

# **GENERAL SALES TERMS & CONDITIONS SAVATECH d.o.o – MOTO PROGRAMME, No. 01/2015**

## **1. Object of terms and conditions**

1.1. These General Sales Terms & Conditions (hereafter referred to as GSTC) shall govern the contractual obligation between the companies SAVATECH d.o.o. Škofjeloška Cesta 6, 4000 Kranj - MOTO PROGRAMME (hereafter referred to as seller) and the buyers of goods and products from the Seller's sales programme (hereafter referred to as goods).

1.2. The GSTC refer to all relations between the seller and the buyer unless explicitly otherwise agreed between the seller and the buyer in a particular case. In the case of a doubt, only explicit agreements in written form shall be deemed different. Irrespective of any other provisions in buyer's general sales term and conditions, the respective sales conditions shall overrule the buyer's terms of sales, unless otherwise agreed between the buyer and the seller in writing. None of the provisions on a buyer's invoice, interest computation or any other similar document regulating any relation already governed by the GSTC shall apply.

1.3. The GSTC are announced on the seller's website at [www.savatech.si](http://www.savatech.si).

1.4. The seller and the buyer shall be referred to as parties, or any of them separately shall be referred to as a party.

## **2. Sales programme**

2.1. The seller forwards an offer to the buyer, which includes the quantity, price and delivery term with regard to the product specification in the buyer's enquiry.

2.2 The seller shall supply the goods, for which the order was already confirmed.

## **3. Offers and orders**

3.1. The seller considers all offers lacking buyer's written order as non-binding offers.

3.2. The seller guarantees the conditions from the offer and a preliminary invoice, respectively, only within the framework of the validity of the respective offer or preliminary invoice.

3.3. The offer shall be considered complete when it includes all the data needed for the manufacturing of the goods, including without limitation quantity, quality, designs, specific properties of the goods, place and time of the planned delivery. If any piece of information fails, it is deemed that standard properties of the seller's goods in that particular part were agreed upon by the parties.

3.4. The seller manufactures and delivers the goods based on a written order, in which the seller refers to the number of buyer's order, the number of offer and preliminary invoice, respectively, and the GSTC. A phone order shall be valid only if the Seller sends a written confirmation of the order.

#### **4. Prices**

4.1. The prices do not include any potential tax and are valid FCA seller's warehouse unless otherwise agreed. The latest version of the INCOTERMS issued by the International Chamber of Commerce, Paris, applies in all cases. The INCOTERMS further apply to offers, confirmations of offers and invoices as well as to establishing of passing of the risk.

4.2. The price includes the standard packaging used in road haulage, whereas transport costs and other transport packaging shall be separately charged by the seller, thereby considering the agreed terms in the order confirmation.

4.3. The goods, the order of which was confirmed by the seller, are delivered according to the valid price list, regardless the fact that at the time of ordering the price was different, unless such different arrangement was preliminary agreed upon. The seller shall be entitled to change the price if the buyer makes changes in quantities, designs or specific properties of the goods.

4.4. The seller reserves the right to change the valid pricelist, particularly in the case of price rises in raw materials, costs of converting raw materials into products and matters that could not be anticipated in advance. The seller shall notify the buyer of any price changes within a reasonable term.

4.5. In cases when the payment is agreed in currency which is not Euro (€), the seller reserves the right to change the originally agreed prices owing to the exchange rates differences; at translation to € it shall consider changes in the exchange rate from the time of the offer made until the time of the order implementation.

#### **5. Delivery terms and conditions**

5.1. Informative delivery terms shall be determined in the offer and the seller's preliminary invoice, respectively.

5.2. The delivery terms shall be agreed upon by the seller and the buyer for every individual order. The final delivery term shall be determined upon order's confirmation, which the seller sends the buyer.

5.3. The Seller shall notify the Buyer as soon as the goods are prepared for shipping.

5.4. The seller reserves the right to define the minimum value of an order. If the seller does not specifically define the minimum value, the amount of €1,000, parity FCA Kranj, shall be considered a minimum order. The seller reserves the right to change the above mentioned value.

5.5. The seller may fulfil its obligation of goods delivery in several partial deliveries, of which it shall notify the buyer within a reasonable time in advance.

5.6. If the goods delivery and parity, respectively, differ from the above agreed, and this incurs extra expenses, such expenses are to the debit of the buyer, unless preliminary otherwise agreed between the seller and the buyer.

5.7. Returning the goods, at delivery of which no irregularities or differences with regard to the quantities and quality of goods were established, is not possible. However, if the seller and the buyer agree that the goods are returned, all expenses in connection with returning the goods shall be borne by the buyer.

5.8. If the buyer does not settle its liabilities within due term, or the seller may reasonably resolve that the buyer is insolvent, the seller has the right to stop deliveries, irrespective of any preliminary agreements or contracts made, until the buyer settles its liabilities or provides a suitable insurance for the performance of its liabilities in accordance with the provisions of the GSTC.

5.9 Considering the provisions 4.3, 4.4., and 4.5 of the GSTC, the seller is held liable for a correct and timely delivery when a written buyer's order is confirmed by the seller in writing.

## **6. Payment conditions**

6.1. The payment is usually effected as an advance payment or a payment within 30 days after the invoice issuance. If the payment is made on the open account, the seller may require the buyer to submit a suitable unconditional bank guarantee at first call, or to open a documentary letter of credit for the benefit of the seller as a collateral for payment, or provide any other suitable insurance, which is to be preliminary confirmed by the seller within 8 days after the receipt of order confirmation or signing the contract

6.2. If the conditions written in the order confirmation or in the contract made between the seller and the buyer differ from the GSTC, the conditions as defined in the order confirmation or the contract overrule.

6.3. Any changes from the preliminary agreed payment terms require a separate agreement made between the parties in writing. The parties shall separately agree on any discounts for preliminary payments in every individual case. The buyer is not entitled to a discount if the payment is made with a bill of exchange, or a cheque. The expenses for cashing and protesting the bill shall be borne by the buyer.

6.4. The delivery of bills of exchange is subject to the seller's preliminary approval and does not constitute payment.

6.5 The seller and the buyer agree that any payments are first used for settling the invoices which already fell due.

6. 6. The payment is considered effected when the money is on the seller's account. The buyer may not reconcile any of its receivables due from the seller with the obligation to pay for the goods.

6.7. If payments are delayed, the seller shall be entitled to charge legitimate default interest and all expenses in connection with the recovery of payment.

## **7. Acceptance of goods, factual defects and liability for damages**

7.1. The buyer shall inspect the goods in terms of quantity and quality at accepting them. In any case, the buyer shall carry out the quantity and quality acceptance of goods as soon as possible in the ordinary course of events. Should any irregularities arise, it shall act in compliance with the claim procedure instructions.

7.2. If the buyer does not accept the goods within 14 days from the date it receives a notification that the goods are prepared for acceptance, the seller may demand 0.5% of the sales value of the goods prepared for acceptance for every started week of delay as expenses, which the seller suffers on account of the buyer's delay in goods acceptance. If the acceptance of goods is delayed, the hazard of a fortuitous loss of the goods shall pass over to the buyer starting with the day on which the buyer falls behind with the acceptance.

7.3. Any damages which arise from the shipping, or factual defects shall be put down in the minutes to be signed by the shipping agent and the recipient of the goods. A photo of the damaged goods, or the goods with factual defects shall be made. When unloading the goods, the buyer and the recipient of the goods, respectively, shall consider the seller's instructions for the claim procedure.

7.4. The goods that are returned to the seller shall not have any other damages as indicated in the claim procedure minutes and shall be returned to the seller within the agreed term.

7.5. If the goods have a factual defect, the seller shall have a choice either to eliminate the defect, offer a replacement service or a fulfilment. In the case of a visual defect, the buyer has to immediately object the goods in the case of a commercial contract, or within 8 days in the case of a non-commercial contract. If during that time the goods are not complained they are considered accepted.

7.6. The seller's warranty against factual defects can be exercised only in the case of seller's intent or gross negligence. The seller's liability for a loss in profit, violation of entity's image and any indirect damage is completely excluded.

#### 7.7. Claim procedure

The buyer shall notify the seller of quantity claims immediately upon the acceptance of goods, and of factual defects immediately after they were or should have been detected. The seller shall decide whether a claim is justified within 30 days after the receipt of the claim at the latest; if required, the claim has to include specimens of claimed goods.

When making a complaint about the goods, the buyer shall submit the seller the minutes of the claim stating the type and the quantity of goods with a defined reason for its claim. In addition to the already mentioned data the buyer shall also submit the identification data from the packaging unit label, date of manufacturing, which is imprinted on a tyre and photos of claimed goods. As regards the missing quantities, the buyer shall protocol the data about the missing quantities in a CMR, or a bill of freight at unloading the goods. The remarks which are not put down in the bill of freight give grounds for rejecting the claim.

The buyer shall gather the claimed goods and enable the manufacturer to view them, and subject to a preliminary agreement, destroy and return them to the manufacturer, respectively.

In the case of a claim, the buyer may give its proposal as to the claim resolving during the claim processing, if it is of opinion that claim's nature deviates from the ordinary manner of claim processing. The ordinary manner of resolving a claim: replacement of goods or a replacement delivery, or a reduction in purchase money. The seller reserves the right to

choose whether defective goods are replaced with the new goods, or it will attend to the elimination of a defect in the original goods, or offer a reduction in purchase money.

The buyer shall immediately notify the manufacturer of any possible latent defects. The buyer shall handle the accepted goods with diligence of a good expert.

## **8. Reservation of title**

8.1. The goods remain the property of the Seller until all liabilities, regardless their basis, are settled by the Buyer.

8.2. If the buyer acts exactly in contrast to the order confirmation or contract made, particularly if payment is delayed, the seller has the right to take the goods back. This is not considered as if the seller resigned from the contractual relation, unless it explicitly expresses that in writing.

8.3. The Buyer shall adequately (i.e. with an adequate insurance sum) insure the goods which are subject to the reservation of title, particularly against fire and theft.

8.4. The buyer shall immediately notify the seller in writing if the seller's ownership right of goods would be disturbed or endangered.

## **9. Use of the seller's trademarks**

9.1. Any use of the Seller's trademark for diverse buyer's purposes shall be agreed upon in advance in writing.

## **10. Declaration of warranty**

10.1. The Seller declares that its goods will be manufactured in compliance with the international standards and regulations, respectively, considering the agreed quality. With regard to the type of products the following standards apply: ECE R75, ECR 30, ECR 54, D.O.T., E.T.R.T.O., ISO 9001, ISO 14001, and ISO 18001. As regards the quality and the appearance of a product, the seller ensures that the goods will be manufactured in accordance with the internal regulations.

10.2. The seller guarantees that the goods will have standard properties within the warranty period. The warranty validity is defined in the declaration of warranty, which forms a constituent part of the General Sales Terms & Conditions. The product, for which the manufacturer recognised the claim and replaced the product, becomes the property of the manufacturer and the buyer shall return it, or destroy it as instructed by the manufacturer. The manufacturer accepts products in the claim procedure if the buyer followed the manufacturer's instructions for use. Unless otherwise agreed, the provisions from the Declaration of Warranty shall apply.

10.3. The warranty is not valid in cases when a defect appears through the buyer's fault or a fault on the part of a person for whom the buyer is responsible, and particularly not when products are damaged during shipping, or due to inexpert assembly, or use under conditions which are abnormal with regard to the data given in the enquiry, in the case of non-observance of the seller's instructions.

## **11. Liability**

11.1. The seller shall not be held liable for any damages suffered by the buyer as a result of the buyer's delays in the performance of contractual obligations, especially due to the incorrect or inaccurate data, specifications, projects, or any other pieces of information to be provided by the buyer, and has the right to demand refund of any expenses, losses or damages.

11.2. The seller shall not be held liable for damages that do not appear directly on the goods, particularly not for the complex, in which the product is installed, lost profit and/or other property and non-property damages suffered by the buyer, and particularly not for any indirect damage. The described limitation in liability fails to apply if damage results from intention or gross negligence. If the liability is excluded or limited, this also applies to associates, employees, agents and seller's exercise assistants.

11.3. The seller's warranty is limited with the provisions and conditions from the corresponding product liability insurance, or any other insurance policy concluded by the manufacturer.

## **12. Force Majeure**

12.1. The circumstances such as *Force Majeure*, and particularly the measures taken by the government authorities and other events that cannot be prevented, eliminated or avoided, i.e. the circumstances, which cannot be influenced by the parties, are considered as inability to perform, for which the party shall not be held liable. A shortage on material in the international market of raw materials used in the rubber manufacturing industry is considered as *Force Majeure*.

12.2. If owing to such circumstances a fulfilment of contractual obligations becomes aggravated or impossible, a liability ceases for the time of fulfilment being aggravated or impossible if respective circumstances could not be prevented, eliminated or avoided. Such circumstances free the party from fulfilling the obligations and from the liability for damages arising from not fulfilling the contractual obligations during that time.

12.3. The party which exercises inability to perform shall prove the existence of such circumstances, which exclude its responsibility, and shall notify the counter-party immediately when it learns that such circumstances arise. When the circumstances, which caused the inability to perform, cease to exist, the party shall notify the counter-party thereof in the same manner. If the counter-party is not immediately notified in a suitable manner, the party which enforces the inability to perform shall be held liable for a direct damage caused.

12.4. Inability to fulfil under this provision is judged in accordance with the applicable legislation and the case-law.

12.5. If a circumstance lasts more than 6 months, the counter-party may request for a change in the contract or may rescind the contract.

12.6. The seller is not held responsible for any delay in fulfilling or not fulfilling its obligations from this contractual relationship if a delay in fulfilling or not fulfilling is due to the reasons beyond its reasonable control, which appear without its fault or negligence including without limitations, inability of suppliers, subcontractors and forwarding agents or the Seller to fulfil their obligations therein, the latter on condition that the Seller will send the Buyer a prompt notice in writing including the details about their appearance and the reasons. The dates of

fulfilling the obligations are extended for the time lost owing to the appearance of such reasons if the contracting parties still have the interest in doing that.

### **13. Changed circumstances**

13.1. If after concluding the contract and confirming an order respectively, the circumstances occur, which aggravate the performance of one party's obligations, or if owing to such circumstances the purpose of the contract cannot be accomplished, in both cases to such an extent that the contract evidently ceases to meet the expectations of the contractual parties and would therefore be wrongful to keep it in force in the respective form, the party whose performance of the obligation is aggravated and the party, which due to the changed circumstances is not able to accomplish the purpose of the contract, respectively, may demand the contract be terminated.

13.2. It is not possible to request a termination of the contract if the party which refers to the changed circumstances, should have considered these circumstances already upon concluding the contract, or if these circumstances could have been avoided, and the consequences of such circumstances could have been rejected, respectively.

13.3. The party demanding the termination of the contract cannot refer to the changed circumstances, which occur after the expiration of a term defined for the performance of its liability.

15.4. The contract shall not be terminated when the other party offers or agrees to change the corresponding contractual terms and conditions in a fair manner.

### **14. Rescission of the contract**

14.1. The Seller shall be entitled to rescind the contract especially if:

- It is not able to fulfil the contractual obligations due to *Force Majeure*, a strike or any other circumstances, which it did not cause.
- The buyer exceeds the agreed payment term by more than 30 days and does not agree upon a subsequent term.
- Due to a gross negligence the party provided false data about its obligations, which endanger its fulfilment ability.

14.2 The buyer shall be entitled to rescind the contract if:

- The seller causes that the delivery is not possible on purpose or due to a gross negligence;
- The seller does not adhere even to a subsequently extended term.

The buyer approves the subsequent term in agreement with the seller, or if the seller has grounds to claim it was not able to fulfil its contractual obligations in time due to *Force Majeure* or a strike and also in the case when the events refer to its supplier and in other cases anticipated by the GSTC.

### **15. Confidentiality clause**

15.1. The parties shall undertake to keep the data from the contractual documents and other data originating from the contractual relation as a business secret during the entire duration of the contractual relation and another 5 years after the expiration of the contractual relation.

15.2. In the case that any of the parties could suffer a considerable damage on account of disclosing a business secret after the expiration of the contractual relation, or a term of 5 years after the expiration of the contractual relation, the data should be further kept as a business secret subject to a special agreement.

15.3. All sketches, schemes, calculations, formulae, instructions, lists, letters, minutes, contractual deeds and other data in a materialised or non-materialised form are considered business secrets

15.4. Any exception from these provisions is subject to a written agreement.

## **16. Assignment of claims and notices**

16.1. The seller undertakes not to assign any of the receivables due from the buyer to third parties without its prior confirmation in writing.

16.2. The parties agree that notifications via corresponding means of telecommunications (telefax, e-mail, etc.) are considered written notifications.

## **17. Disputes**

17.1. Provided that a contract is made with the buyer whose provisions are not in accordance with the terms and conditions hereunder, every individual relation shall be governed in accordance with the contractual provisions. The terms and conditions hereunder apply to relations which are not regulated by the contract. In the cases, for which these terms and conditions expressly define that an opposing arrangement is not possible, the contents of these terms and conditions shall apply.

17.2 Any dispute that could arise in connection with the valid conclusion, violation, termination and legal relations, which arise from the contractual relation, shall be settled amicably. Should a dispute fail to be settled amicably, the court in Kranj is competent for settling the dispute and the Slovene law shall apply if not otherwise agreed between the parties.

## **18. Final provisions**

18.1. The seller adopts the GSTC on 1.1. 2015 .