

# GTS/DH/002/2021

## 1. General provisions

The purpose of the General Terms of Sale is to regulate the relationship between Donako Sp. z o.o., with its headquarters in Wrocław (53-609), at ul. Fabryczna 10, entered in the Register of Entrepreneurs of the National Court Register (KRS) held by the District Court for Wrocław-Fabryczna in Wrocław, 6th Commercial Division of the National Court Register, under KRS number: 0000409741, NIP: 8971780832, with an initial capital of PLN 4,330,000.00 /hereinafter referred to as the 'Seller', and the Customer /hereinafter referred to as the 'Buyer'.

These General Terms and Conditions shall apply to the delivery of goods and services, /hereinafter referred to as 'Deliveries'.

Any offer or any order or agreement resulting therefrom, /hereinafter referred to as an 'Order', shall be governed exclusively by these General Terms of Sale, the Specific Terms and Conditions set forth in the Offer/Order, /hereinafter referred to as the 'Specific Terms and Conditions', and the Technical Specifications agreed upon in writing between the Seller and the Buyer, to the exclusion of any other terms and conditions, custom or prior arrangements between the parties.

The GTS constitute an integral part of all agreements for the sale or delivery of Goods or provision of Services concluded by Donako. The GTS also constitute part of a commercial offer drawn up by the Seller or provided to the Purchaser in the course of negotiations aimed at entering into an agreement or are attached as an integral part (appendix) to the agreement concluded with the Purchaser.

Effective delivery of these GTS is also considered to be notification of the Buyer of their availability on the Seller's website.

Submission of an order by the Purchaser or entity authorised to act on their behalf is equivalent to submitting a declaration of acceptance of the GTS to the Seller.

## 2. Effective date

An Order shall not be binding upon the parties until the Seller has confirmed acceptance of the Order and until the Seller has received an advance payment and/or until the financial instruments or payment guarantees as specified in the Specific Terms and Conditions have been established. Unless otherwise agreed, this date shall constitute the commencement of the Seller's contractual obligations and the commencement of the time limits for performance of the Deliveries.

## 3. Form and Specifications

Orders and Specific Conditions should be submitted electronically or in another form that allows them to be recorded.

Deliveries shall be made in accordance with these General Conditions and the Specific Conditions specified in the Order.

## 4. Changes

The Seller shall be entitled during the performance of the Order to make changes



to the Deliveries when necessary in the event of circumstances such as changes in technical standards or production methods, changes in laws or regulations concerning the terms and conditions of performance of the Order, without altering the main features of the Deliveries. Such changes shall not affect the interests of the Buyer and the Buyer shall be promptly notified thereof.

## **5. Storage and Delivery**

In the absence of any provisions to the contrary in the Specific Conditions, Deliveries shall be made on EXW Wrocław terms according to Incoterms 2010.

The delivery date shall be deemed to have been met when the Goods are handed over to the carrier or directly to the Buyer, or when the Buyer receives written notification that the Supplier is ready to hand over the Goods, in accordance with Incoterms 2010.

In the case of EXW or FCA delivery terms, the customer is obliged to take delivery of the goods within 1 week of the invoice date. If the goods are collected later than 1 week after the invoice date, additional storage and handling costs will be negotiated between the parties;

In the case of FCA delivery conditions, the client shall be obliged to provide a means of transport within two weeks from the date of notification by Donako Sp. z o.o. of readiness to collect the goods. Should this condition not be met, the EXW conditions shall automatically apply;

If the Buyer fails to collect the Delivery within the time limit specified in the Order, the Seller shall be obliged to store the Delivery within a period no longer than 2 weeks from the date of issuing the invoice for exports to countries outside the EU, and within a period no longer than 15 days for deliveries within the EU. After this time limit, the Seller shall charge the Purchaser with a contractual penalty equal to VAT at the rate of 23% on the established amount of the Order, issuing an appropriate debit note. This note shall be payable within 15 days from the date of issue, irrespective of which payment terms apply to the order.

In the event of a further delay of more than 3 months from the date of issue of the invoice for exports to countries outside the EU and within 15 days for deliveries within the EU, the Seller may charge the Buyer an additional contractual penalty amounting to 0.5% of the agreed Order sum – for each week of delay, by issuing an appropriate debit note. It may also withdraw from the Order at any time, whereby Article 16.2 shall apply.

The Seller shall be deemed to have delivered the Delivery to the Buyer after storage has commenced and the Seller shall be entitled to receive payment of the invoice from that time. If the risk has not yet passed to the Buyer – according to the Order – it shall pass to the Buyer when storage commences.

If, in accordance with the Order, the Seller delivers and transports the Delivery and the Delivery is damaged, the Buyer shall notify the Seller within 24 hours of the damage to the Delivery so as to enable the Seller to make a claim against the carrier.

### **Storage and delivery of tools**

1. In the case of complete shearing and bundling tools that are the subject of an individual Order, the Seller is obliged to issue a VAT invoice, and the tools become the property of the Buyer upon payment of the invoice. The reservation of ownership shall be indicated on the invoice. If the aforementioned tools are left at the Seller's premises, the Seller undertakes to store them for a period of 1 year from the invoice date at no additional charge. After that time, the parties shall agree on the storage

costs of the tools or they shall be sent to the Buyer at their expense.

2. In the case of complete shearing and bundling tools that are part of the order and are not individually invoiced, the Seller undertakes to store them for a period of 1 year from the date of completion of the project and issuance of the invoice at no additional charge. After this period, the above tools become the property of the Seller.

3. In the case of other tools, the manufacture of which is necessary for the execution of the order (punching dies, wedges, inter-press plates, bending dies, welding templates), they become the property of the Seller after the completion of the project.

## **6. Transfer of ownership and risk**

Unless otherwise specified, for an EXW clause, ownership of the Delivery and all risks of loss of or damage to such a Delivery /as per INCOTERMS 2010/ shall pass to the Buyer upon making the Delivery available at the warehouse or other agreed point.

For a DDU clause, ownership of the Delivery and all risks of loss of or damage to such a Delivery /as per Incoterms 2010/ shall pass to the Buyer upon delivery of the Delivery to the Buyer's premises and upon payment of the invoice.

## **7. Obligations of the Buyer**

The Buyer shall provide and ensure in a timely manner all the approvals, technical documentation, instructions, authorisations or licences required for the performance of the Order. The Purchaser shall provide with the Order an electronic version of the technical documentation (in CAD or CAM format) together with a 3D model of the component which is the subject of the Order. Otherwise, Donako reserves the right to charge the Ordering Party additionally with the preparation of the technical documentation in the required format.

In the event of failure to comply with this obligation, the date of completion of the Order shall be delayed accordingly, with no further declarations in this respect.

In the case of execution of an order from materials entrusted to the Seller by the Buyer, the Order must specify the type of material, quantity of material and date of its delivery to the Supplier. The costs of storage of material entrusted to the Seller by the Buyer shall be borne by the Buyer, unless the Parties have agreed otherwise in the Detailed Conditions.

### **7a. Trade in entrusted materials.**

In the case of fulfilment of an Order from materials entrusted to the Seller by the Buyer, the Order should specify the type of material, the quantity of material and the schedule for its delivery to the Supplier. In the event that the actual date of delivery of a set of entrusted materials is later than the date specified in the Order Specifications, the final date required by the Buyer for completion of the Order shall be delayed by the period of delay in delivery of the entrusted materials, without any further declarations in this respect.

The Parties shall agree in the Order the normal expected material consumption (in kilograms per piece of finished product or the entire scope of the Order), which shall take into account the average material waste occurring during standard production processes and material and production defects resulting in particular from minor transport damage and minor quality defects, such as paint coating defects, mechanical damage to the sheet metal surface, exceeding the permissible burr height between standard inspections and production defects.

If, as a result of the production process, the Seller discovers an above-average accumulation of material defects in the entrusted material and this material is not acceptable for production or disqualified from further production, the Seller shall notify the Buyer thereof within 7 days, and the Buyer shall decide

- to withdraw the material from production, specifying a new date for delivery of the missing material;
- to continue production from the available material with the acceptance of increased consumption of the entrusted material. The Buyer will simultaneously inform the Seller of the delivery date for the missing material;
- to continue the production of the available material together with the acceptance of a change in the quality requirements for the finished products. In this case, the Purchaser shall waive the rights arising from Section 11 (quality guarantee/liability for defects).

The Buyer should settle within the following 7 days, after which time the Seller may make a choice for the Buyer or terminate the Order, whereby Art. 16.2 shall apply. Upon completion of the Order, the Purchaser shall be entitled to collect from the Seller, at their own expense, the entrusted material in the weight being the difference between the weight of the material delivered and the product of normal wear and tear times the quantity of finished products manufactured for the Purchaser (residuals). If the entrusted material is not collected within 30 days from the date of completion of the Order, the Seller shall take possession of the residuals, unless the Parties have agreed otherwise in the Detailed Conditions.

#### 7b Cancellation of order by the Buyer

If, despite having sent and confirmed an order, the Buyer decides not to purchase the Seller's products, they are obliged to repurchase all materials needed for the execution of the order purchased by the Seller, including the costs of purchase and storage of these materials.

### **8. Terms of payment**

Goods shall be sold according to prices currently binding at the Seller as of the date of the order.

In case of changes beyond the Seller's control, fees and costs (which affect the price) occurring in the period between the conclusion of the agreement and delivery, the Seller reserves the right to change the price accordingly.

Unless otherwise stipulated in the Order, the Order shall be invoiced on the date of the shipment of goods and shall be payable within 30 days from the date of invoice, unless otherwise agreed by the Parties in the Specific Terms and Conditions of the Order.

The Buyer shall make payment to the Seller's designated bank account.

Where there is a delay in payment, the Seller shall be entitled to charge interest currently applicable in Poland.

The day of payment of the price or Donako's remuneration shall be the day on which Donako's bank account is credited.

### **9. Taxes**

1. Except as expressly provided otherwise in the Order, the aggregate price of the Order shall not include any taxes or charges applicable to the Order or the Delivery supplied by Seller, its subcontractors and their employees.



2. Where the Delivery is delivered to a country outside the European Union, for as long as the laws applicable in the Seller's country or in the country of origin of the Delivery so provide, export costs, VAT or similar taxes or charges on the Delivery or work in the Seller's country or in the country of origin of the Delivery shall not be levied where the Seller is responsible for the transport of the Delivery.

If transport is organised by and at the expense of the Buyer, the Buyer is obliged to provide the Seller with an export declaration of the Delivery, i.e. an EX3 document certified by an appropriate customs office within 60 days of the invoice date.

After this deadline, in the event of failure to deliver the document, the Seller shall impose upon the Buyer a contractual penalty in the amount of 23% of the determined Order sum, by issuing an appropriate debit note. The debit note shall be payable within 15 days of its issue, irrespective of the payment terms applicable under the Order.

3. Where the Deliveries are made to another country within the European Union and the Buyer is registered for VAT in that country, VAT will not be charged in the Seller's country if within 15 days the relevant proof of transport outside the country of departure is provided and the Buyer provides the Seller with a current (valid) VAT number at the time of the Order. If such conditions are not met, the Seller shall charge the Buyer with a contractual penalty equal to VAT at the rate of 23% on the agreed amount of the Delivery by issuing an appropriate debit note. The debit note shall be payable within 15 days of its issue, irrespective of which payment terms apply to the Order.

4. Where Deliveries are made within the Seller's country, the VAT of the Seller's country shall be added to the invoice in addition to the contract prices, at the rate applicable on the date of invoicing to the Buyer.

5. Taxes, interest or penalties for late payment, which the Seller will be obliged to pay due to the fact that the Seller is registered for VAT, will be reimbursed by the Buyer to the Seller within 15 days from the presentation of proof of payment.

## **10. Contractual penalties**

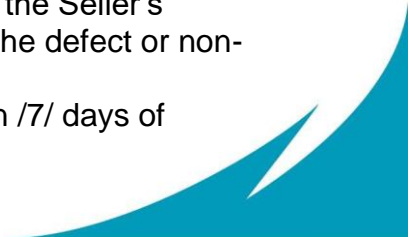
If, as a result of circumstances for which the Seller is responsible, the Seller fails to meet the delivery date provided for in the Order, the Buyer shall be entitled to charge contractual penalties, calculated on the contractual value of the delayed Delivery, at an amount agreed between the parties. Further damages, including consequential penalties, shall be excluded, including lost profits and additional costs incurred.

The level of Donako's contractual penalties shall be: 1 week without penalties, 0.5% penalties for delayed deliveries for each subsequent week, with a maximum of 5% of the contract value, unless otherwise agreed between the Parties.

## **11. Quality assurance / liability for defects**

The Seller warrants that the Delivery shall be free from defects in material and workmanship and that they shall conform to the contractual technical specifications. This warranty of the Seller shall apply for twelve /12/ months from the date of delivery of the Delivery, unless otherwise specified in the Purchase Order. The Seller's obligation under this quality assurance guarantee shall be limited, at the Seller's option, to repairing or replacing defective Deliveries to the extent of the defect or non-conformity with the technical specifications.

The Buyer is obliged to inspect the Delivery at the latest within seven /7/ days of



receipt. If a defect becomes apparent later, the Buyer shall notify the Seller of the defect no later than seven (7) days after its discovery. Failure to comply with these deadlines shall result in the loss of warranty rights. Within seven days of notification, the Purchaser shall enable the Seller to examine the defect on pain of losing the right to claim.

The Seller's quality guarantee shall not apply to defects resulting from normal wear and tear, defects in any plans, specifications, deliveries or services not covered by the Order. The Seller's quality assurance shall not apply either in the event of faulty operation, negligence, the failure to follow the Seller's instructions, repairs or modifications to the Deliverables made without the Seller's prior written consent. Unless otherwise provided for in the Order, the Seller shall not bear the costs of dismantling, assembling and installing the Delivery covered by this quality warranty. Such costs shall be borne by Buyer or paid by the Buyer to the Seller upon submission of invoices by the Seller.

## **12. Ownership and confidentiality**

The Buyer shall retain ownership of all designs, drawings, plans, software, technical documents and know-how relating to the Delivery supplied to the Seller as well as the intellectual property rights therein acquired originally or derivatively by the Buyer prior to or during the performance of the Order.

The technical documents shall be kept confidential by the Seller, its employees, its subcontractors and sub-subcontractors and shall not be copied, modified or disclosed or used by any of them except for the purpose and within the scope of the Order.

The prohibition on disclosure of Confidential Information by the Buyer shall apply indefinitely unless Donako releases the Buyer in writing from the obligation of confidentiality.

## **13. Limitations of liability**

The Seller's total liability shall be limited to the value of the Order. The Seller shall only be liable for the normal consequences of their actions.

## **14. Force Majeure**

The Party invoking Force Majeure shall notify the other Party of its failure in writing within 7 days of the occurrence of the Force Majeure event.

If the performance of the Order is delayed by more than 3 months due to Force Majeure, the Parties shall agree the terms for further performance of the Order. In the absence of an agreement between the Parties, each Party may withdraw from the Order by written statement submitted to the other Party.

An event of Force Majeure shall be understood as an event beyond the control of either party, preventing the parties from performing their obligations, when the event could not have been foreseen when the obligation arose, and the party affected could not have avoided it or prevented its consequences.

The occurrence of an event of Force Majeure shall relieve the party at which such an event has occurred from its obligations for the duration of the Force Majeure or for the time necessary to remove the effects of the event. The party claiming Force Majeure shall immediately inform the other party of its occurrence, consequences and expected duration.

The Party which has experienced the event of Force Majeure making the performance of its obligations impossible shall make every effort to remove, or at least minimize the consequences of, that event.

Donako shall not be liable for failure to perform or improper performance of obligations under the Agreement resulting from circumstances attributable to Force Majeure, which shall be understood to mean an event of sudden, extraordinary, unforeseeable, independent of the will of the Parties, which cannot be prevented by ordinary means even with the utmost care. Examples of Force Majeure include, but are not limited to, natural disasters, e.g. fire, flood, earthquake or collapse, hurricane, epidemic, failures of the nature of a building collapse and failures causing the suspension of the operation of data transmission equipment for a period exceeding two days, acts of state authorities, e.g. martial law, a state of emergency, embargoes, blockades, etc., acts of war, acts of sabotage, labour strikes taking place on the basis of or in violation of the provisions of the Act on Resolution of Collective Disputes.

### **15. Suspension / deferral of the Seller's obligations to perform obligations**

Should the Buyer fail to perform any or all of their other obligations under the Order:

- a) the Seller shall be entitled to suspend performance of the Order until such failure of performance by the Buyer is remedied;
- b) the Seller's performance of the Order shall be extended accordingly;
- c) any resulting costs to be borne by the Seller shall be paid by the Buyer, with a debit note payable within 15 days.

If performance of the Order is suspended due to any cause for which the Buyer is responsible and such suspension lasts for a period exceeding 3 months, the Seller shall be entitled, after the expiry of such 3 months, to terminate the Order with immediate effect by written notice to the Buyer. In this case the provisions of article 16.2 shall apply.

### **16. Termination of an Order**

1. Notwithstanding anything to the contrary already set forth in the General Terms of Sale, either party shall be entitled to terminate the Order at any time in the event that the other party fails to perform its obligations under this Order and at the same time fails to take satisfactory steps to remedy such failure within 30 days counted from receipt of a written notice from the other party requesting the other party to remedy such a failure.

2. Termination of the Order shall not waive the obligation to pay the Order price with respect to deliveries which were made and delivered prior to termination.

Furthermore, within 30 days from the delivery of a notice of termination from the Order by one of the Parties, the Buyer shall pay the Seller:

- a) the unpaid amount of the value of the Order in respect of Deliveries which have been produced and which can be delivered in accordance with the provisions of the Order, as well as the costs incurred by the Seller up to the time of the notice of termination for the production of the Delivery,
- b) expenses to be incurred by the Seller due to termination of any orders placed with subcontractors,
- c) a contractual penalty amounting to 10% of the agreed total of the Order.

3. However, the obligations set forth in Articles 16.2 a, 16.2 b and 16.2 c above shall

not apply in the event of termination of the Order by the Buyer on account of the Seller's default.

4. Termination of the Order, in whole or in part, for whatever reason, shall not limit the provisions of this Article and Articles 9, 12, 13 and 18 or the application thereof.

#### **17. Subcontractors**

The Seller reserves the right to use subcontractors for all or part of the Delivery provided for in the Order.

#### **18. Final provisions**

Any disputes related to the validity, interpretation, performance or termination of the Order shall be settled by the Court of Arbitration at the Polish Chamber of Commerce and in cases which cannot be resolved before this court, by a common court of law in a place agreed by both parties.

The Order shall be governed by the law applicable at the Seller's registered office, unless the Parties agree otherwise.

In cases not regulated in the accepted Order and these GTS, the relevant provisions of Polish law, including the Civil Code, shall apply.

Unless the Parties expressly agree otherwise in writing, these GTS can only be accepted without reservations, and cooperation with Donako shall not be subject to any internal regulations applicable to the Buyer, and in particular the application of general principles or conditions of purchase functioning at the Buyer's enterprise is excluded. The Buyer's general terms and conditions of purchase shall not be binding for Donako under any circumstances, even if they are the basis of the Buyer's order and Donako has not expressly objected to their content.

In the case of discrepancies between the content of the sales agreement and these GTS, the provisions of the agreement shall apply in the first instance.

