



## **GENERAL TERMS AND CONDITIONS OF SALE OF PRODUCTS AND/OR SERVICES**

### **"PELMET E. Pelczar i K. Pelczar" Spolka Jawna**

**Applicable from 01.01.2016**

#### **ART. 1. GENERAL PROVISIONS**

§ 1. These General Terms and Conditions of Sale (hereinafter referred to as the "GTCS") are based on the Article 384 and subsequent articles of the Civil Code — consolidated text: Dz. U. [Journal of Laws] of 2014, item 121.

§ 2. The GTCS shall apply to contracts of sale of products and/or services concluded by "PELMET Eugeniusz Pelczar i Kazimierz Pelczar" Spolka Jawna with a head office in Kroscienko Wyzne, address: 38-422 Kroscienko Wyzne, ul. Marynkowska 5, entered into the National Court Register maintained by the District Court in Rzeszow, XII Commercial Department of the National Court Register, registered under numbers: KRS: 0000054996, REGON: 371006788, NIP: 6841004666 (hereinafter referred to as the "Seller") with its contractors (hereinafter referred to as the "Buyer"), who conclude these contracts only for the purposes directly related to their business activities.

§ 3. The products and/or services shall not be sold to natural persons who are consumers as defined by the Civil Code, hence the GTCS shall not apply to consumers.

§ 4. The GTCS are available on [www.pelmet.com.pl](http://www.pelmet.com.pl) and upon request of the Buyer may be sent to its address in an electronic form.

§ 5. It shall be deemed that signing the contract or placing the order by the Buyer and acceptance of the delivered products and/or services shall mean the acceptance of the GTCS without reservations. If no explicit objection is made by the Buyer in writing, the GTCS shall constitute a part of the contract.

§ 6. If the parties conclude a contract different from the GTCS, to the extent unchanged by this contract, the GTCS shall apply unless the parties stated otherwise in writing.

§ 7. Any provisions different from the GTCS individually proposed by the particular Buyer, shall bind the Seller only if the Seller declares in writing that such provisions shall constitute a part of the contract.

§ 8. In case the Buyer maintains regular commercial relationships with the Seller and the GTCS have been accepted by the Buyer according to the procedure specified in the Art. 1 § 5 of the GTCS, it is assumed that the GTCS shall apply throughout the entire commercial relationship between the parties.

§ 9. The General Commercial Terms of the Buyer shall not bind the Seller, even if they were presented in writing or in any other form and the Seller has not raised any objection.

## **ART. 2. CONCLUSION OF CONTRACT**

§ 1. Any commercial information of an advertising and marketing nature in whatever form shall not constitute an offer as defined by the Civil Code.

§ 2. The contract is concluded by signing by both the parties a mutually agreed text of the contract or by placing, accepting, agreeing and confirming the order pursuant to the Art. 2 § 4 - § 11 of the GTCS.

§ 3. The contract concluded by signing by both the parties a mutually agreed text of the contract shall be effective as of the day of signing the contract or any other date specified in the contract by the parties.

§ 4. Concluding the contract by placing, accepting, agreeing and confirming the order requires the Buyer in each case to submit to the Seller a written order (by fax or email) specifying the price, type and quantity of the ordered products and/or the type and scope of services and the date of their delivery and/or provision. It is assumed that the order is placed and signed by the person authorized to place orders on behalf of the Buyer.

§ 5. In order to be valid, each order must be promptly confirmed in writing (by fax or email) by a person authorized to represent the Seller, with a confirmation of the acceptance of all the terms and conditions specified in the order, in particular the date of the delivery of the products and/or the date of the provision of the services as well as the price.

§ 6. Without the consent of the Seller, the Buyer shall not cancel or change the properly confirmed order.

§ 7. Any changes of the terms and conditions of the order must comply with the procedure specified in § 4 and § 5 in order to be valid.

§ 8. The contract is concluded upon sending the order confirmation by the Seller, except as provided in § 7.

§ 9. In the case referred to in the Art. 6 § 4, the contract is concluded upon receipt of the order confirmation by the Seller specifying the current price of the ordered products and/or services.

§ 10. The Seller shall not be liable for the consequences of errors in the content of the order placed by the Buyer.

§ 11. The Buyer shall not, without a written consent of the Seller, assign the rights arising from the concluded contract of sale of products and/or services to third parties.

## **ART. 3. ORDER COMPLETION DATE**

§ 1. The term of completion of the order begins on the day specified in the contract or on the day of the order confirmation.

§ 2. The terms of delivery and/or completion of the order as well as other terms and conditions of sale may be subject to change, even after the Buyer places the order for products and/or services, in particular as a result of force majeure or other circumstances beyond the control of the Seller, and as a result of changes in market conditions and the current trading conditions related to, among others, the relations between the Seller and entities cooperating with the Seller for the purpose of execution of contracts by the Seller. The Buyer shall be promptly notified of any change in the date of delivery and/or completion of the order as well as any change in other conditions of sale.

#### **ART. 4. DELIVERY, ACCEPTANCE OF PRODUCTS AND/OR SERVICES, COMPLAINTS**

§ 1. The place of performance is the Seller's warehouse. In case the products are to be delivered to the place other than the place of performance, the ordered products shall be delivered to the place specified by the Buyer in the individual contract.

§ 2. If the Buyer collects the products with its own means of transport, the risk and transport costs shall be borne by the Buyer.

§ 3. It shall be deemed that the products are delivered upon their handover to the Buyer or to the carrier designated by the Buyer, after signing the handover document by the Buyer.

§ 4. The proof of the completion of the order or its part shall be the invoice, the stock issue confirmation or the protocol of delivery and acceptance confirmed by the representatives of the recipient and the supplier, or the confirmation of the carrier that the products were delivered. The unjustified refusal of the Recipient's representative to sign the document shall be treated as signing the document and the order shall be completed.

§ 5. The Buyer shall be obligated to accept the ordered products and/or services, even with irrelevant deficiencies and defects, without prejudice to claims due to defects. The non-acceptance of the products and/or services shall not discharge the Buyer from the obligation to pay the full price.

§ 6. Upon receipt of the shipment sent by the Seller, the Buyer shall thoroughly check the condition of the packaging in the presence of the courier. In the event the Buyer finds external damage to the packaging or has objections as to the quantity of the delivered products or the content of the package, the Buyer shall prepare the damage protocol in the presence of the courier including a description and photos of the package. The protocol shall be drawn up in two identical copies, each signed by the courier, one for the Seller and one for the Buyer. In such case, the products are returned to the Seller in order to start the complaint procedure against the carrier. Without the damage protocol, the complaint is rejected.

§ 7. The Buyer may file the complaint to the Seller within 2 days from the date of purchase. If the complaint is accepted, the Seller shall send the missing products as soon as possible, at its own expense.

#### **ART. 5. TRANSFER OF RISK AND RETENTION OF TITLE**

§ 1. The risk of loss or damage to the products shall pass to the Buyer upon delivery of the products to the carrier, but at the latest when the products leave the warehouse of the Seller.

§ 2. The products shall remain the Seller's property until the payment of the full price stated on the sale invoice of these products issued by the Seller.

§ 3. The Buyer shall handle the products in a proper manner and provide at its own expense a full insurance coverage against fire, flood, theft, destruction or damage of the products.

§ 4. In case maintenance works or inspection is needed, the Buyer shall timely perform these works at its own expense.

§ 5. The Buyer shall not encumber the products by any third party rights.

§ 6. The Buyer shall promptly notify the Seller of any enforcement proceedings conducted against the Buyer, in the course of which the products may be seized by the enforcement authorities.

#### **ART. 6. PRICE AND TERMS OF PAYMENT**

§ 1. The sale of products and/or services takes place at the prices applicable as of the date of the order confirmation included in the Seller's pricelist, taking into account the discounts

granted to the Buyer. In the event products and/or services in the given order are not included in the Seller's pricelist, the sale shall take place at a price mutually agreed by the parties in writing.

§ 2. The prices specified in the pricelist or agreed by the parties shall apply only for the purpose of completion of the given order, unless the parties agree otherwise in writing.

§ 3. All prices determined and made available by the Seller are net prices and shall apply in the Seller's warehouse, EXW Kroscienko Wyzne (INCOTERMS 2000).

§ 4. The Seller reserves the right to change the prices included in the pricelist in the event of changes in foreign currency exchange rates and other factors influencing the price. In such case, the Buyer shall be notified in the order confirmation of the current price for the ordered products and/or services.

§ 5. The payments may be made by cash or bank transfer to the account of the Seller specified in the invoice. The bank charges shall be borne solely by the Buyer.

§ 6. The standard payment term is 30 days, however, it may be prolonged or shortened by the individual contract. In case new trading relations are established, the Seller reserves the right to supply products only in return for the payment in advance for the whole or the part of the order.

§ 7. The date on which the payment is recorded on the Seller's account shall be the date of payment of the price.

§ 8. In case of delay in the payment of the price, the Seller shall have the right to charge statutory interest and suspend the delivery of products and/or provision of services until the payment of the full price plus accrued statutory interest calculated for the period of payment delay.

§ 9. Any set-off claims made by the Buyer against the Buyer's receivables arising from the contracts concluded with the Seller shall be excluded.

#### **ART. 7. MANUFACTURER'S WARRANTY**

§ 1. Any material specifications, attestations and testing results referred to in the commercial documents shall not constitute any assurance of the quality of products and/or services. This reservation shall also apply to publications or public statements by the Seller relating to the quality of products.

§ 2. The Seller provides warranty for the sold products under the conditions set forth in the Warranty Card.

§ 3. The Seller provides warranty for the equipment and parts of the products delivered by the subcontractors in accordance with the warranty cards provided by the manufacturers for particular products.

§ 4. The Warranty Document is available on [www.pelmet.com.pl](http://www.pelmet.com.pl)

§ 5. The manufacturer's warranty shall not apply to damage which occur after the transfer of risk to the Recipient or damage caused by natural wear and tear, incorrect handling or improper maintenance.

§ 6. The liability of the Seller under the manufacturer's warranty shall expire when the Buyer or a third party makes any modifications to the product, repairs it using non-original spare parts as well as does not promptly undertake actions to limit the damage or makes it impossible for the Seller to remove the defect on time.

§ 7. In the event of detecting any defects or shortcomings, the Buyer shall submit a warranty claim on the Complaint Form promptly after the defect is discovered, although not later than 2 days from the date on which the defect was detected, submitting a copy of the proof of

purchase. The complaints shall be handled by correspondence, fax or telephone and resolved or discussed urgently.

§ 8. Within 14 days from the date of receipt of the proper warranty claim, the Seller shall inform the Buyer on the outcome of the claim. The Buyer may only make claims for repair or replacement. The method of resolving a claim is determined by the Seller.

§ 9. The Seller may fail to meet the deadline for resolving the warranty claim if there are any interruptions in the operation of its company due to import/export restrictions and/or other legal provisions or any other unforeseeable circumstances.

§ 10. The Seller shall not be liable for any further damage caused by the product defects such as: discontinuation of production, loss of profit and any other indirect losses. The liability of the Seller for the further damage caused by the product defects is excluded, unless it was the willful act of the Seller.

§ 11. The Seller shall not be liable under the warranty for physical defects.

§ 12. After expiry of the warranty term, any repairs carried out by the Seller shall be paid for.

§ 13. The provisions of the Warranty Card shall complement the provisions of the GTCS relating to the scope of the warranty.

## **ART. 8. LIMITATIONS OF LIABILITY**

§ 1. Any liability of the Seller towards the Buyer and third parties shall be excluded to the fullest extent permitted by applicable law.

§ 2. The tort and contractual liability of the Seller towards the Buyer and third parties shall be excluded, subject to the mandatory provisions of the Civil Code.

§ 3. The liability of the Seller towards the Buyer and third parties for possible damage that might be caused intentionally shall be limited to the unit price of products that caused the damage as specified on the Seller's invoice. This liability shall not encompass the right to claim reimbursement of any benefits lost or for any indirect damage.

§ 4. The Seller shall not be liable in particular for any damage caused by improper or unprofessional handling, improper assembly or start-up by the Buyer or third parties, for normal wear and tear, improper or negligent use, as well as in particular for any consequences of unprofessional modifications made without the consent of the Seller or any repairs carried out by the Buyer or third parties.

§ 5. The Seller shall not be liable for any functional defects of the products resulting from the inappropriate selection of devices or improper design of the system, or installation by the Buyer who, prior to the purchase, shall familiarize itself with and verify whether the functionality of the products offered by the Seller fulfills the Buyer's needs.

§ 6. The Seller shall not be liable for any third party claims resulting from the use of the products by the Buyer or from the use of the products by any unauthorized third parties, to the detriment of the Buyer.

§ 7. The Seller shall not incur any liability for the liabilities of the Buyer to third parties.

§ 8. If a third party takes legal action against the Seller for damage incurred by that party in connection with the products and/or services, the Buyer undertakes to join the legal proceedings with the Seller, if it is permitted by the applicable law, and to support the Seller in the course of such proceedings as well as to pay all costs associated thereto, including damages, court fees, legal representation costs etc.

§ 9. The Seller shall not be liable for any failure on the part of the Buyer to comply with the obligation to obtain any authorizations required by law.

## **ART. 9. CORRESPONDENCE — ADDRESS**

§ 1. The Parties shall notify each other of every change in address. In the event of failure to notify the other party of the change in address, correspondence delivered to the previous address shall be deemed to have been delivered and shall produce the legal effects stipulated therein.

§ 2. All correspondence between the Seller and the Buyer via electronic mail shall be deemed to produce legal effects, provided that the message contains the following elements: the sender's email address, the date and time of the message and the sender's full name. Any anonymous messages shall be deemed invalid.

## **ART. 10. CONFIDENTIALITY CLAUSE / TRADE SECRET**

§ 1. Without the consent of the Seller, the Buyer shall not disclose to third parties any information that constitutes a trade secret and has been obtained in the course of business relations.

§ 2. Any information or materials (hereinafter referred to as the "Confidential Information") provided to the Buyer by the Seller and not available to the public shall be treated as confidential; this provision shall apply in particular to the data related to the technical solutions used by the Seller, codes, documentation related to business relations between the Parties, information on contractors or the economic and legal condition of the Seller.

§ 3. The Buyer shall prevent any disclosure of the Confidential Information by its present and future employees, partners and shareholders as well as after the termination of the employment relationship (upon ending the cooperation with the Buyer).

§ 4. Notwithstanding the foregoing, the Buyer shall restore the proper legal status and prevent further violations of the Confidential Information.

§ 5. The Buyer shall:

- a.) use the Confidential Information only in accordance with the GTCS;
- b.) maintain confidentiality of any Confidential Information and not disclose or convey it to third parties;
- c.) take all requisite measures to provide security of the Confidential Information.

§ 6. The confidentiality clause shall not apply if:

- a.) The Confidential Information is or has been disclosed to the public in other manner than through violation of the GTCS;
- b.) The Confidential Information was previously known to the Buyer from other sources, which can be proven beyond reasonable doubt, both with regard to the time and source of obtaining such Confidential Information;
- c.) the obligation to disclose the Confidential Information to third parties is required by applicable law. The Buyer shall promptly notify the Seller of receiving the above-mentioned request, unless the disclosure of such Confidential Information is prohibited by the law or by a decision of the entity that requires the Confidential Information to be disclosed. The above-mentioned notice shall be sent, if possible, before disclosing the Confidential Information to the entity authorized to make such a request;
- d.) the Buyer who intends to disclose the Confidential Information must obtain a written consent of the Seller specifying the subject and scope of the consent.

§ 7. The non-disclosure obligation shall apply without time limit. The obligations set forth in this Article shall survive the performance or termination of the legal relationship between the Parties.

#### **ART. 11. FORCE MAJEURE**

The Seller shall not be liable for the failure to perform or improper performance of the obligations arising out of the contract of sale of products and/or services, if the failure to perform or improper performance of obligations have been caused by circumstances beyond the Seller's control despite acting with due diligence (Force Majeure). The circumstances referred to in the previous sentence shall include, in particular: natural phenomena, disruptions in social order including strikes and riots, official measures, unfulfilled deliveries from the Seller's suppliers and other unforeseeable, unavoidable and serious events. The occurrence of such events releases the Seller from its contractual obligations for the duration of the disturbance and to the extent of its impact. The Seller shall notify the Buyer of such circumstances as soon as possible and spare no effort to fulfill its obligations in good faith, to the extent the prevailing circumstances permit.

#### **ART. 12. PERSONAL DATA**

§ 1. The Seller notifies the Buyer that, to the extent necessary for the business purposes, without prejudice to the provisions of the Personal Data Protection Act, the Seller collects and processes data on its customers and contractors in accordance with the Seller's Information Security Policy. The Buyer gives its consent for its personal data to be processed for the purposes necessary for business cooperation, in accordance with the Act of 29 August 1997 on Personal Data Protection (consolidated text: Dz. U. of 2002, no. 101, item 926 as amended)

§ 2. The Seller shall not transfer any personal data of the Buyer to third parties. The personal data may be disclosed to the entities authorized to receive them under applicable law, in particular the judicial authorities.

§ 3. The Buyer shall have the right to amend its personal data at any time and withdraw its consent for the personal data to be processed

#### **ART. 13. SEVERABILITY CLAUSE**

§ 1. Should any provision of the GTCS be held invalid, illegal or unenforceable for any reason whatsoever, the remaining provisions of the GTCS shall remain in full force and effect as if the GTCS was in full force without such invalid, illegal or unenforceable provision. The invalid provisions shall be replaced with the applicable provisions of the Polish civil law.

§ 2. If the scope of the determined invalidity or unenforceability prevents achieving the objective, the Seller and the Buyer shall promptly embark on negotiations in good faith in order to replace the invalid or unenforceable provision by such valid and enforceable provision which to the greatest possible extent matches the intention of the provision which is being replaced.

#### **ART. 14. FINAL PROVISIONS**

§ 1. The Parties agree that amendments to the GTCS made by the Seller shall not necessitate an addendum to the contract and they shall produce legal effect as from the moment of their publication on the website [www.pelmet.com.pl](http://www.pelmet.com.pl).

§ 2. To all matters not settled herein, provisions of the Polish law, in particular the Civil Code, shall apply. Any disputes shall be resolved in accordance with the wording of the GTCS as of the day of making a claim.

§ 3. Any possible disputes arising from the GTCS shall be settled amicably, and in the case of failure to reach an agreement within 30 days, all such disputes shall be settled by the Polish court competent for the head office of the Seller.