

GENERAL TERMS AND CONDITIONS OF DELIVERY AND PAYMENT OF DAWELL CZ s.r.o. 2020R1

Article 1: Definitions

1. For purposes of these General Terms and Conditions (hereinafter as GTC), the following terms will be in the following meanings, unless stated otherwise.

Producer: DAWELL CZ s.r.o.

Other Party / Client: any legal entity or natural person that has concluded or wishes to conclude an agreement with the Producer, as well as any or all of its/his/her legal representatives, attorneys in fact or heirs

Goods : any and all equipment, tools and materials offered for sale by the Producer

Article 2: General

1. These GTC will be apply to any offer or quotation and to any agreement between the Producer and the Other Party to which the Producer has declared these GTC applicable. Any varying stipulations, arrangements or schemes will apply only in the event and to the extend that the Producer has confirmed such in writing by letter or email.
2. These GTC will also apply to any and all agreements with the Producer in respect of whose execution third parties must be engaged.
3. By entering into an agreement with the Producer the Other Party waives any term and conditions applied by it/him/her, regardless of their name, so that the GTC applied by the Producer will apply to any and all agreements.
4. In the event that one or more of the provisions laid down in these GTC are null and void, or are avoided, the other provisions of these GTC will continue to apply in full force and effect in that event, the Producer and the Other Party shall consult one another in order to agree on new provisions to replace the null and void or avoided provisions, with the object and purpose of the original provisions being observed, if and to the extend possible.

Article 3: Offers and Quotations

1. All offers and quotations or other agreements issued by Producer will be entirely without obligation, unless stated otherwise. All documents attached to the offer (as drawings, sketches, samples and technical data about dimensions, weight and power) content or as a part of the offer represent the estimation of data and there are not binding, unless stated otherwise.
2. Offers or quotations will not automatically apply to future orders.
3. We reserve ownership and copyright to all price estimates, drawings and other documents. These may not be disclosed to or used by any third party.

Article 4: Creation of Agreement and Order acceptance

1. Any purchase agreements or other agreements between the Producer and the Other Party will not be binding until the Producer has confirmed such in writing by letter or email or unless the Producer in fact excluded the order in so far as no confirmation has been issued.
2. In the event that the correctness of a written confirmation is not denied within eight working days of its dispatch, both parties will be bound by it.
3. Any changes of agreement and/or any other conclusions will be effective only if the Producer confirmed the variations by Letter or by e-mail. In case that the variation has effect of higher costs, that the Producer has a right to charge the cost to contractual party.

Article 5: Execution of Agreement

1. The Producer shall execute the agreement to the best of its knowledge and ability and in conformity with the requirement of proper workmanship, on the ground of the state of the art.
2. In the event and to the extent that a proper execution of the agreement so requires the Producer will have the right to have specific work carried out by third parties.
3. The Other Party shall ensure that all data indicated by the Producer to be necessary, or which the Other Party should reasonably understand that such are necessary to execute the agreement are provided to the Producer on time. In the event that the data needed to be execute the agreement have not been provided to the Producer on time, the Producer will have the right to suspend the execution of the agreement and/or to charge the client the additional costs ensuing from the delay as per the customary rates.
4. The Producer will not be liable for any damage of any nature whatsoever (that has arisen) because the Producer has used any incorrect and/or incomplete data provided by the Other Party unless the Producer should have been aware of such incorrectness or incompleteness.
5. Any amendments to the agreement and/or any further arrangements will be effective only in the event and to extent that such have been agreed upon or confirmed by the Producer in writing by letter or email. In the event that any departures and/or amendments lead to an increase in costs, the Producer be entitled to charge such costs on to the Other Party.

Article 6: Prices

1. The prices stated in the offer will be exclusive of VAT or any other Government charges imposed on sales and delivery and will be on delivery ex warehouse (according to actual Incoterms conditions) of Producer unless agreed otherwise in writing.
2. If circumstances require that, in the situation where the risk of changes is borne by the ordering party (Other party), any changes in the execution of the order, the ordering party (Other party) shall bear the additional costs incurred.
3. If the payment due date is exceeded, the Producer shall have the right to charge interest at the rate of 10 percentage points higher than the applicable standard rate announced by the Czech National Bank, plus recovery costs of at least 12% pa.. This applies irrespective of any other consequences of the delay.
4. The Other party shall not be entitled to unilaterally execute, refer or sell any receivable of the Producer, from any title without the prior written consent of the Producer. Such claim would be ineffective against the Producer.
5. The VAT and, in general, all levies imposed or allowed by the Government in respect of the conclusion, execution and financial settlement of the agreement will be borne by Other Party. In the event of any amendments to taxes and/or levies, the agreed upon price will be adjusted accordingly.
6. The Other Party will be separately charged for any services, assembly work based on the actual rates for material and manhour costs.

Article 7: Delivery Period

1. The Producer will provide a rough indication of the delivery period. The delivery period will begin after written acceptance by Producer of the order and as soon as the Producer received all the data needed to execute the agreement from the Other Party.
2. If the parties agree that the agreement is amended or supplement, this may affect the time of completion of the execution. The Producer shall so notify the client as soon as possible.
3. If the agreed delivery time for the delivery of goods and services, or the delivery time extended in accordance with these Terms was exceeded by more than four weeks, the Ordering Party shall have the right to terminate this Agreement by giving notice by writing.
4. The Producer have a right to provide partial deliveries, about this event will inform the Other Party.

Article 8: Delivery and Passage of Risk

1. The Goods will be delivered ex warehouse, unless the parties have agreed otherwise in writing.
2. As soon as the Goods pertaining to the order are ready for dispatch in the Producer's warehouses and the buyer has been so notified, the Goods will be considered delivered where the delivery period is concerned.
3. The costs transport and costs of risk in the Goods will be borne by the Other Party as from the time of delivery.

Article 9: Storage

1. In the event that the Other Party is unable to take delivery of the Goods at the agreed time for any reasons whatsoever, and the Goods are ready for dispatch, the Producer shall – if its storage facilities allow such – keep the Goods in custody and look after them for a maximum of three months. In that event, the Other Party must reimburse the costs of storage and custody on the basis of 0,5% of invoiced amount per month as from the delivery date provided for in the agreement until the date of eventual delivery.

Article 10: Transport

1. Transport from the Producer's warehouse will be handled on behalf of the Other Party, unless agreed otherwise in writing.
2. The costs of transport and of any goods-in transit insurance will be borne by the Other Party, unless the parties have agreed otherwise in writing.

Article 11: Goods on Approval, Demo, Exhibition

1. Goods on approval, Demo or Exhibition will be delivered based on approved and signed "Loan report" (contractual document) prepared by Producer and signed by Other Party.
2. In the event that goods on approval have not been returned within fourteen days from due date, they will be considered to have been bought by the Other Party.

Article 12: Cancellation

1. It will be possible for the Other Party to sever or cancel the agreement only if the Producer consents.
2. If the Producer consents to severing or cancelling the agreement, the Other Party must reimburse the costs incurred by the Producer in this respect and compensate the adverse financial consequences of the Producer on account of the non-execution of the agreement, together amounting to at least 10% of the agreed-upon price.

Article 13: Guarantee

1. The Producer guarantees the proper performance of the Goods delivered by it for twelve months from the time of delivery, provided that the Other Party uses and treats the Goods with the necessary expertise and due care.
2. The costs of and risk in any changes or amendments to the Goods delivered that have been introduced by the Other Party will be borne by the Other Party. Furthermore, any such changes or amendments will nullify the guarantee provision given above.
3. Upon receipt of the Goods, the Other Party shall convince itself/himself/herself of the condition of the Goods.
4. If a sample or model has been shown or provided to the Other Party, it will be deemed to have been (shown or) provided on an indicative basis only, unless it is expressly agreed that the Goods to be delivered must correspond to such sample or model.
5. The Guarantee shall not apply to the natural wear and tear of the Goods and other parts that are subject to operational wear and tear and are exchanged within the framework of the operation, maintenance and servicing according to the User's instructions. The Guarantee shall not apply to any defects of the Work caused by any tampering by the Client or by a third person, and to the defects of the Work, for which it is not possible to prove that they have arisen through the use of defective materials, defective design or incomplete processing, especially the defects of the Work arising through natural wear and tear, improper maintenance if use of Goods does not comply with operational manual and regulations.
6. The ordering party has no right to suspend payments due to warranty claims or other counterclaims not recognized and confirmed by User.
7. The Guarantee shall not apply to case when Other party tampering the Goods without User confirmation or in case when were used nongenuine parts.
8. All repairs out of the Guarantee process will be invoiced by User to Other party based on Standard Price list of User.

Article 14: Complaints

1. Upon receipt of the Goods, the Other Party shall convince itself/himself/herself of the condition of the Goods.
2. Any complaints, for purposes hereof including any and all complaints with respect to the Goods delivered and their performance, will be handled only if they are lodged with the Producer in writing within eight working days of delivery, clearly specifying the nature of the complaint. In case of a complaint, the Goods may not be/have been processed.
3. Without prior consultation, returned Goods will not be accepted.

Article 15: Liability

1. The Producer will not be liable for any direct or indirect damage arising for the Other Party or for third parties as a consequence of the execution by the Producer of the agreement concluded by it with the Other Party, unless the damage ensues from any intentional act of omission or gross negligence on the part of the Producer.
2. The liability of the Producer and its staff will in all instances be limited to the amount to which the Producer is entitled under the liability insurance taken out by it, plus the deductible to be borne by the Producer under such insurance. Upon request, an extract from the liability insurance policy will be provided.
3. Should no payment be made under the aforementioned insurance for any reason whatsoever, any liability will be limited to the amount for which the Producer invoiced the Other Party in respect of its delivery.
4. The Producer will not be liable for any direct or indirect damage if Client or Other party did not strictly observed all safety regulations, technical rules, installation regulations, operating instructions and user manuals, and in particular all regulations valid in the field of electrical engineering, and only allow trained and qualified personnel to operate the equipment.

5. At the end of the service life of the goods the Producer is liable to collect the goods free of charge at the Producer's workshop for waste disposal. The Parties agree on the following procedure for handling with packaging material: The Other Party is liable to return the packaging material relating to the Goods which was delivered by Producer to Other Party. The return of the packaging material will be confirmed by the Producer in the handover protocol. If the Other Party breach this obligation, it is considered that together with the Goods the ownership rights to the packaging have passed to the Other Party and at the same time the Second Party takes over responsibility according to the provisions of § 13 paragraph 1 letter b of Act 477/2001 Coll. and all obligations arising from this Act for the handling of packaging.

Article 16: Force Majeure

1. In the event that the Producer is unable to deliver any Goods or fulfill its obligations in the customary manner due to force majeure, it will have the right, without any judicial intervention being required, either to suspend the execution of the agreement for the duration of the force majeure, though for a maximum of three months, or to dissolve the agreement in whole or in part, without being liable for any damages. During the suspension, the Producer will be entitled and, after the expiry of the said three months, obliged to choose between execution or the whole or partial dissolution of the agreement.
2. The parties will qualify as force majeure factors, in particular: fire, theft, acts of war, riots, strikes, sit-down strikes, interruptions of operations, war, heavy weather, a delay in or discontinuation of the supply of materials or aids and/or services, intervention by public or semi-public and/or supervisory authorities, statutory schemes obstructing the use of the Goods delivered, and, in general, any cause beyond the Producer's control as a consequence of which the execution of the agreement is impeded for the Use.

Article 17: Payment

1. Payment must be effected within 30 days of the date of the invoice, in manner to be indicated by the Producer and in the currency in which the invoice is denominated. Any objection to the amount of an invoice will not suspend the payment obligation.
2. In the event that the Other Party fails to pay within the said 30 days, the Other Party will be in default by operation of law. In that event, the Other Party will owe interest at a rate of 1% a month, unless the interest at the State legal rate is higher, in which event the State legal interest will apply. Interest will be calculated from the moment at which the Other Party is in default until the moment of payment of the full amount.
3. In the event of the Other Party's winding up, bankruptcy, attachment or suspension of payments, the Producer's claims against the Other Party will be immediately due and payable.
4. Should the Other Party be in default of fulfilling one or more of its/his/her obligations, all reasonable costs to obtain satisfaction extra-judicially will be borne by the Other Party.

Article 18: Provision of Security, Right of Pledge and Retention of Title

1. If there are reasons to do so, in the Producer's opinion, the Producer will at any time be entitled to demand that the Other Party provide proper security for payment.
2. Any Goods delivered will remain the property of the Producer until the purchase price has been paid in full, regardless of whether the Goods have in the meantime been processed or become part of a larger whole.
3. Until the Other Party has paid the purchase price in full, the Other Party will not be entitled to dispose of the Goods, for instance by giving the Goods to third parties as security, providing the use thereof or transferring title thereto.
4. In the event that the Other Party continues to fail to pay for the Goods delivered in full after the term of payment has expired, the Producer will be entitled, also without any notice of default being required, to repossess the Goods, regardless of where they are located and whether they have been processed or not. The Other party shall allow access to the Goods and possible return to Producer. This invocation of the retention of title will lead to a dissolution of the agreement without any judicial intervention being necessary, and without prejudice to the Producer's right to claim damages, lost profits and interest.
5. In the event of a petition for bankruptcy or a request to grant a suspension of payments, the Other Party undertakes promptly to so notify the Producer, so that it can exercise its property rights. The costs thereof will be borne by the Other Party.

Article 19: Suspension and Dissolution

1. The Producer will be entitled, without any notice of default or judicial intervention being required, either to suspend the execution of the agreement until further notice or to dissolve the agreement in whole or in part, without being obliged to pay any damages or issue any guarantee, and without prejudice to any further rights accruing to it, in the event of:
 - a. the temporary or permanent impossibility for the Other Party to fulfil any obligation from the agreement concluded with the Producer or from any associated obligation;
 - b. serious doubts about the Other Party's capability to satisfy its/his/her contractual obligations in respect of the Producer;
 - c. the failure by the Other Party to provide security at the Producer's request, and/or
 - d. the bankruptcy, suspension of payments, closure, winding up or whole or partial transfer of the Other Party's business.
2. In the event that the Producer resolves to suspend the execution of the agreement in any instalments already paid and any costs saved by the Producer on account of the suspension, will be immediately due and payable, and the Other Party will be obliged to reimburse any and all costs, including those of storage, incurred by the Producer.

Article 20: Personal data protection

1. The Other party agree with handling of personal data (name, address, e-mail ...) entirely with fully respect the European legal framework for personal data protection.

Article 21: Disputes and Applicable Law

1. Valid Applicable Law for GTC and all other agreements, jurisdiction is Law of the Czech Republic.
2. All disputes and disagreements concerning GTC or in connection with it or related agreements shall be resolved by the Parties through negotiations as far as possible. If no agreement be achieved, all disputes are to be settled without application to State courts, by Arbitration Court of Economical and Agrarian Chamber of Czech Republic in Prague, according to regulation of applicable Law of Czech Republic.
3. The official language of Arbitration Court will be Czech language.
4. Arbitration judgement will be binding for both parties.