buyer shall not use the gained information in any way. The Buyer is liable if he breaches this legal duty, and Buyer shall pay to the Seller the full amount of damages allowed by law.

## **11. Final Provisions**

The Parties agree that any possible disputes arising from this contract shall be resolved according to Czech law, at a Czech court, specifically the locally competent court, corresponding to the headquarters of the Seller.

The purchase contract and these GTC can be changed and supplemented only in writing. If for any reason any provision of the purchase contract or these GTC would be by



the court judged as invalid, void, voidable, ineffective or unenforceable, such provision shall not affect the validity or effectiveness of the remaining provisions of the contract. The Parties agree that in such case they shall immediately start negotiations for the purpose of changing said provision, so as to become a valid, legal, and enforceable provision, and at the same time, to the maximum possible extent preserve the original intentions of the parties regarding the provision regulating the particular question.

I have become acquainted with the above stated General Terms and Conditions in detail, and I fully agree with them, and, as a person legally authorized to act for the Buyer, and by my signature I herewith confirm the agreement of the Buyer to these General Terms and Conditions.

\_\_\_\_\_ date \_\_\_\_\_