



TERMS AND CONDITIONS of Crystalex CZ, s.r.o. - ID 28542673

1. GENERAL PROVISIONS

1.1. By purchasing the goods from Crystalex CZ, s.r.o. the Buyer confirms acceptance of these Terms and Conditions (T&C). The following T&C determine a part of the Purchase Agreement for the supply and consumption of goods and services concluded by and between the Seller - Crystalex CZ, s.r.o. and the Buyer. Unless explicitly agreed otherwise by the Seller and Buyer, these T&C are binding for both Contracting Parties.

1.2. The Seller is not bound by any terms and conditions of the Buyer that are not in compliance with these T&C or that would cancel, alter or supplement these T&C in any way whatsoever, unless such terms are confirmed in writing by the Seller.

1.3. If a written form is needed to make the legal acts under these T&C binding, such legal acts must be made by a person that has been authorized to do so by means of a letter, fax or electronic mail. Unless it is equipped with a valid electronic signature, a legal act made by means of electronic mail must be confirmed by the sender without undue delay and at the latest within 10 days from the date of its sending via electronic mail by a regular letter, fax or electronic mail in the PDF format signed by the authorized person, otherwise the other Contracting Party may consider such legal act as not binding.

2. CONCLUSION OF PURCHASE AGREEMENT

2.1. Proposal for conclusion of the Purchase Agreement:

Based on a Buyer's order served by fax, mail or letter the Seller shall send to the Buyer a written bid or the Order Confirmation that will comprise an accurate determination of the subject of purchase (goods), amount and Purchase Price, way and place of delivery, delivery times, way of packaging and other terms of the Purchase Agreement accompanied with these T&C attached as an integral part of the Seller's bid and other appendices thereto. The Seller is authorized to deviate from these T&C in his bid. The bid is binding for the Seller.

2.2. Acceptance of a proposal for conclusion of the Purchase Agreement:

The Buyer must within the period of 15 days from the date when the Seller sends a bid confirm such bid in writing or refuse the same. The Purchase Agreement is concluded at the moment of delivery of an acceptance of the proposal for conclusion of the Purchase Agreement to the Seller or delivery (returning) of a copy of the Order Confirmation signed without any reserves by the Buyer to the Seller.

2.3. Change in proposal:

A partial acceptance or partial refusal of the Seller's bid by the Buyer is considered as a change in the proposal for conclusion of the Purchase Agreement. To conclude the Purchase Agreement the Seller must accept the changed proposal in writing. The Purchase Agreement is concluded at the moment of sending the acceptance of the proposal for conclusion of the Purchase Agreement to the Buyer.

2.4. Preceding agreements:

Any preceding agreements and arrangements made by the Contracting Parties before signing the Purchase Agreement are considered as invalid and not binding for either of the Contracting Parties.

2.5. Appendices to the Purchase Agreement:

Any appendices to the Purchase Agreement must be made in writing and signed by the authorized persons of the Seller and Buyer.

3. PURCHASE PRICE AND TERMS OF PAYMENT

3.1. Purchase Price:

Purchase Prices mean the Purchase Price of the goods supplied in compliance with INCOTERMS 2020 and specified in the Order Confirmation or in the signed Purchase Agreement.

3.2. Purchase Price due date:

The Purchase Price is payable under the terms and within the periods agreed by the Contracting Parties in the Purchase Agreement or in the Order Confirmation based on an invoice issued by the Seller.

3.3. Penalties:

Provided that the Buyer fails to settle the Purchase Price duly and in time, it must pay to the Seller a contractual interest on delayed payment of 0.05% of the amount due per each day of delay. A delay in paying the Purchase Price or a part thereof exceeding 30 days represents a significant breach of the contractual obligations by the Buyer and the Seller has the right to withdraw from the Purchase Agreement provided that the Buyer fails to pay the Purchase Price even in an extended period determined by the Seller. In such case the Buyer must return the already supplied goods to the Seller and compensate the Seller for any damage incurred.

3.4. Purchase Price payment:

In the case of the Purchase Price payment by means of a bank transfer the Purchase Price is considered as settled at the moment of its crediting to the Seller's account. The costs related with a bank transfer in a foreign country are always borne by the Buyer.

3.6. Instalments:

Provided that the Contracting Parties agree on the Purchase Price settlement in instalments and the Buyer is on delay in paying any instalment, the entire debt shall become payable on the date following the due date of the unpaid Purchase Price instalment.

3.7. Currency:

The Purchase Price must be paid in the currency provided in the Purchase Agreement or the Order Confirmation. The Buyer has the right to settle the purchase price in another currency exclusively in the event that the Seller has granted its prior written approval and shall use the rate of exchange issued by the Czech National Bank on the date of settling the Purchase Price.

3.8. Exchange rate clause:

Crystalex CZ has been working with planned exchange rates of CZK 25.00 / EUR and CZK 21.50 / USD for 2022, based on which the current sales prices for 2022 are calculated.

If in the course of 2022 the Czech crown strengthens against the Euro and/or US Dollar by more than 5% against the planned exchange rates above, then Crystalex CZ s.r.o. will initiate price adjustment negotiations with the aim of adjusting the existing sales price, which will compensate for such appreciation of the Czech crown against foreign currency.

3.9. Packaging clause

If Crystalex CZ s.r.o. products are packaged in customer packaging produced and/or delivered by Crystalex CZ s.r.o., then the customer shall undertake to accept all packaging within 6 months from the final day of production of the particular type of product ("Day D"), with it further agreed that:

- Commencing as of the first day of the 4th month from Day D, Crystalex CZ s.r.o. shall become entitled to bill a storage fee (of which the customer will be notified after the lapse of 2 months from Day D, including the storage fee amount).
- After the lapse of 6 months from Day D, Crystalex CZ s.r.o. shall be entitled to issue separate invoices for the value of packaging not consumed (of which the customer will be notified after the lapse of 5 months from Day D).

3.10. Energies Unexpected cost increase clause:

CRYSTALEX CZ reserves the right to open negotiations on the current sales price due to a significant and unexpected increase in energy prices (electricity). By significant increase is meant all increases above 15 % of year – on – year average quarterly prices from 2021 to 2022. The source for price statistics is the Power Exchange Central Europe, a.s. (=PXE). This indicator will be evaluated at the end of each quarter i.e., 31st Mar., 30th Jun., 30th Sept., 31st Dec of 2022.

4. TERMS OF DELIVERY AND DELIVERY TIMES

4.1. Terms of delivery:

The terms of delivery are governed by the INCOTERMS 2020 trade clauses determined in the Order Confirmation or Purchase Agreement.

4.2. Failure to observe the delivery time:

If it can be anticipated that a delivery time will not be observed, the Seller must notify the Buyer of such fact in writing immediately after the Seller becomes aware of such fact. If the Buyer does not raise a written objection after delivery of such notification, it is considered that the Buyer agrees with such delayed supply of goods without any reserves.

4.3. License, permit:

Liability for obtaining licenses and permits is governed by the INCOTERMS 2020 clause agreed in the Purchase Agreement or Order Confirmation. Unless the contractual relationship is governed by one of the INCOTERMS 2020 clauses, the Buyer must obtain all export and import licenses or other official permits and deal with all custom obligations related with the goods export at the Buyer's own risk and cost.

4.4. Transfer of risks:

The risk of damage to the goods shall be transferred to the Buyer in compliance with the INCOTERMS 2020 trade clauses.

4.5. Goods reception:

The Buyer must take over the goods within the agreed delivery time based on the Seller's notification that the goods are prepared for delivery at the latest 10 (ten) days from the date of such delivery notification. If the Buyer fails to receive the goods within the aforesaid period, the risk of damage shall pass to the Buyer on the date following expiration of such period. Unless agreed otherwise by the Parties in writing, in the case that the Buyer fails to receive the goods even in the period of 90 days, after the lapse of this period the Seller has the right to charge the Buyer a contractual penalty of 0.05% of the price of such unreceived goods per each day of delay in the goods reception and at its own discretion even to withdraw from the Purchase Agreement and sell to goods to a third party. The Seller may also require the Buyer to settle compensation of the damage incurred due to a failure to receive the goods, including the costs of the goods storage.

4.6. Transfer of ownership:

The ownership right to the supplied goods shall be transferred to the Buyer on the date of full payment of the Purchase Price. The Seller has the right to retain the documents confirming the legal status of the goods or any other documents allowing for dealing with the goods until the full payment of the Purchase Price.

5. INSPECTION, PACKAGING, INDICATION, TRANSPORT AND INSURANCE

5.1. Inspection, indication, packaging, transport and insurance of the goods are performed in compliance with the INCOTERMS 2010 trade clauses determined in the confirmed bid or Purchase Agreement.

5.2. Insurance against fracture:

Unless provided otherwise in the Purchase Agreement or confirmed order, the goods are not insured against fracture.

6. DEFECTIVE GOODS, LIABILITY FOR DEFECTS

6.1. Defective goods: The Seller is liable to the Buyer for the following defects:

- a) Defective quality meaning that the goods quality is not in compliance with the technical standards applicable in the Czech Republic or with the agreed quality;
- b) Defective amount meaning that the goods are served in another than agreed amount;
- c) Defective packaging and indication meaning that the goods are not packed or indicated in compliance with the Purchase Agreement or these T&C or in a way ensuring the goods storage and protection;
- d) Fractured goods due to defective packaging;
- e) Supply of other goods than as agreed in the Purchase Agreement;
- f) Defective documents that are needed for due use of the goods.

6.2. Defective goods before transfer of the risk of damage to the goods: The Seller is liable to the Buyer for any defective goods detected at the moment of transfer of the risk of damage to the goods to the Buyer, even though the defect becomes visible after the transfer. In such case the Buyer must evidence that the defect originated before transfer of the risk of damage to the goods from the Seller to the Buyer.

6.3. Defective goods after transfer of the risk of damage to the Buyer: The Seller is liable to the Buyer for any defects originating on the goods after transfer of the risk of damage to the Buyer provided that they were caused due to a breach of the Seller's liability (e.g. due to defective packaging of the goods). However, the Seller is not liable for any damage caused to the goods due to inappropriate transport and/or manipulation with the goods by the Buyer.

6.4. Liability for damage on the goods caused upon the goods manufacturing due to the use of materials or procedures supplied by the Buyer: The Seller is not liable to the Buyer for any defects on the goods that were caused in the course of the goods manufacturing using the materials or procedures provided (specified) to the Seller by the Buyer provided that despite due care the Seller could not have determined inappropriateness of such materials or procedures for manufacture or if the Seller determined such inappropriateness but the Buyer, despite such inappropriateness of the materials and procedures, insisted on their use.

6.5. Notification of defects: The Buyer must inspect the goods without delay after the goods are delivered to the agreed destination. The right of the Buyer for compensation due to defective goods shall not apply, unless the Buyer notifies the Seller of the nature of such defects in a reasonable period after the Buyer discovers or should have discovered them, in any case at the latest within 3 (three) months after the date of the goods delivery, as concerns visible defects, and within two years after the date of the goods delivery, as concerns hidden defects that could have not been discovered earlier, even under good professional care applied by the Buyer.

6.6. Complaints: The Seller must settle any complaint without undue delay after delivery of a written notice of defects by the Buyer, but in any case at the latest within 2 (two) months after the date of such notice delivery. If the Seller incurs an obligation to remove any defect for which it bears responsibility under the Purchase Agreement, it shall be authorized to do so in the way feasible and efficient, with regard to the nature of such defect.

7. DOCUMENTATION, DRAWINGS, DESIGNS, PATENTS, CONFIDENTIALITY

7.1. Documentation: All documents, drawings, designs and patents related to the goods and its manufacture shall remain a property of the Seller or manufacturer and cannot be transferred by the Buyer to any third party without prior written consent of the Seller. This provision does not apply to the documents, drawings, designs and patents submitted to the Seller by the Buyer in relation with the goods and manufacture thereof. The Seller has the right to use such documents, drawings, designs and patents exclusively in compliance with the Buyer's instructions.

7.2. Trade Marks. By supplying any goods protected by a trade mark the right to use such trade mark in any way whatsoever shall not pass to the Buyer.

7.2. Confidentiality: The Buyer must maintain confidentiality concerning any information obtained in relation with making the deal with the Seller. The Seller considers the information concerning manufacture and trading with the goods that is not commonly available in the applicable business circles as confidential and the Buyer must not disclose such information to a third party or use it for its own benefit or for the benefit of a third party without prior consent of the Seller; the Buyer must not misuse such information.

7.3. In the event of a breach of the obligations set forth in this Article hereof the Buyer must compensate the Seller for any damage incurred by the Seller due to a breach of such obligation.

8. FORCE MAJEURE

8.1. Force majeure: The Contracting Parties shall be released from any liability for a partial or full failure to fulfil their obligations arising from the Purchase Agreement provided that such non-fulfilment is a consequence of any circumstances representing the force majeure. Cases of force majeure include events, such as fire, flood, earthquake, civil unrest, war, changes in legal regulations or decisions of the government or public administration authorities or local administrative authorities or any other similar circumstances that the Contracting Parties cannot anticipate, control or affect provided that such circumstances directly affect fulfilment of the obligations of the Contracting Parties arising from the Purchase Agreement.

8.2. Notification duty: If a force majeure event occurs, the affected Contracting Party must notify the other Contracting Party of such event in writing immediately after such event occurs and in any case within 48 (forty-four) hours at the latest. Immediately after the force majeure event expires, the Contracting Party that claimed the force majeure must notify the other Contracting Party of the exact date when the force majeure event expired and of its effect on the performance of its obligations and attach to such notification the applicable confirmations, certificates and documents issued by official authorities and organizations.

8.3. Withdrawal from the agreement: Provided that the force majeure event affecting one Contracting Party lasts for more than 6 (six) weeks, the other Contracting Party has the right to withdraw from this Purchase Agreement without incurring any obligation to compensate the other Contracting Party claiming the force majeure for the damage incurred.

9. USABLE LAW, RESOLUTION OF DISPUTES

9.1. Usable law: The Purchase Agreement, confirmed bids and orders, including any appendices thereof, as well as any and all agreements concluded by and between the Seller and the Buyer under these T&C, as well as the relations arising thereof and related thereto shall be governed by the Czech law. Provided that any provision of the Purchase Agreement becomes invalid or ineffective, the other provisions thereof shall remain valid and in effect. In such case the invalid or ineffective provision shall be replaced by a provision of the Czech law corresponding in the greatest admissible extent to the meaning and purpose of the Purchase Agreement.

9.2. Interpretation of clauses: The international rules of INCOTERMS 2020 issued by the International Chamber of Commerce in Paris are used to interpret the trade clauses set forth in the Purchase Agreement.

9.3. Dispute resolution: Any dispute occurring upon performance and interpretation of purchase agreements, orders and the Seller's bids, supplies of goods by the Seller to the Buyer and in relation thereto or upon performance and interpretation of the purchase agreements based on these orders and bids shall be finally resolved by the Arbitration Court at the Economic Chamber of the Czech Republic and Agricultural Chamber of the Czech Republic in Prague by three arbitrators in compliance with the arbitration rules. One arbitrator shall be appointed by the Seller, one arbitrator shall be appointed by the Buyer and these two arbitrators shall appoint the third arbitrator. The arbitration procedure shall be held in the Czech, English and/or German language, as decided by the Seller.

9.4. Under Section 14 (1) of Act No.634/1992 Coll., on Consumer Protection, as amended the Seller notifies the Buyer that the entity competent for amicable settlement of consumer disputes in the Czech Republic concerning the offer of goods and services is the Czech Trade Inspection Authority (www.coi.cz).

9.5. The Seller and Buyer must observe the principles of personal data processing in compliance with Regulation (EU) 2016/679 of the European Parliament and of the Council - GDPR, mainly to process personal data exclusively for the purpose of purchase and sale of goods and in the extent necessary to perform the concluded Purchase Agreements or confirmed bids and in compliance with these Terms and Conditions.

Nový Bor, November 2021