

General Contractual Terms and Conditions for the Sale of Goods and Services and Execution of Deliveries by M&MR Trading Polska Sp. z o.o. in force as of 1 October 2019

DEFINITIONS

Further herein, the terms and phrases mentioned below shall have the following meaning:

Price – price set out in the Agreement, less value added tax, payable by the Buyer to M&MR Trading Polska Sp. z o.o. for the performance of the Agreement;

Place of Delivery – a place specified by the Buyer where M&MR Trading Polska Sp. z o.o. is to deliver Products;

Buyer – a Party to the Agreement with M&MR Trading Polska Sp. z o.o., purchasing the Product within the framework of its business activity;

Warranty Period – a period during which the quality assurance for the Product is in effect;

Delivery Acceptance Certificate – confirmation that the product has been delivered to the Place of Delivery, made in writing by the Buyer or a representative of the freight forwarding/transport company;

Technical Specification – a description of performance parameters, a technical and functional description including drawings, a detailed description of the Product and a description of terms and conditions for their performance as set out in the Agreement or in the Order;

Product – a product, good, service or device to be delivered by M&MR Trading Polska Sp. z o.o. under the Agreement;

Parties, Party – an entity (entities) entering into the Agreement;

Agreement – an agreement along with all of its annexes, concluded by M&MR Trading Polska Sp. z o.o. with the Buyer, the subject-matter of which is the delivery of the Product to the Buyer;

Terms and Conditions – these General Contractual Terms and Conditions for the Sale of Goods and Services and Execution of Deliveries by M&MR Trading Polska Sp. z o.o.;

Order - a document containing the statement of intent to enter into the Agreement, submitted to M&MR Trading Polska Sp. z o.o. by the Buyer.

1. GENERAL PROVISIONS

- 1.1. These Terms and Conditions regulate the principles pursuant to which M&MR Trading Polska Sp. z o.o. performs Agreements.
- 1.2. These Terms and Conditions form an integral part of the Agreements concluded with Buyers.
- 1.3. Terms and Conditions may also apply to Agreements concluded with consumers, provided that generally applicable provisions of law do not stipulate otherwise.
- 1.4. Terms and Conditions are deemed accepted by the Buyer with effect mentioned in clause 1.2 upon execution of the Agreement containing a reference to these Terms and Conditions by the Buyer, and where such agreement has not been made in writing – upon the submission of the Order for Products or Services offered by M&MR Trading Polska Sp. z o.o. by the Buyer or the payment of a deposit towards that Order, whichever occurs first.
- 1.5. M&MR Trading Polska Sp. z o.o. reserves the right to amend these Terms and Conditions at any time, with the stipulation that such amendment shall not apply to Agreements concluded prior to its introduction.
- 1.6. The basis for the Agreement to enter into force are Orders submitted by the Buyer and accepted by M&MR Trading Polska Sp. z o.o. upon the agreement of detailed terms and conditions of delivery.
- 1.7. The type of Products being the subject-matter of the Agreement, time limits and volume of delivery as well as other parameters necessary to perform the Order shall be determined by the Parties during the term of the Agreement in such a way that the Buyer shall submit the Order by electronic mail or in paper form to the current address of the registered office of M&MR Trading Polska Sp. z o.o. disclosed in the National Court Register. M&MR Trading Polska Sp. z o.o. shall confirm acceptance of the Order within 2 business days as of its receipt at the latest. The Order confirmation shall contain the order number and delivery date. Failure to confirm the Order shall be construed as refusal to accept it for performance.
- 1.8. The Parties shall consider the Order submission date to be the date on which M&MR Trading Polska Sp. z o.o. receives the Order in a way that enables it to read its contents.
- 1.9. If the Order is divisible, it may be performed successively according to the order of release of Products specified in the Order.

2. PERFORMANCE OF THE AGREEMENT

- 2.1. The property right to the Product delivered under the Agreement shall be transferred to the Buyer upon M&MR Trading Polska Sp. z o.o. paying the full price for the Product delivered under the Agreement, without any deductions. As of the acceptance of delivery, the Buyer shall store the Product and be responsible and liable for it as a keeper. The risk of loss of or damage to the Product shall be transferred to the Buyer upon drawing up the Delivery Acceptance Certificate.
- 2.2. In the event of default on payment for the Product delivered under the Agreement that exceeds 30 days, M&MR Trading Polska Sp. z o.o. reserves the right to physically reclaim the Product from the Buyer, to which the Buyer irrevocably agrees. The Product reclamation shall not be construed as withdrawal by M&MR Trading Polska Sp. z o.o. from the Agreement concluded with the Buyer, unless M&MR Trading Polska Sp. z o.o. submits an express statement on withdrawal from the Agreement. This right may be combined with a claim for the Buyer to pay M&MR Trading Polska Sp. z o.o. appropriate compensation for the deterioration of the product or the loss of its value due to any other reason.
- 2.3. If the delivered Product constituting the property of M&MR Trading Polska Sp. z o.o. is combined with any other devices, components or parts, M&MR Trading Polska Sp. z o.o. shall have an interest in the ownership title to devices or components created in this way, in proportion equal to the value of the delivered Product as specified under the Agreement to the value of devices, components or parts to which the Product was attached or with which it was combined. The Buyer undertakes to inform third parties that may have a legal interest in having this information of this interest in ownership title.
- 2.4. If the Product cannot be delivered by M&MR Trading Polska Sp. z o.o. within the time limit set out in the Agreement or the Order and the delay results from circumstances which are beyond the control of M&MR Trading Polska Sp. z o.o. (e.g. delay by a vendor or sub-vendor of materials or raw materials key to perform the Agreement), such state of affairs shall not be construed as delay, which in consequence excludes the Buyer from charging a contractual penalty and seeking claims for damages arising due to non-performance or improper performance of the obligation. In such case,

2.5. M&MR Trading sp. z o.o. shall set a new time limit for the performance of the agreement.

2.6. If the Buyer does not accept an ordered Product despite the (reported) readiness of M&MR Trading sp. z o.o. to perform the delivery, except for circumstances related to events of force majeure, the non-accepted Product shall be delivered to the warehouse of M&MR Trading sp. z o.o. and stored there at the expense of the Buyer. Notwithstanding the above, the Buyer shall be charged a contractual penalty in the amount of 0.1% of the Product value per each day of its storage.

3. TERMS OF PAYMENT

- 3.1. M&MR Trading sp. z o.o. shall issue an invoice for the total remuneration due under the Agreement plus VAT due. Invoices shall be payable within 14 days as of their issue date, to the bank account of M&MR Trading sp. z o.o. specified on the invoice, unless the Parties agree on a different time limit in the Agreement or the Order.
- 3.2. In the event of late payment of an invoice, the Buyer shall pay M&MR Trading sp. z o.o. statutory interest for late payment in commercial transactions.
- 3.3. M&MR Trading Polska Sp. z o.o. represents that it is a registered VAT payer holding tax identification number (NIP) 5841016120.
- 3.4. Where the Agreement specifies prices in EUR and the payment of net value is made in EUR and VAT in PLN, conversion to PLN is made according to the average foreign currency exchange rate published by the National Bank of Poland on the last business day preceding the day on which tax liability arises, i.e. the day on which the Product or service is delivered or the day on which payment for the delivery of the Product or service is received, either in part or in full.
- 3.5. Where an invoice is issued before the tax liability arises, conversions to PLN shall be made according to the average foreign currency exchange rate published by the National Bank of Poland on the last business day preceding the invoice issue date.
- 3.6. During the term of these General Terms and Conditions for Sale, the total value of amounts owed to M&MR Trading Polska Sp. z o.o., payable by the Buyer on the Order submission date, cannot exceed the amount agreed by the Parties under a separate agreement (debt limit). Where the Order would result in the possibility of exceeding the debt limit, M&MR Trading Polska Sp. z o.o. shall have the right to refuse to accept the Order or demand security for that Order or its prepayment. An Order that exceeds the agreed debt limit amount may also be accepted upon prior payment of existing amounts due (including amounts not yet outstanding) up to the amount which does not exceed the debt limit. If the Buyer is late with a payment for more than 14 days or late with two consecutive payments for more than 7 days, the Buyer is no longer able to use the debt limit.
- 3.7. The Parties agree that where payment of amounts due to M&MR Trading Polska Sp. z o.o. for performed delivery accepted by the Buyer is late for more than 7 days, M&MR Trading Polska Sp. z o.o. shall have the right to suspend all deliveries of Goods under Orders submitted by the Buyer until such time as all outstanding amounts are settled in full. The period during which M&MR Trading Polska Sp. z o.o. suspends the performance of its obligations shall not be construed as a period of delay or late performance and the Buyer waives any claims against M&MR Trading Polska Sp. z o.o. in relation to that period – especially claims for contractual penalties and compensation that could be sought in court.

4. QUALITY ASSURANCE

- 4.1. M&MR Trading Polska Sp. z o.o. assures the Buyer that Products delivered under the Agreement shall be compliant with their Technical Specification. M&MR Trading Polska Sp. z o.o. shall ensure the transfer of Product warranty granted to M&MR Trading Polska Sp. z o.o. by the Product manufacturer onto the Buyer. M&MR Trading Polska Sp. z o.o. shall not grant the Buyer an additional warranty as to the performance of the Product, its design quality nor materials from which the Product is made, except for the warranty granted for the scope of services provided by M&MR Trading Polska Sp. z o.o. and the part of the Product manufactured by M&MR Trading Polska Sp. z o.o.
- 4.2. M&MR Trading Polska Sp. z o.o. assures that it will remove defects related to the inadequate quality of services performed in regard to Products, at its own expense, in the Warranty Period.
- 4.3. The Warranty Period for the Product each time corresponds to the period indicated in the warranty granted by the Product manufacturer.
- 4.4. Upon becoming aware of any irregularity covered by a warranty claim (in the case of warranty granted by M&MR Trading Polska Sp. z o.o.), the Buyer shall without delay notify M&MR Trading Polska Sp. z o.o. of this fact and provide defective Products or a defective part of the Product to M&MR Trading Polska Sp. z o.o. at its own expense.
- 4.5. If M&MR Trading Polska Sp. z o.o. satisfies the warranty claim by replacing the Product or a part thereof with a new Product or a part thereof, the replaced Product or part thereof shall be the property of M&MR Trading Polska Sp. z o.o.
- 4.6. M&MR Trading Polska Sp. z o.o. shall undertake activities related to its warranty obligations within 2 business days as of the receipt of a warranty claim at the latest. Warranty claims shall be handled within time limits justified by circumstances on a case-by-case basis.
- 4.7. The provisions of Articles 556 to 576 of the Act – Civil Code (warranty for defects) do not apply in relations between M&MR Trading Polska Sp. z o.o. and the Buyer.
- 4.8. The obligations of M&MR Trading Polska Sp. z o.o. under the warranty shall expire, if: (i) the Product is used contrary to its intended use or Technical Specification or (ii) the Buyer or third parties make any repairs or modifications to the Product, or (iii) the Product is used in a negligent way, in a way that exposes it to excessive loads or in conditions inconformant with the Technical Specification.
- 4.9. In connection with works being carried out to modify offered Products, M&MR Trading Polska Sp. z o.o. has the right to replace a part of the Product, if the relevant part of the Product is no longer manufactured or has been replaced with another part that is commonly offered by M&MR Trading Polska Sp. z o.o. to its clients, or it is no longer available, provided that M&MR Trading Polska Sp. z o.o. guarantees that it is replaced with an appropriate product or part thereof, with at least equivalent functions and compatibility with the rest of the Product, and with the stipulation that in such case M&MR Trading Polska Sp. z o.o. shall notify the Buyer in writing about such replacement.

5. FORCE MAJEURE

- 5.1. M&MR Trading Polska Sp. z o.o. shall not be liable for non-performance of its obligations towards the Buyer under the Agreement and Orders due to the occurrence of an event of Force Majeure.
- 5.2. For the purposes of these Terms and Conditions, “Force Majeure” means an unforeseeable event which is beyond the control of the Party, occurs after the Parties execute the Agreement and does not result from the exclusive fault or negligence of that Party, including but not limited to wars, revolutions, fires which have not been caused by an action or omission of M&MR Trading Polska Sp. z o.o., floods, epidemics, embargoes, strikes and lockouts in relevant branches of industry, and official decisions of state and public administration authorities introducing restrictions on business activity to the extent covering the core object of activity of M&MR Trading Polska Sp. z o.o.

6. CONFIDENTIALITY

- 6.1. All information related to the Product and Technical Specification, provided to the Buyer by M&MR Trading Polska Sp. z o.o. in any form, remain the property of M&MR Trading Polska Sp. z o.o.
- 6.2. Unless M&MR Trading Polska Sp. z o.o. stipulates otherwise in writing, this information shall be adequately safeguarded against unauthorised and third party access. In the case of integration works necessary for the Buyer to efficiently use the Product, especially integration of the Product with systems and equipment of vendors other than M&MR Trading Polska Sp. z o.o., M&MR Trading Polska Sp. z o.o. shall specify the necessary scope of information that may be provided to a third party for this purpose.

6.2. The Buyer shall not reproduce any information (especially the Technical Specification or a part thereof) for purposes other than necessary to use the Products.

6.3. Neither of the Parties to this Agreement may, without obtaining consent from the other Party, reproduce, distribute or disclose information regarding the other Party or its interests, finances or actions, including any technical data or data regarding costs and trade secrets, regardless of the source of such information, unless this information is commonly known or should be disclosed to a competent authority or persons acting within the framework of applicable provisions of law.

6.4. Any and all information disclosed under this Agreement, either in writing or verbally, shall be considered as confidential, unless it has been expressly marked as non-confidential or non-proprietary information at the moment of its disclosure, or it is clear that this information is not confidential or proprietary due to its nature.

6.5. The Party receiving confidential information undertakes to treat it as strictly confidential and not to disclose it, either directly or indirectly, to any other person, company, corporation, association or entity for any purpose whatsoever and not to use or reproduce this information for purposes other than arising from this Agreement.

6.6. The Buyer acknowledges that M&MR Trading Polska Sp. z o.o. is an entity which forms part of an organisation comprised of many legal persons subject to various jurisdictions and that it may prove necessary for M&MR Trading Polska Sp. z o.o. to provide confidential information to its affiliated companies, but only insofar as necessary for the relevant affiliated company to perform the Agreement concluded with the Buyer. An affiliated company shall also mean entities to which M&MR Trading Polska Sp. z o.o. submitted a request for quotation concerning the Product.

6.7. Confidential information may be disclosed only to representatives, employees, consultants and subcontractors of the receiving Party who have a legitimate interest in access to this information for the purpose for which it was disclosed and who are bound by a non-disclosure obligation towards the receiving Party.

6.8. The aforementioned non-disclosure obligation does not apply to information or part thereof which:

- was known to the receiving Party prior to receiving this information from the other Party;
- which is or becomes common knowledge without the receiving Party breaching any non-disclosure obligation;
- was developed and duly documented independently by the receiving Party without using confidential information provided by the disclosing Party;
- must be disclosed by virtue of law, an order issued by a competent court or other state or public administration authority (in such case the Party which must disclose information shall immediately inform the other Party of this fact prior to its disclosure).

7. ASSIGNMENT OF RIGHTS AND OBLIGATIONS

7.1. The Buyer may transfer rights and obligations arising from the Agreement concluded with M&MR Trading Polska Sp. z o.o. only in full, to entities linked to the Buyer by equity or organisationally, provided that all financial obligations towards M&MR Trading Polska Sp. z o.o. have been settled prior to the transfer. The Buyer shall be jointly and severally liable together with the entity to which rights and obligations arising from the Agreement have been transferred.

8. CONTRACTUAL PENALTIES

- 8.1. The total value of contractual penalties that may be charged by the Buyer cannot exceed 10% of net value specified in the Agreement – regardless of any future annexes thereto.
- 8.2. The total liability of M&MR Trading Polska Sp. z o.o. for contractual claims arising from the Agreement, delictual or other claims (the effects of damage in the form of profits lost) arising due to the quality of the Products, sale, delivery, replacement or use of the Product, or claims related thereto shall not in any case exceed 10% (ten percent) of the Price paid by the Buyer.
- 8.3. The Buyer irrevocably agrees to the deduction by M&MR Trading Polska Sp. z o.o. of contractual penalties from amounts payable to the Vendor.

9. FINAL PROVISIONS

- 9.1. In the case of discrepancies between provisions laid down in the Terms and Conditions and provisions laid down in the Agreement, these Terms and Conditions shall have priority, unless the application of specific provisions laid down in the Terms and Conditions has been expressly excluded in the Agreement. The clause in the Agreement providing for such exclusion shall prevail over this Article of the Terms and Conditions.
- 9.2. All matters not regulated by these Terms and Conditions or the Agreement shall be governed by the provisions of Polish law. The United Nations Convention on the International Sale of Goods shall not apply to transactions between the Buyer and M&MR Trading Polska Sp. z o.o.
- 9.3. Any and all disputes between the Parties arising due to the interpretation or performance of these Terms and Conditions and/or the Agreement must be settled without undue delay by way of negotiations or mediation between the Parties, within 30 (thirty) days as of their commencement.
- 9.4. If negotiations or mediation provided for in the Agreement fail, the Parties shall refer the arisen dispute for settlement to the common court having jurisdiction over the registered office of M&MR Trading Polska Sp. z o.o.

Gdynia, 1 October 2019