

**Terms of Sale  
as of 01/07/2020**

**Article 1: Definitions**

- 1.1 The user of these general terms of sale ("GTS") is **Fabory Poland Sp. z o.o.** Where mention is made of "Fabory" and/or "us" and/or "we" in these GTS, this refers to Fabory Poland Sp. z o.o. (registered at the Sąd Rejonowy Poznań – Nowe Miasto i Wilda w Poznaniu, VIII Wydział Gospodarczy Krajowego Rejestru Sądowego under registration number KRS 0000026889, and NIP 958-12-95-437 with its registered offices at Poznań, ul. Lutycka 105, 60-478 Poznań and to companies and businesses linked and/or affiliated with the aforementioned company.
- 1.2 Where in these GTS mention is made of "Customer", this refers to the opposing party of Fabory. For the purposes of this GTS, it does not apply to the definition in the article 22<sup>1</sup> of the civil code.
- 1.3 Where in these GTS mention is made of "Products", this refers to the Products in the agreement between Fabory and the Customer
- 1.4 All tenders of Products and services by Fabory occur in general without engagement and will be valid during 30 days, unless explicitly stated otherwise.

**Article 2: General**

- 2.1 We reserve the right to unilaterally change these GTS. We will inform the Customer about the amended provisions. The changes will become effective and will be part of the contractual relationship with the Customer, unless the Customer has objected to this by giving notice in writing, by fax or email within a period of six weeks following the notification about the changes.
- 2.2 Product depictions in the catalogs and websites are for illustrative purposes only. Fabory reserves the right to revise publishing errors in its catalogs or any of its websites. Despite our efforts, occasional pricing errors may occur in the catalogs and websites. Fabory reserves the right to cancel any and all orders free of charge resulting from such pricing errors, even if Customer has received an order confirmation from Fabory.
- 2.3 Products can show small deviations from the products shown in the catalog or website published. The small deviations are admitted when they fall within the accepted scope of deviations. The Products of Fabory can, at Fabory's own judgment, be replaced by similar. They may differ from those described and / or illustrated in catalogs or on websites.

**Article 3: User Account**

- 3.1 The Customer has the opportunity to register and create a personal user account on Fabory's website, [www.fabory.com](http://www.fabory.com) ("User Account"). Each Customer shall keep only one User Account at the same time. The User Account will be activated by Fabory after review of the registration and, at our discretion, a check of creditworthiness. We are, however, not obligated to accept a registration.
- 3.2 All information provided by the Customer must be true, accurate and complete and any future changes must be communicated without undue delay to Fabory.

- 3.3 The Customer may not transfer the User Account and the rights and obligations resulting therefrom without our prior written consent. The Customer acknowledges and agrees that the User Account may not be shared with third parties.
- 3.4 When the User Account is used by third parties, subject to article 3.3 of these GTS, the use of the User Account deems the respective user to be authorized by the Customer. The Customer hereby authorizes the respective user of the User Account to make transactions on behalf of and for the account of the Customer. By delivering the Products to the respective user following its instructions, we are discharged from our obligations towards the Customer.
- 3.5 The Customer must keep its credentials confidential and appropriately restrict the access to the User Account. In particular, the Customer must protect the credentials against loss, theft and any unauthorized use. The Customer must notify us without undue delay of any loss, theft or unauthorized use of its credentials in writing. Until such notification, any use of the User Account is deemed to be authorized by the Customer and any purchases through the User Account are deemed to be made with binding effect on the Customer, i.e. on behalf and for the account of the Customer.

#### **Article 4: Conclusion of Contract**

- 4.1 A binding agreement between the parties is concluded only after Fabory has sent an order confirmation to the Customer or after Fabory executed the agreement, or after Fabory has notified the Customer about the Products being shipped.
- 4.2 In the event that our supplier fails to deliver a Product in a timely manner, Fabory is entitled to refuse to accept a Customer's offer or to revoke its acceptance respectively and cancel the contract with regard to the undelivered Products, without being liable for any compensation to the other party.

#### **Article 5: Termination**

- 5.1 When the Customer terminates a contract (whether in total or in part), the Customer is obligated to compensate Fabory for all costs reasonably incurred by Fabory for the implementation of the contract, without prejudice to any right that Fabory may have to claim compensation for costs, damages, losses (including lost profits) and interest ensuing from the termination of the respective contract.
- 5.2 Without prejudice to its other rights, Fabory has the right to terminate the contract for cause in case the Customer is in default or if the Customer is in the stage of insolvency, (requested) suspension of payment or liquidation. In the aforementioned cases, the claims of Fabory on the Customer shall be immediately receivable.

#### **Article 6: Prices**

- 6.1 Unless explicitly stated otherwise, prices listed in Fabory's online shop, catalogs or any other literature are wholesale, do not include shipping, pallets fees, handling fees, taxes, duties, import fees and/or customs brokerage charges, and are subject to correction or change

without notice. Market sensitive commodity Products will be priced according to current market conditions.

- 6.2 Customer is responsible for applicable sales taxes, duties, import fees and any custom brokerage charges.
- 6.3 Fabory at all times has the right, after the conclusion of the agreement, to alter the agreed price proportionally, where price-determining factors undergo changes – whether foreseeable or not at the time of the tender and/or confirmation of order – such as wages, prices, import taxes, currency rates, excise duties, levies and taxes, and in general all government measures, this to occur while taking into consideration the relevant current statutory regulations.

#### **Article 7: Delivery**

- 7.1 Unless explicitly agreed upon otherwise, delivery shall be made "Ex Works (EXW)" in accordance with Incoterms 2015 (as amended from time to time). The Products are ought to be delivered once the Products are at the disposal of the Customer.
- 7.2 Partial deliveries of Products included in the same order shall be permitted, provided that the Products can be used separately. Where Products and/or services are delivered in parts, Fabory has the right to invoice separately for each part.
- 7.3 The risk of damage or loss of the sold Products as well as the risk to pay for the sold Products shall pass to the Customer upon delivery of the Products.
- 7.4 In the event that a delivery to the indicated address is not possible or the Customer refuses to accept or collect the shipment, we reserve the right to charge the Customer for any and all costs caused thereby (such as, but not limited to handling, storage, packaging and shipping the Products).

#### **Article 8: Delivery time**

- 8.1 Any delivery times stated in the online shop, catalogs or any other literature are of indicative nature only and shall not constitute or be construed as a statutory deadline or fix delivery deadline, unless explicitly stated otherwise by us in writing.
- 8.2 After expiration of a term of delivery, Fabory shall not automatically be in default. The Customer shall then be obliged to send Fabory a written notice of default, providing it with an additional reasonable term for performance.
- 8.3 Fabory shall not be liable for any resulting in whole or in part from any force majeure event, including but not limited to acts of God, labour disruptions, acts of war, acts of terrorism (whether actual or threatened), governmental decrees or controls, insurrections, epidemics, quarantines, shortages, communication or power failures, fires, accidents, explosions, inability to procure or ship product or obtain permits and licenses, inability to procure supplies or raw materials, severe weather conditions, catastrophic events, or any other circumstance or cause beyond the reasonable control of Fabory in the conduct of its business.
- 8.4 If the performance of the contract by us is affected by force majeure or by an unforeseeable impediment to perform which cannot be overcome by commercially reasonable efforts and which is not attributable to us, the initial delivery deadline shall be extended by the period of time during which the impediment to perform continues, unless this cannot reasonably be expected of Fabory, in which case Fabory is entitled to terminate the agreement free of charge.

## **Article 8A: Rules of Returning Pallets**

- 8.A.1 Fabory shall deliver the Products in collective packaging on euro pallets, i.e. wooden pallets with dimensions of 80 x 120 cm, meeting the standards specified for euro pallets: Polish standard PN-N-78216 and international standard according to UIC 435 Codex (hereinafter: Pallet or Pallets). The Customer shall be obliged to return Fabory Pallets under the rules specified in this Article 8A of the GTCS.
- 8.A.2 Pallets shall be returned in four quarters (hereinafter: Quarter), covering:
- 1) Quarter 1 – January, February, March;
  - 2) Quarter 2 – April, May, June;
  - 3) Quarter 3 – July, August, September;
  - 4) Quarter 4 – October, November, December.
- 8.A.3 The Customer shall return a number of Pallets equal to the number of Pallets delivered by Fabory in respect of completed deliveries of Products within the relevant Quarter. This means that the Customer shall ensure that at the end of the relevant Quarter the number of Pallets returned by the Customer to Fabory is equal to the number of Pallets delivered to the Customer during the Quarter. The cost of handling the return of the Pallets by the carrier has been calculated within the shipping costs.
- 8.A.4 The Customer shall be obliged to return full-value Pallets, i.e. non-defective Pallets that comply with the standards indicated in Art. 8A section 1 of the GTCS. The Customer shall bear the risk of returning the full-value Pallets until completion of their delivery to Fabory.
- 8.A.5 The Customer shall be obliged to return the Pallets by handing them over to the carrier performing the delivery of Products at the time of the current or subsequent delivery, however, no later than by the end of the Quarter. The carrier shall be entitled to verify the quality of the returned Pallets and shall refuse to accept the Pallets if they do not meet the parameters referred to in Article 8A Clause 4 of GTCS. Verification of quality of Pallets by the carrier shall not exclude the Customer's liability referred to in Article 8A clause 4 of GTCS.
- 8.A.6 As soon as the Pallets have been collected, the carrier shall give the Customer a receipt indicating the number of Pallets handed over to the carrier.
- 8.A.7 At the end of each Quarter, Fabory shall compare the number of Pallets delivered to the Customer and the number of Pallets returned by the Customer. The comparison shall be made on the basis of a pallet balance drawn up by the carrier.
- 8.A.8 If, as a result of the comparison referred to in Article 8A section 7 of the GTCS, it turns out that the Customer has not returned to Fabory the same number of Pallets as were delivered to the Customer, Fabory will charge the Customer with a net amount of PLN 22.00 (twenty-two) for each unreturned Pallet. Fabory shall issue and deliver to the Customer a VAT invoice, payable in accordance with the due date for payment for the goods, by transfer to the Fabory bank account specified in the VAT invoice. Fabory shall add VAT to the price of the unreturned Pallet at the rate applicable at the time the VAT invoice is issued.

## **Article 9: Payments**

- 9.1. The Customer shall be obliged to pay the sales price for the Products indicated in the VAT invoice within 30 (thirty) days from the date of Fabory's VAT invoice, unless a different payment term results from a separate agreement between Fabory and the Customer. The Customer shall be obliged to pay for the Products by bank transfer to Fabory's bank account indicated in the VAT invoice. Fabory shall not incur any additional costs for the bank transfer. The Customer authorises Fabory to issue VAT invoices without the recipient's signature.

- 9.2. In the event of an error in the content of the VAT invoice, Fabory will issue a correction invoice, which, however, will not affect the payment deadline indicated in section 9.1.
- 9.3. If the Customer does not specify the title of a payment, Fabory shall be entitled to credit the payment made against the Customer's outstanding debt to Fabory, and if there are several outstanding debts, against the most recent outstanding debt. In the event of late payment by the Customer, Fabory shall be entitled, notwithstanding any instruction to the contrary from the Customer, to credit the payment concerned first against the related interest for late payment.
- 9.4. If the Customer is in delay with payment, Fabory shall be entitled to demand payment of interest for delay in commercial transactions and other benefits related to the delay in payment, resulting from the Act of 8 March 2013 on counteracting excessive delays in commercial transactions.
- 9.5. Set-off by the Customer of claims owed to Fabory against counterclaims of Fabory against the Customer shall only be permitted upon prior written consent of Fabory.

#### **Article 10: Complaints**

- 10.1 The Customer shall inspect the Products with due care promptly upon delivery. Delivered Products shall be deemed to be approved by the Customer unless any defect is notified to us:  
1) in case of a visible defect within a period of four working days after delivery; or 2) otherwise within three working days from the day when the defect has been discovered, or reasonably should have been discovered. If the Customer does not notify Fabory in time of the defect, the Customer can no longer claim in respect of any defect. Minor, commercially acceptable or technically unavoidable variations in quality, quantity, size, colour, finish, measurements, treatment and such are accepted by the Customer and do not constitute a defect.
- 10.2 If the Customer notifies Fabory according to article 10.1 in time of the defect, the Customer is still obliged to purchase and pay for the Products.

#### **Article 11: Warranty**

- 11.1 Fabory warrants that the delivered Products 1) comply with the agreement and 2) are in conformity with all the applicable laws and regulations of Poland at the time of delivery.
- 11.2 The Customer can only claim under this warranty within 12 months after delivery of the Products. If a manufacturer warranty of a third party is applicable, the manufacturer warranty prevails.
- 11.3 If the Products do not comply with the warranty in article 11.2, the Customer will inform Fabory in writing about the defect within the in article 10.1 mentioned period of time. In this warranty claim, the Customer will inform Fabory about the following: 1) the Products the claim is about, 2) the order date and the delivery date of the Products and 3) explanation of the defect the Customer discovered.
- 11.4 If the Customer does not notify Fabory in time of the defect and if the Customer does not submit the warranty claim in time, the Customer can no longer claim under this warranty.
- 11.5 If the Customer submits the warranty claim in time, Fabory will assess such warranty claim at its own discretion. The Customer will, at the first request of Fabory, make the Products available to Fabory for its inspection. The Customer will send the Products to Fabory after Fabory has given its approval in writing. The Customer shall use the address mentioned in

- article 1.1 of these GTS and the original packaging of the Products. The Customer shall bare the risk and costs for shipping the Products.
- 11.6 If the warranty claim is justified according to Fabory's opinion, Fabory will at its own discretion either repair or replace the Products within a reasonable period of time.
- 11.7 A warranty claim will in any case be unsuccessful if 1) a defect is caused by abusive or negligent use of the Product, 2) the Product has been changed or treated and 3) Fabory used, following instructions of the Customer, certain raw material, package material or suchlike, and the raw material caused the defect, or contributed to the defect.
- 11.8 In compliance with what is given in this article, all claims and defenses of the Customer, following from, or related to the defect Products, expire 12 months after the Products have been delivered.

#### **Article 12: Retention of Title**

- 12.1 We shall retain legal title to any Products supplied by us until the invoice amount (including applicable taxes and shipping costs) for such Products have been fully settled. Until the title passes to the Customer, the Customer undertakes (a) to handle the Products with care, (b) to store them separately and clearly recognizable as Fabory's property, and (c) not to pledge such Products.
- 12.2 The Customer must inform Fabory immediately of any claims or attempts by third parties to gain possession of Products for which Fabory has retained ownership.
- 12.3 The Customer hereby already grants Fabory the irrevocable right, to have access to places where Fabory's property is located in order to exercise its rights of ownership.
- 12.4 The Customer shall take reasonable care not to mix Fabory's Products with other Products, in order to, inter alia, safeguard quality control criteria and traceability of Products in the production chain. If there is accession, intermixing or conversion of the Products delivered by Fabory, while the claim of Fabory has not yet been fulfilled, Fabory shall be presumed to be – with regard to a value of the mixed Products equal to the invoice amount - the owner of these Products.

#### **Article 13: Liability**

- 13.1 If Fabory is liable for damages the liability of Fabory shall be limited by the invoice amount.
- 13.2 Damages are limited to direct damages, existing of: 1) the reasonable costs for identifying the cause and scope of the damages, only if identifying the damages have the meaning as derives from these GTS, 2) the possible reasonable costs involved to have the defective performance of Fabory repaired, 3) reasonable costs incurred to prevent or limit the damages, but only if the Customer is able to show it suffered damages and the costs incurred to prevent or limit the damages have attributed to limiting the damages.
- 13.3 We shall not be liable (on whatever legal grounds) for damages which cannot reasonably be foreseen, assuming a normal use of the Products. This foregoing limitation of liability shall not apply in cases of intent or gross negligence by us.
- 13.4 Fabory is not liable for indirect damages – such as, but not limited to – consequential damages following from any cause, lost profit, missed cuts, damages of third parties and damage caused by business interruption.
- 13.5 The restriction of the limitation of liability shall not apply: (a) with respect to claims for damages from injury to life, body or health due to wilful misconduct or gross negligence/deliberate recklessness by us or by our legal representative or persons we engage in the performance of our obligations.

- 13.6 The liability of Fabory is in any case limited to the amount the insurance company of Fabory will grant.

#### **Article 14: Intellectual Property**

- 14.1 The Customer shall have no right, title, or interest in the trade names, trademarks, trade dress, copyrights, patents, domain names, product names, catalogs or any other intellectual property rights of Fabory, or any trademarks or service marks owned by suppliers to Fabory.
- 14.2 All materials contained on our websites are subject to the ownership rights of Fabory and its suppliers and licensors. The Customer shall have no right to copy or use any of the intellectual property of Fabory, its suppliers or licensors without Fabory's permission.
- 14.3 New intellectual property rights following from the agreement, will belong to Fabory.

#### **Article 15: Confidentiality**

- 15.1 The parties shall keep all confidential information, received following from the agreement or from other sources confidential. Information is confidential when the other party mentioned this or when it follows from the nature of the information.
- 15.2 The obligation to keep confidential information confidential, is not applicable to information and data: 1) that is generally available to the public without one party breaching this article 2) that is released as a result of statutory obligation or a judicial verdict which has taken effect, and 3) that the disclosing party agrees in writing is free of confidentiality restrictions.
- 15.3 Unless agreed otherwise in writing, it is forbidden for the Customer to refer to Products and to the agreement in publications or advertisements on websites or in brochures.

#### **Article 16: Anti-Corruption**

- 16.1 Customer is aware that Fabory's business practices prohibit bribery and corrupt behavior in any form. Customer agrees that it is an independent contractor and it is and shall remain in compliance with all applicable laws that relate to commercial or public sector bribes, money laundering, terrorism (including but not limited to local anti-corruption laws, Canada's Corruption of Foreign Public Officials Act, the U.S. Foreign Corrupt Practices Act, the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the U.K. Bribery Act).
- 16.2 Customer shall not offer or provide anything of value (gifts, loans, travel, entertainment, or any other similar benefit) either directly or indirectly to any individual for the purpose of influencing any act or decision. This means that Customer cannot pay a gratuity, bribe or inducement to any government official, even if it appears customary or consistent with prevailing business practices. Prohibited payments include, for example, any payment to a purchasing agent to influence its decision to purchase products from us; any payment to an individual to expedite the handling of products being imported or to minimize the amount of duty to be paid; any payment to an individual to reduce taxes or expedite the resolution of tax matters; any payment of travel expenses; contribute to an election campaign of a candidate for government office, or otherwise give a gift (other than of nominal value) to an individual that may regulate our business or who is a current or potential customer or supplier.

### **Article 17: Export Controls and Related Regulations**

- 17.1 Customer shall comply with all applicable laws, regulations, treaties, and agreements relating to the export, re-export, and import of any Product. Product(s) may not be exported or re-exported, transferred or re-transferred into (i) any restricted designated country or region (including countries or regions that the United States of America., United Nations, European Union or W.W. Grainger, Inc., embargoes or sanctions (a “designated location”)) or (ii) to any person on a “Denial/Debarment List”. Customer represents and warrants that it is not located in, under control of, or a national or resident of any such designated location or on any such Denial/Debarment List. Customer shall cooperate fully with Fabory in any official or unofficial audit or inspection related to applicable export or import control laws or regulations, and shall indemnify and hold Fabory harmless from, or in connection with, any violation of this Section by Customer or its employees, consultants, agents, or customers.

### **Article 18: Applicable law and choice of jurisdiction**

- 18.1 Any contracts entered into between us and the Customer and all legal relationships between Fabory and the Customer shall be governed by the laws of Poland and under exclusion of the UN Convention on the International Sale of Goods (CISG).
- 18.2 The proper Poznań court shall have exclusive jurisdiction with respect to any disputes arising out of or in connection with the relevant contract or any legal relationship between Fabory and the Customer.

### **Article 19: General**

- 19.1 Customer shall not assign this agreement or any order, or any interest therein, without the prior written consent of Fabory. Any actual or attempted assignment without Fabory's prior written consent shall entitle Fabory to cancel such order. Fabory has the right to transfer its rights and obligations under the agreement to a third party by means of contract transfer and the Customer agrees in advance and declares to cooperate in such a transfer.
- 19.2 The text of these GTS is available in the English and Polish language. In case of any differences in the language used, the Polish version of the GTS shall always prevail.