

## **FABIOS SA GENERAL TERMS AND CONDITIONS OF SALE**

### **1. DEFINITIONS**

- 1.1. The General Terms and Conditions of Sale are hereinafter referred to as the GTCS.
- 1.2. Seller –FABIOS S.A. Białka 556, 34-220 Maków Podhalański, Poland.
- 1.3. Buyer – a legal person, natural person or any other organisational unit having legal capacity, purchasing the product of the Seller in the course of a business or profession.
- 1.4. The provisions for signing the contracts shall apply to the acceptance of the purchase order and to the confirmation thereof (contract consisting of two documents) accordingly.

### **2. AREA OF APPLICATION OF THE GENERAL TERMS AND CONDITIONS OF SALE**

- 2.1. The Buyer or any person duly authorised by the Buyer shall certify, when placing an order, that the Seller's GTCS are known to him and that he accepts them. The compliance with the said condition is required to start business cooperation.
- 2.2. The conditions for carrying out contracts with different contents applicable at the Buyer's site shall not be accepted by the Seller.
- 2.3. The Seller permits entering into individual commercial contracts by way of mutual negotiations between the Parties thereto. The accepted solutions different to those included in the GTCS shall have precedence over the GTCS provisions.

### **3. PURCHASE ORDER**

- 3.1. The basis for making any purchase of a product from the Seller shall be submitting the purchase order signed by the Buyer.
- 3.2. The purchase order shall be placed at the Sale and Marketing Department by 10<sup>th</sup> day of the month preceding the month in which the order is carried out on the form indicated in Appendix 1 (Purchase Order Form), in writing by post, by fax to +48 33 877 13 29, as well as via email (email address: [fabios@fabios.com.pl](mailto:fabios@fabios.com.pl)). The Purchase Order shall contain:
  - a. The kind of the ordered range of products (basic dimensions, type, colour, kind of packaging and customising, required length),
  - b. The quantity of ordered items,
  - c. The expected date of acceptance of the ordered items.
- 3.3. The placing of the purchase order shall not be binding to the Seller and the lack of reply shall not mean tacit acceptance of the order. The acceptance of the order by the Seller for carrying out shall require the written confirmation by the Seller. Where the order is accepted by the Seller with any reservations, the Buyer shall be bound by the content of the said reservations unless he presents his remarks, if any, without delay.
- 3.4. When the subject-matter of the order is the casing subjected to special packaging or with a rare colour, the Seller, prior to the preparation of the contract, shall have the right to require prepayment from the Buyer for the ordered goods.
- 3.5. The purchase order acceptance shall not be binding to the Seller in the following situations:
  - a. Where the delivery and sale of products (goods) are impossible or excessively impeded due to reasons not attributable to the Seller, in particular due to the action of force majeure,
  - b. Where the overall obligations of the Buyer towards the Seller have exceeded the amount of the trade credit awarded to the Buyer by the Seller or the limit of the trade credit amount by the insurance company,

- c. Where the Buyer is late with the payment in favour of the Seller of any required amounts due or where he does not accept the goods even though the notice to receive has been sent,
- d. Where no security has been established on request or the security has expired,
- e. In the situation described in 6.6 and 7.4.

#### **4. TERMS OF DELIVERY: TIME OF DELIVERY, TRANSPORT, INSURANCE, TRANSFER OF RISK**

- 4.1. The Delivery of Goods takes place through the effort of the Buyer or with assistance from the forwarding companies on the basis of FCA, indicated location, Poland (INCOTERMS 2000).
- 4.2. The time of delivery specified in the order confirmation should be considered to have been agreed between the Parties. Failure to meet the date of delivery by the Seller shall authorise the Buyer to claim the rights he is entitled to only where the Seller still is not carrying out the delivery in spite of new dates agreed in writing.
- 4.3. The Buyer shall collect the product (goods) or shall accept it within 7 days of receipt of the notice about the fact that the product is available in the Seller's warehouses. In the event of any delay in the receipt of the goods, the Buyer may be responsible for meeting the storage charges. The Seller reserves the right to withdraw from the contract where the foregoing time limit has elapsed.
- 4.4. Each partial delivery shall constitute a separate transaction and may be invoiced separately by the Seller.
- 4.5. The confirmed order may only be withdrawn by the Buyer, in part or in whole, with consent from the Seller.

#### **5. PRICE**

The price of the product (goods) shall be established on the basis of the arrangements applicable on the date of the order confirmation.

#### **6. PAYMENT**

- 6.1. The Seller's invoices are payable in the bank mentioned in the invoice. The bank fees related to the payment shall be covered by the Buyer, unless otherwise provided in the contract. The payment shall be made under the conditions provided for in the contract. In the event of any delay in payment, the Seller may, irrespective of the interests that he is entitled to, hold and annul other deliveries and make the Buyer responsible for meeting the documented charges. The Seller reserves the title to the delivered products (goods) until the time when he obtains the full payment for the said goods.
- 6.2. Where the content of the agreement between the Parties does not indicate whether the specific prices are net or gross prices, they shall always be considered as net prices which shall be increased by the VAT amount as per the rate applicable at the specified time for the given product (goods).
- 6.3. The payment shall be made within the time limit indicated in the contract or the pro-forma invoice, as agreed by and between the Parties. Where no such agreements were made, it shall be made no later than within 14 days of the date of issuing the goods to the Buyer.
- 6.4. Where the Buyer does not carry out his obligations within six weeks of the agreed date, the Seller may withdraw, in writing, from the contract without having to provide any additional notices to the Buyer.
- 6.5. The date of making payment shall be the date on which the specified amount is entered in the books on the Seller's bank account. In the event of any violation of the payment term, the Seller is entitled to claim the payment of the interest amount from the Buyer in accordance with the provisions of law in force or the contractual conditions.
- 6.6. Where there are reasonable grounds to suppose that the Buyer will not meet his obligation to pay, the Seller may request – prior to issuing the product (goods) and irrespective of the previously agreed payment term – the payment of the whole amount by money transfer as per the pro-forma invoice or the provision of the specific guarantees or payment security or changing the payment term.

6.7. Any complaints brought by the Buyer shall not hold the run of the payment term.

## 7. QUANTITY AND QUALITY

- 7.1. The product (goods) is sold by quantity as per the units specified in the contract (linear metres, kg, pieces or other).
- 7.2. The Seller guarantees that the quality of the delivered casings is as per the technical sheets Ref. J-DKJL-605 through 610. Technical sheets are available from seller at the request of the buyer.
- 7.3. The Buyer shall store the purchased collagen casings in a manner ensuring that they maintain their properties and compliance with the said "Instruction for use of FABIOS casings" J-TP-407 placed in each box.
- 7.4. The Buyer undertakes to sell the products:
  - a) collagen casings manufactured by FABIOS S.A. exclusively under the brand name of the Seller.
  - b) other products in the Seller's offer exclusively under the brand name of the manufacturer.

In the event of a breach of the obligation by the Buyer, the Seller has the right to impose a contractual penalty to the Buyer in the amount of 100 000 EUR.

## 8. COMPLAINTS

- 8.1. Any claims brought by the Buyer related to the quantity and quality complaints with regard to the collagen casings shall be considered by the Seller provided that they are reported to the Seller in writing and by fax to: 033-8771329 or via email in the PDF format sent to: [fabios@fabios.com.pl](mailto:fabios@fabios.com.pl).
- 8.2. The Buyer shall examine the product (goods) with respect to the quantity immediately after it is received.
- 8.3. In the case of any complaint as to the quantity, the Buyer shall send to the Seller the complaint by fax within 48 hours of the unloading of the goods.
- 8.4. The complaint shall be considered by the Seller within 14 days of the date of receipt thereof. The date of considering the complaint shall be the date on which the letter on the complaint consideration is sent.
- 8.5. Where the Buyer has found any quality faults of the collagen casings, the Buyer shall immediately inform the Seller about the above fact in writing and preserve the remaining part of goods intact and in the original packing until the complaint is considered by the Seller.
- 8.6. In the case of the quality complaint regarding the collagen casings at the Buyer's customer, the remaining unprocessed portion of the casings shall be secured and the Seller's representative shall be called in order to consider the said complaint. The Buyer is responsible for providing the Seller with the possibility to carry out technological tests of the casings at the Buyer's customer's facility, where any faults of the casings are found. Failure to carry out the above provisions shall give no grounds for making any claims for damages.
- 8.7. In the event of a groundless quality complaint, the factual costs of inquiry into such complaint by the Seller shall be borne by the Buyer.
- 8.8. The Seller's responsibility shall be disclaimed in whole where the Buyer fulfils his contractual obligations improperly, particularly by storing the collagen casings in inappropriate storage conditions or does not keep the identification of the casing Seller.
- 8.9. Where any quality faults are found at the Buyer or at the Buyer's customer, the Buyer is entitled to replace the goods with new items free of defects at the expense of the Seller or to obtain price discount.
- 8.10. The Seller's responsibilities for the quality of the collagen casings subjected to printing and shirring are set forth in the rules included in the technical sheets which are made available to the Buyer. The Buyer's failure to comply with the rules specified in the technical sheets shall relieve the Seller from his liability for surety and warranty for quality defects.
- 8.11. With regard to the collagen casings subjected to printing and shirring at the Buyer's facility, the Seller requires that his identification information be preserved on the casings.

- 8.12. The Parties limit the Seller's liability under the warranty for quality defects of the casings:
  - a) casings intended to come into contact with food referred to in paragraph 7.4a, up to 6 months from the date of their sale to the Buyer.
  - b) casings intend to come into contact with food shirred and RTU (ready-to-use) referred to in paragraph 7.4 point a – according to information included on packages label,
  - c) collagen casings and film intended for human consumption referred to in paragraph 7.4b - up to 12 months from the date of their manufacture.
  - d) products (goods) referred to in paragraph 7.4b according to the declaration of producer.
- 8.13. The parties limit the liability on account of the surety for requesting the replacement of the faulty goods with item(s) free of defects at the expense of the Seller or for obtaining the price discount.
- 8.14. The Seller shall not be responsible for any consequential damages and any lost economic benefits on account of the complaint lodged by the Buyer.
- 8.15. If the Buyer does not make available to the Seller the product complained of, the Seller shall consider the complaint to be groundless.

## **9. FORCE MAJEURE**

The Parties shall bear no responsibility for partial or total failure to perform the contract caused by the force majeure which occurred after signing the contract and were totally beyond the control of the Parties.

Force majeure shall be understood to mean any occurrences arising as a result of events of an extraordinary character, such as fire, natural disasters, war, embargo, blockades, strikes, prohibitions on export or import, or any weather conditions affecting the manufacture of the casing, including in particular high temperatures, high humidity (over 12g/m<sup>3</sup>) preventing the expected capacity from being obtained or lack of raw material for the manufacture irrespective of the reasons attributable to the Seller. The time for fulfilling the obligations shall be extended by the period equaling the duration of such circumstances. The party which will not be able to perform its obligations arising from this contract shall notify, within 7 days, the other Party about the commencement and the cessation of the circumstances preventing the said obligations from being duly performed. Either Party may attribute its situation to the action of force majeure provided that the other Party is notified about the foregoing circumstances.

## **10. SCOPE OF RESPONSIBILITY**

- 10.1. Any Seller's liability connected with entering into contract or carrying out sale of goods, except for the deliberate defaults, irrespective of the title of such liability, shall not include redressing the damages related to the expected benefits, lost profit, production losses, loss of market repute etc.
- 10.2. The liability resulting from the item having specific properties or its usability to purposes required by the Buyer shall only be borne by the Seller provided that he gives the Buyer the written assurance that the items (goods) has specific properties or that it can be used for such purposes.
- 10.3. Except for the product defect liability described above, the Buyer is not entitled to any compensation for any damage caused by the product (goods), including the hazardous goods or in connection with its possession or use – except for the obligatory liability resulting directly from the regulations of law in force.
- 10.4. Where any third person files any claims against the Buyer which may remain in connection with the product sold to the Buyer by the Seller or with the products that were manufactured using the products (goods) sold to the Buyer by the Seller, the Buyer shall inform the Seller about the above fact without delay and enable him to take part in the proceedings related to the claims lodged by the person, otherwise any Seller's liability related to the said claims shall be excluded.
- 10.5. The Seller reserves the right to claim compensation to such an extent as the damage sustained by the Seller exceeds the value of the reserved liquidated damages.

## **11. OTHER PROVISIONS**

- 11.1. Any disputes that may arise between the Parties where the provisions of these GTCS would apply shall be resolved by the Polish Common Court with the subject-matter and territorial jurisdiction over the Seller's principal place of business.
- 11.2. These GTCS shall apply to each contract for sale under which the Seller sells to the Buyer any products (goods) (provided that the Buyer has been informed about the foregoing in any form or manner or could easily get familiar with the contents thereof and the Parties have not excluded in writing the application of all or any of the terms and conditions), as well as – within the scope not specified herein – the appropriate provisions of the Polish Civil Code and other Polish legal acts in force.

## **12. APPLICATION OF THE GTCS PROVISIONS IN RESPECT OF INTERNATIONAL CONTRACTS**

- 12.1. The provisions of the Convention of 11 April 1980 on the contracts of international trade shall not apply to the international contracts of sale (contracts).
- 12.2. The provisions of these GTCS shall apply to the international contracts of sale subject to the following:
  - a. Unless otherwise agreed in the written contract, all fees, including bank fees, taxes, customs duties, and other such charges shall be borne by the Buyer provided that the Seller shall regulate pay his obligations in respect of the actions which he performs as per the contract on the territory of the Republic of Poland and which should be paid in the country of the Seller in accordance with the regulations of law;
  - b. All performances and lists shall be made in the language of the contract agreed in the written agreement. Where there is no such agreement, the language shall be English or Polish, however, the Polish version shall prevail where any discrepancies or disputes arise.



### **CONFIDENTIALITY CLAUSE**

*During the term of the Contract, the parties undertake not to disclose to any third party any information received from each other which is related to the contract or the carrying out thereof or any other confidential information transferred to each other save where the obligation to disclose such information results from the regulations of law and is carried out in favour of the authorised state authorities.*

### **PERSONAL DATA PROTECTION**

*By accepting the foregoing GTCS, the Buyer agrees to have his personal data processed by FABIOS SA in connection with the carrying out of the contracts of sale of goods offered by FABIOS SA and for marketing purposes related to the economic activity carried on by FABIOS SA. The Buyer is entitled to exercise all rights resulting from the Personal Data Protection Act of 29 August 1997 (Journal of Laws No. 101, Item 926 of 6 July 2002).*