

# General Terms and Conditions of Supply (GTCS) of LOMA Polska Sp. z o.o. Sp.k. -

## **I. General information**

Supplies are governed exclusively by contractual provisions negotiated and agreed individually and these GTCS of LOMA Polska Sp. z o.o. Sp.k. ("the Supplier"). Any other terms and conditions of contract performance are excluded. These GTCS apply to supplies made as part of regular business relations or under framework contracts and under all future orders or contracts until the Supplier introduces new GTCS. The Customer will agree to these GTCS upon receipt of the goods from the Supplier at the latest. All arrangements must be made in writing or else they are null and void. They may also be made by email. If it turns out after concluding the contract or delivering the goods that the Customer is at risk of insolvency, the Supplier will be entitled to withdraw from the contract or demand immediate payment for the delivered goods. Claims may be assigned only with the Supplier's consent.

## **II. Advice**

The Supplier provides any written or oral advice to the best of its knowledge and according to its experience. Any data and information provided by the Supplier and referring to the usability and application of the goods are not binding and do not exempt the Customer from conducting its own inspections and tests. When using the delivered goods, the Customer must observe statutory provisions and official standards.

## **III. Proposal, bulk orders performed on demand, proposal-related documents**

Proposals placed by the Supplier are not binding unless the order confirmation provides otherwise. Bulk orders are concluded for maximum 12 months; the Customer must specify delivery deadlines and the ordered quantity at the time of placing the order.

The Supplier reserves the title and copyrights to all documents provided by it. They may be disclosed to or shared with third parties only with the Supplier's written consent. If no order is placed, all documents must be returned to the Supplier immediately at the Supplier's request. The Customer's documents may be made available to third parties whom the Supplier wants to contract for the supply of goods and services.

Orders should be placed in writing or by email; orders placed by phone will be performed at the Customer's risk.

## **IV. Price, price changes**

1. As a rule, prices are "ex works" according to Incoterms, increased by VAT due and applicable on the delivery date and the costs of customs duty, freight, packaging and insurance. VAT is disclosed as a separate invoice item. Prices set for a given order or contract apply to that order or contract only; they do not apply either retrospectively or to any future orders or contracts. Each repeated purchase order is deemed a new order.

2. If the costs of supply increase, in particular, due to the conclusion of collective labour agreements, increase in market purchase prices or prices of materials, the Supplier reserves the right to increase the prices accordingly. The increase in costs is to be documented at the Customer's request.

## **V. Scope of supply, methods of measurement, industrial property rights, data protection**

1. The binding content and scope of the order is included in the Supplier's order confirmation to be sent by email.

Partial deliveries are permitted unless they have negative consequences for the use of the goods. Partial deliveries are paid based on invoices issued separately for this purpose. If the Customer is late with payment for partial deliveries, the Supplier reserves the right to refuse delivery of the remaining part of the order. In view of production technology, the Supplier reserves the right to deliver a quantity lower or higher than ordered, within the limits customary in the industry, by no more than 10% of the agreed delivery volume. The Supplier reserves the right to make technical changes in goods if such changes are necessary for manufacturing or maintenance purposes or required by law or for other reasons. If after being informed about the changes the Customer considers them inadmissible, it is obliged to immediately notify this to the Supplier. Should any inspection procedures be carried out involving the application of certain temperatures, time periods or other measurement or control values, the parties will agree appropriate measurement methods before starting the delivery. If nothing is agreed in this regard, the Supplier's measurement methods will apply.

Orders or contracts performed based on drawings, sketches or other data delivered by the Customer are at the risk of the Customer. If as a result of performing such an order the Supplier infringes on intellectual property rights of third parties, the Customer will hold the Supplier harmless against claims to which those third parties are entitled. The Customer is liable for any further damage or loss. The Supplier processes personal data in compliance with Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation).

## **VI. Delivery date, force majeure, delay**

1. Delivery deadlines will be specified in the order confirmation or contract. The delivery deadline will be kept on condition that all technical issues are agreed in advance and on time, the Supplier receives from the Customer all documents, required permissions and approvals in due time, the relevant plans or schedules are agreed and approved on time, the agreed terms of payment and other obligations are observed, and any items made available by the Customer are delivered on time. Otherwise, the delivery deadline will be accordingly extended. Delivery deadlines given by the Supplier are approximate deadlines. To ensure contract performance, the delivery deadline will be specified with due care subject to prior timely delivery on the part of the Customer. The Supplier will meet its supply obligations on condition that the Customer first fulfils its cooperation obligation correctly and on time.

2. The delivery deadline is deemed met if the shipment is handed over for dispatch or if the information that the shipment is ready to be collected is sent within the order performance deadline. If the delivery is delayed for reasons attributable to the Customer, the delivery deadline is deemed kept if the information that the goods are ready to be collected has been sent within the order performance deadline. In the case of bulk orders, the Customer is obliged to request delivery performance in such a way that the last shipment is dispatched no later than one year after the date on which the Supplier received the order.

3. War, civil war, export or trade restrictions due to change in political relations, as well as strikes, lockouts, disruptions or restrictions of conducting business by the establishment, state of epidemic threat, state of epidemic or similar events which hinder contract or order performance or due to which the

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Supplier cannot be expected to perform the contract or order are considered force majeure events which exempt the Supplier from the obligation to perform the delivery on time. In such circumstances, the Supplier may, at its own discretion, either extend the delivery deadline by the period of duration of a force majeure event or withdraw from the contract in whole or in part. The Customer is not entitled to compensation for any damage or loss resulting therefrom.

4. The liability for damage or loss suffered due to a delay resulting from wilful misconduct or gross negligence of the Supplier, its representative or subcontractor is regulated by statutory law. However, redress of damage covers only the losses incurred by the party who has suffered the damage. In the remaining scope, the Supplier's liability for loss or damage due to delay in the delivery of goods is limited as follows: up to 10% of the price if compensation is demanded in addition to the performance; up to 10% of the value of the delivery or services if compensation is demanded in lieu of the performance. Any further claims of the Customer, even those which arose after the deadline set for the Supplier for delivery performance, are hereby excluded.

5. If the Customer is in delay with payment, the Supplier is entitled to suspend further deliveries until the Customer pays all due invoices.

### **VII. Cancellation costs**

If the Customer withdraws from the order or contract:

- a) within a relatively short period after placing the order, where the Supplier has not yet purchased any materials necessary for production and has not incurred any costs of order performance, the Supplier will not charge the Customer any order cancellation costs;
- b) where the Supplier has purchased the materials necessary for production and cannot return them and/or has incurred irreversible costs of order performance, be in only partial performance, the Customer will reimburse the Supplier for the total costs incurred;
- c) where the Supplier has already performed the contract or order, the Customer is obliged to accept the ordered goods from the Supplier and pay the Supplier the full fee agreed for a given order or contract.

In addition, in the cases described in items a) and b) above, the Supplier reserves the right to demand the payment of 10% of the sales price to cover the costs of order or contract performance and lost profits, and the Customer hereby agrees to it. The Supplier reserves the right to demand compensation in excess of the stipulated amount. The Customer has the right to prove that the suffered damage was of a lower value..

### **VIII. Packaging**

Unless agreed otherwise, the Supplier determines the type of packaging and manner of packing. The Supplier selects the packaging at its discretion and with due care. Disposable packaging becomes the property of the Customer.

### **IX. Transfer of risk and transport**

1. As a rule, deliveries are made ex works, according to Incoterms. The benefits and burdens related to the Goods and the risk of accidental loss or damage of the Goods (risk connected with the supply of goods) pass to the Customer at the time at which the shipment is entrusted to the person responsible for its transport or at the time at which

the shipment leaves the Supplier's warehouse for dispatch. The above risk passes to the Customer also when the parties agree a free-off-charge delivery. If the shipment deadline is extended at the request of the Customer, the risk passes to the Customer at the time at which the Customer is advised that the shipment is ready for dispatch. Unless agreed otherwise in writing, the Supplier determines the means of transport and the delivery route. If the goods are damaged or lost during transport, the Customer will immediately take stock of the goods and notify the Supplier thereof.

2. If the dispatch or delivery of the shipment is delayed at the Customer's request, the Supplier reserves the right to bill the Customer for the costs of storing the goods at 1% of the invoice amount, no more than 5% of the net amount, for every commenced month of storage; the Supplier reserves the right to demand compensation in excess of the stipulated amount. The Customer has the right to prove that the suffered damage was of a lower value.

3. Return shipments may be sent only through freight forwarders appointed by the Supplier.

### **X. Breach of obligations**

1. If the Customer is in breach of its obligations, in particular, if the Customer is late with payment or fails to collect the goods and if the time limit set for the Customer to perform its obligations expires to no effect, the Supplier is entitled to withdraw from the contract or order and demand return of the performance or compensation in lieu of the performance. The above does not affect the Supplier's statutory right to withdraw from the contract without setting an additional time limit and the right to make further claims.

2. If the Supplier is late with the performance of its obligations under the contract or order, the Customer may exercise its statutory right to withdraw from the contract once an additional time limit of at least 21 days set for the Supplier to perform those obligations expires to no effect. If the Supplier is in breach of its obligations, the Customer, after being requested by the Supplier, must submit, within a relevant deadline, a statement whether it withdraws from the contract or demands performance of the supply.

3. The Supplier loses the right to compensation if it withdraws from a reciprocal contract. This does not apply to damage caused by wilful misconduct of the Supplier.

### **XI. Payment terms and delay in payment**

1. The Supplier reserves the right to accept bills of exchange or cheques. Bills of exchange and cheques are accepted only as payment and the amounts for which they have been issued will be regarded as paid only after they are cleared. All payments are exclusive of any additional fees. Also when paying by cheque or bill of exchange, the Customer is obliged – even if nothing is expressly agreed between the parties in this respect – to incur all discount fees, payment handling costs or other banking fees. Payments are set off against amounts due in the following order: costs followed by interest followed by the oldest outstanding principal amount.

2. If the Customer is late with the payment of amounts due, the Supplier may calculate interest in the amount of maximum late payment interest as referred to in Article 481(2<sup>1</sup>) of the Civil Code. The Supplier is entitled to prove by presenting relevant documents that the damage caused by the delay is higher. The Customer has the right of offset against the Supplier's receivables or the right of retention only if the Customer has a receivable from the Supplier which is non-disputable, due and can be sought in court or before another state authority.

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3. The Supplier reserves the right to demand immediate payment of the amount due for which a bill or exchange or cheque was issued if the Supplier learns that the Customer's bill of exchange has been protested, enforcement proceedings have been initiated against the Supplier or the Supplier's financial standing has deteriorated. In the above-mentioned cases and where the due invoices are not paid despite prior demand for payment, the Supplier reserves the right to demand that advance payments be made or security be provided on account of future supplies.

### **XII. Obligation to inspect goods and lodge complaints, defects**

1. The Supplier is liable towards the Customer for any physical or legal defects in the Delivered Items (statutory warranty). The Customer loses the rights under the statutory warranty if the Customer fails to inspect the delivered item after their receipt and fails to immediately notify the Supplier of the defect, and in the case of hidden defects, if the Customer fails to notify the Supplier immediately upon discovering the defect. Lodging a complaint does not release the Customer from its payment obligation. If an item is defective, the Supplier may, at its own discretion, either remove the defect or replace the defective item with a defect-free one within a deadline set by the Customer, not shorter than 21 days. If the Supplier removes the defects, the Supplier bears the costs only up to the amount of the fee agreed for the supply. The Customer is not entitled to remove a defect, even in urgent cases, without the Supplier's prior written consent. If a defect removal or the replacement of a defective item with a defect-free one proves unsuccessful, the Customer is entitled, at its own discretion, to either withdraw from the contract or demand price reduction.

2. It is hereby agreed that the properties of the goods are only those included in the manufacturer's product description. The Customer is not entitled to raise claims for minor defects. Announcements, advertisements, public comments, price lists and other information addressed to the public or to individual persons are not considered information about the contractual properties of the goods. The Supplier does not grant customers any warranties or guarantees in legal terms. Information included in the product descriptions and specifications does not mean that the properties of a given item are warranted or guaranteed in any way whatsoever or that such properties will be maintained for a given period.

3. The Customer is entitled to recourse claims against the Supplier unless the terms that the Customer and its customer have agreed for defect-related claims go beyond the statutory provisions.

4. Claims and rights become statute-barred as stipulated in the general principles specified in the Civil Code.

### **XIII. Liability**

1. Liability for wilful misconduct or gross negligence of the Supplier, its representatives or subcontractors is regulated by the generally applicable laws. However, redress of damage covers only the losses incurred by the party who has suffered the damage.

2. The Supplier is fully exempt from the liability for damage caused by the delivered item to the Customer's assets, e.g. to other items. The liability exemption does not apply to wilful misconduct or gross negligence and to damage

caused by unlawful acts.

3. Items 1 and 2 above also apply when compensation is demanded in addition to or in lieu of the performance, irrespective of the legal basis for such a demand, in particular due to defects and a breach of contractual relationship. The liability exemption also applies to claims for compensation for unreasonable expenditures. However, clause VI.4 applies to the liability for delay and section XIV applies to the liability for inability to perform.

4. Liability for damages is limited to the sum insured to cover the liability for the Supplier's product in the amount of up to PLN 2 million, which covers also the insurance of the costs of recalling the product from the market and replacing it with a defect-free product (for one or several events). The above does not apply to strict liability for wilful misconduct or gross negligence and to damage caused by unlawful acts.

5. The Supplier's liability is limited or excluded also with respect to all other claims of the Customer for fault in conclusion of the contract [*culpa in contrahendo*], breach of subsidiary obligations or the Customer's product liability claims. The same applies to the inability to perform.

6. The limitation of the Supplier's liability for damages, as described above, is extended to include also the personal liability of its employees, contractors, representatives, subcontractors or vicarious agents.

### **XIV. Inability to perform**

In the case of wilful misconduct or gross negligence, the liability of the Supplier, its representatives or subcontractors for inability to perform the supply is regulated by the generally applicable laws. However, redress of damage covers only the losses incurred by the party who has suffered the damage. In the remaining scope, the Supplier's liability for loss or damage due to inability to perform or to refund unreasonable expenditures is limited to 10% of the supply value. Any further claims of the Customer due to inability to perform a supply is excluded. The liability exemption does not apply to wilful misconduct or gross negligence or to damage caused by unlawful acts. The above does not affect the Customer's right to withdraw from the contract.

### **XV. Contract amendment**

If any unforeseen events result in a significant change of the economic meaning or content of the supply or significantly affect the Supplier's establishment, or render the performance of the contract or order by the Supplier partially impossible due to circumstances for which neither party can be held liable, the scope of the contract or order will be accordingly amended. If this is not acceptable for economic reasons or due to the fact that a partial supply would be pointless for the Supplier considering the nature of its obligation or in view of the objective pursued by the Supplier under the contract or order, the Supplier is entitled to withdraw from the contract or order.

### **XVI. Tools, items made available by the Customer**

1. Tools and specialised equipment produced by the Supplier and paid for by the Customer are owned by the Customer but remain in the Supplier's possession. If the Customer does not collect those tools or specialised equipment for at least two years, the Supplier is entitled to have those tools and equipment scrapped or to use them in another manner. In such a case, the Customer waives any claims for damages.

2. The Supplier's liability for damage or destruction of items which the Customer made available to it or entrusted to it for

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processing is limited only to wilful misconduct or gross negligence; the liability for ordinary negligence is excluded. The liability for damages for wear and tear is excluded. The Customer is obliged to insure in an appropriate scope the items made available to the Supplier. The Customer will ensure the checking and control of the quality (in terms of raw materials, measurement accuracy etc.) of the raw materials, semi-finished goods etc. made available to the Supplier; the Supplier will check the goods upon their receipt exclusively in terms of the number of pieces delivered and goods identity and will visually inspect the delivered goods for apparent damage which might have occurred during transport. The Supplier is not obliged to conduct any further checks.

### **XVII. Retention of title**

1. The Supplier reserves the right to retain title to the goods delivered to the Customer until all receivables that arose at the time when the Supplier started business with the Customer are paid; this includes also receivables on account of subsequent or additional orders or orders for spare parts that arose until then. If the value of the security entitlement exceeds the value of the Supplier's claims by over 20%, the Supplier will, at the Customer's request, release the security established over the relevant part of the goods.

2. If the Customer breaches the contract, in particular, if the Customer fails to pay the amounts due referred to in clause 1 above, the Supplier is entitled to demand return of the goods. Taking back or seizure of the goods by the Supplier does not constitute a withdrawal from the contract unless the Supplier expressly indicates that in writing. The Supplier is entitled to sell the goods; the amounts earned for the sold goods are credited towards the Customer's liabilities, after prior offset of the costs of sale. The Customer must take care of the delivery. In particular, the Customer must, at its own expense, insure the goods against damage due to fire, flood, storm, burglary and theft, for an amount ensuring the reinstatement of the value of the new goods. The Customer transfers any security claims resulting from damage to the Supplier. The Customer carries out any required maintenance work or inspections in due time and at its own expense.

3. The Customer is not entitled to pledge the goods or transfer them as security until the title to the goods is transferred to it according to clause 1 above. The Customer must immediately inform the Supplier in writing about any seizures of the goods or any other forms of third-party interference with the goods to enable the Supplier to file an action to prevent enforcement, as well as provide any information and documents necessary to defend the Supplier's rights. The Customer must inform enforcement authorities and third parties about the Supplier's ownership right. If a third party is not able to reimburse the Supplier for the costs of court or out-of-court proceedings payable to the Supplier as a result of the action to prevent enforcement, the Customer will cover those costs; at the same time, however, the Supplier will have the right to seek further claims for damage,

modification or destruction of items.

4. The Customer is entitled to resell or process the purchased items as part of ordinary business activity. The Customer undertakes as of now to assign to the Supplier any claims that the Supplier may have against the Customer's customers or third parties due to the resale, up to the final invoice amount plus VAT, regardless of whether the sold item has or has not been processed before the resale. The Supplier will agree to the above assignment. If the accounts between the Customer and its customers are settled using a current account, the claims assigned to the Supplier include also the recognised balance, and if the customer is put into bankruptcy, the then existing "conditional balance". The Customer is entitled to recover claims also after their assignment. However, the above does not affect the Supplier's right to recover claims on its own. The Supplier will not recover any claims as long as the Customer pays its liabilities on account of collected proceeds, does not default on payment or no petition is filed for opening bankruptcy proceedings.

5. At the request of the Supplier, the Customer undertakes to provide a detailed list of claims along with the names and addresses of customers, individual claim amounts, invoice details etc. as well as disclose and permit the verification of any information necessary to seek the payment of the assigned claims.

6. The Customer processes or alters the delivered items for the Supplier. If the item is processed together with other items that do not belong to the Supplier, the Supplier will acquire co-ownership of the new item in the ratio of the value of the delivered item to the value of the other processed items at the time of processing. The same provisions apply to items created as a result of processing and items delivered subject to retention of title. If items are processed, mixed or combined in such a way that the Customer's item is considered the main item, the Customer will transfer to the Supplier the co-ownership of the item in the ratio of the value of the Supplier's item to the main item. The Customer stores the item created in this way, and exclusively owned or co-owned by it, on behalf of the Supplier.

### **XVIII. Competent court, place of performance, other information**

1. The competent court is determined in view of the Supplier's registered office. The Supplier reserves the right to file an action against the Customer also with a court competent for the Customer's registered office.

2. Unless otherwise agreed in the contract or order confirmation, the Supplier's registered office is also the place of performance.

3. The contract or order is governed by Polish law. All disputes between the Customer and the Supplier will be governed exclusively by Polish law; this will apply also if the Customer is established abroad. However, this does not exclude the application of the conflict-of-law rules. At the same time, the Supplier excludes the application of the United Nations Convention on Contracts for the International Sale of Goods (CISG).

4. If any of the provisions of these GTCS proves to be invalid, the validity of the remaining provisions will remain unaffected. The invalid provisions must be amended so as to make them correspond with the economic purpose originally intended by the parties.