

ARMACELL POLAND SP. Z O.O.
GENERAL COMMERCIAL TERMS

I. General

-§ 1-

1. These general commercial terms ("GCT") govern relationships intended to promote, sell and distribute goods offered by Armacell Poland Sp. z o.o. ("Armacell Poland") and to give Authorised Distributors suitable resale conditions, the main purpose being to increase the resale and to optimise its underlying terms.
2. Once these GCT enter into force or the parties use them to sign a special contract between each other, any earlier arrangements between the parties shall cease to be in effect.
3. Any contracts of sale of Seller's goods shall be executed and performed under these GCT unless the parties have amended or excluded any of these GCT in their special contract. Without limiting the generality of the foregoing, no contracts made under these GCT shall be governed by any pre-formulated standard contracts, as defined in Article 384 Civil Code, other than these GCT, including by any standard contracts used by Armacell Poland's supplier or customer, unless Armacell Poland agrees in writing.
4. In any contracts of sale made according to these GCT, the following terms shall have the meanings set forth below:
 - a) Seller - Armacell Poland Sp. z o.o.;
 - b) Buyer - an entity which buys Seller's goods;
 - c) Distributor - a Buyer who buys Seller's goods in order to resell them;
 - d) Authorised Distributor - a Buyer who buys goods from Seller on special terms defined in a special contract which entitles that person to use the designation *Authorised Distributor of Armacell Poland* (Autoryzowany Dystrybutor Armacell Poland Sp. z o.o.);
 - e) pricelist - a pricelist of goods offered by Seller as per his current catalogues (CMTA),
 - f) rebates - price rebates specified in special contracts;
 - g) standard goods - products offered by Seller or Distributors in Seller's current catalogues, other than products that are considered non-standard in those catalogues;
 - h) non-standard goods - products that do not feature in Seller's current catalogues or that are considered non-standard in such catalogues, offered for sale upon special requests of Buyers or Distributors;
 - i) non-standard delivery - a delivery of not more than 5 boxes of isolation (not applicable to accessories), taken from Seller's warehouse on the EXW terms according to Incoterms 2000;
 - j) standard delivery - a delivery of 5 or more boxes of isolation (not applicable to accessories), delivered on CPT *destination* terms according to Incoterms 2000;
 - k) special contract - a contract signed by both Seller and Buyer or Distributor or a contract formed through offer and acceptance where the offer is made by Buyer or Distributor on terms individually agreed with Seller.
5. In the event a contract of sale is made, Seller must deliver (issue) the ordered goods to Buyer or Distributor while Distributors shall be required to resell (distribute) these goods in the territory of Poland. A separate authorisation is necessary for a Distributor to make sales in the territory of any other country. Resale is made by a Distributor in his own name and for his own account.

II. Formation of contract

-§ 2-

1. Seller's catalogues, pricelists and advertising and Seller's individual arrangements in response to pre-offer requests for a quote shall constitute an invitation for Buyers or Distributors to submit orders. An order submitted by a Distributor shall be treated as an offer to contract on the terms specified in §1.3 of these GCT. Within one day Seller shall accept or refuse to accept the order, or propose different terms on which it is to be fulfilled. Contract shall be considered to be formed on delivery of order confirmation to Buyer or Distributor. If Seller does not respond to the order within said time or refuses to accept the order, no contract shall be considered to be formed. Where Seller gives Buyer or Distributor a response that proposes different terms (counteroffer), a contract of sale shall be deemed to be formed on the terms set out in such response, unless Buyer or Distributor objects within one day from the date on which Seller's response is delivered to him. Absent such objection, the contract of sale shall be considered to be formed on expiry of said one-day period.
2. An order should be issued by an authorised person and should state at the minimum: the kind (range) of goods and their code, the quantity, the unit of measure, the delivery date and, for standard deliveries, the delivery place. Subject to §5.3, the prices for products on order equal those specified in Seller's catalogue current on the order submission date. An order shall be submitted by fax to number (071) 317 51 15 or by email to an address indicated by Seller.

3. Except in relation to orders for non-standard goods, Buyer or Distributor may change or cancel an order (order adjustment) in writing no later than two days before the date confirmed by Seller for issue or delivery of the ordered goods,
4. A standard goods order by Buyer or Distributor shall be fulfilled by Seller without delay but in any case within 21 days from order receipt date. Delivery dates for non-standard goods are agreed on a case-by-case basis. Seller may unilaterally extend order fulfilment time by a maximum of 5 days, always with a notice given to Distributor in due time ahead.

III. Issue and delivery of goods

-§ 3-

1. A standard delivery is made on a CPT (Incoterms 2000) basis to a destination designated by Buyer or Distributor while a non-standard delivery is made on an EXW (Incoterms 2000) basis, i.e. the delivery is taken by Buyer or Distributor from Seller's warehouse.
2. Special contracts may provide for different delivery (issue) terms, especially in relation to partial deliveries or deliveries of missing items.
3. On delivery (issue) of goods, Seller shall give Buyer or Distributor an external GIN (goods issued note) stating the kind and quantity of the goods and any difference between the order and the issue (delivery). The GIN shall be signed by an authorised representative of Buyer or Distributor and returned to Seller. Where a GIN states no differences between the order and the issue (delivery), Seller shall be entitled to refuse complaints as to the quantity or kind of the goods.

IV. Complaints. Seller's liability

-§ 4-

1. Seller shall not be liable for any acts of Buyer, Distributor or third parties, including acts relating to design or implementation activities.
2. Complaints about goods lost or damaged on issue (delivery) shall be considered by Seller only if reported in writing without delay but in any case within 7 days from the issue or delivery date. If Buyer or Distributor have damaged goods assembled or installed, they lose their rights under statutory warranty for physical defects.
3. After the ordered goods are assembled, installed or otherwise attached so as to become fixtures of some other property, the only remedy available to Buyer or Distributor against Seller in terms of physical defects is to claim a price reduction.
4. Seller must process complaints without delay.
5. To the extent permitted by mandatory provisions of law, any liability of Seller in connection with formation or performance of the contract of sale, under any doctrine (including, without limitation, any liability in damages to Buyer or Distributor and liability under statutory warranty) shall be limited to an amount equal to the price due to Seller for the goods to which the claim against Seller relates. No damages claimed from Seller in connection with any goods sold by him shall in any case include indirect, consequential or contingent damages or lost benefits.

V. Prices

-§ 5-

1. The prices for the goods are as stated in Armacell Poland's pricelist. The amounts given in the pricelist are stated net, i.e. exclusive of the goods and services tax.
2. Prices for non-standard goods shall be negotiated individually.
3. In the case of a special contract or individual arrangements between Seller and Buyer or Distributor, the prices to apply are those negotiated individually.

VI. Payment terms

-§ 6-

1. On or after issuance (delivery) of the goods, Seller shall issue an invoice to Buyer or Distributor according to applicable regulations. The delivery of the VAT invoice shall be treated as a request for payment. Unless the parties agreed oth-

erwise in their special contract, Distributor must pay for the goods in full before taking delivery. Payment shall be made by funds transfer to designated bank account of Seller.

2. In the event of a delayed payment, Seller reserves the right to charge statutory interest or to exercise his remedies listed in point 4 below in relation to the entire debt. In addition, if payment is delayed beyond the due date, Seller may withhold deliveries or terminate the contract with immediate effect.
3. Without a written consent of the other party, neither party has the right to apply a setoff in relation to mutual debts or the right of retention (lien).
4. Seller may charge Buyer or Distributor for costs and expenses incurred in connection with engaging professional firms or entities to pursue and collect any amounts in arrears.
5. The total of all amounts in arrears from Buyer or Distributor to Seller may not be more than the amount set out in the special contract (credit limit). In the case of a special contract with a credit limit, Seller's right under point 4 above shall not arise until the credit limit is exceeded. In addition, where such credit limit is exceeded, Seller shall be entitled to withhold deliveries or terminate the contract with immediate effect.

VII. Use of Seller's marks. Status of Distributor or Authorised Distributor

-§ 7-

1. The Distributor status applies to a Buyer who purchases goods from Seller for further resale.
2. A Distributor must offer his customers the full range of Seller's goods as per relevant catalogues and must give his customers accurate and full information on the characteristics and properties of the goods. If so requested by Seller, a Distributor must also give information on anything he notices in terms of restrictions or opportunities of expanding the scope of sales.
3. A Distributor may use Seller's marks only according to these GCT and the special contracts and only for the term thereof. The license to use Seller's marks includes Distributor's right and duty to take necessary action to protect them, and in particular to notify Seller of any infringements by third parties. No written communication originating from Distributor may contain Seller's marks. Distributor may not remove Seller's or other entities' marks from the goods he purchased from Seller.
4. The Distributor may hold himself out as *Authorised Distributor of Armacell Poland* (Autoryzowany Dystrybutor Armacell Poland Sp. z o.o.) throughout the term of the special contract. The status of an Authorised Distributor of Armacell Poland confers certain special rights and purchase terms in relation to Seller's goods, as set out in the special contract.
5. For a Distributor to acquire the status of *Authorised Distributor of Armacell Poland* (Autoryzowany Dystrybutor Armacell Poland Sp. z o.o.), he must:
 - a) within each period of twelve months as of the execution date of the special contract, make purchases with Seller for a specific amount set out in the special contract (turnover threshold);
 - b) maintain the confidentiality of any information obtained in connection with performing the contract, including without limitation information on turnover, actual or projected marketing efforts, Seller's discount schemes, etc.;
 - c) give Seller an immediate notice of any changes on his part, including changes in particulars reportable to business information records (National Court Register, register of sole traders, identification codes: NIP, REGON, PESEL).

VIII. Advertising and promotion

-§ 8-

1. An Authorised Distributor must strive to increase the share which the goods he purchases from Seller have in the Polish market.
2. Seller must assist Authorised Distributors as provided for in the special contracts and, as far as is possible for him, follow their advice as to upgrades or improvements in the goods and how to change the goods to better conform to customers' needs and market requirements.
3. An Authorised Distributor has full discretion in creating his distribution policies but should take into consideration the need to protect Seller's interests.

IX. Duration and termination of contract

-§ 9-

1. Any contracts made under these GCT by way of offer and acceptance terminate upon discharge by performance as provided therein.
2. Unless it has a fixed term, a special contract signed by both parties may be terminated with notice (*wypowiedzenie*). Either party may terminate such a contract by giving a three months' prior notice effective as at the end of the calendar month. The notice must be given in writing to be valid.
3. Seller may terminate forthwith a special contract signed by both parties or withhold further deliveries if:
 - a) Buyer or Distributor takes action that harms Seller or tarnishes his reputation, or that impairs the goodwill of Seller or of his marks;
 - b) Buyer's or Distributor's financial position grossly deteriorates, including if an application is made for his bankruptcy or registration as an insolvent debtor or for the opening of the procedure to make a general arrangement with his creditors (*postępowanie układowe*);
 - c) a credit limit provided for in the special contract is exceeded or a payment is beyond its due date.
4. A special contract signed by both parties may be terminated by Buyer or Distributor forthwith if Seller breaches any of the duties provided for in these GCT or special contracts.
5. Unless the parties agree otherwise, and such agreement must be in writing to be valid, any claims under a contract shall become immediately enforceable on the date on which the contract is terminated with notice.

X. Applicable law. Arbitration

-§ 10-

1. Polish law, including especially the Civil Code, shall apply to anything not regulated in the special contract or these GCT.

Any disputes arising out of or in connection with performance of this contract shall be submitted by the parties for resolution to common courts in Legnica.