

## SALES CONDITIONS

**Refloactive Spółka z ograniczoną odpowiedzialnością**, a company duly organized and existing under the laws of Poland, with its registered office in Bydgoszcz (Poland), at Rynkowska 2, 85-503 Bydgoszcz, entered into the Register of Entrepreneurs kept by the District Court for Bydgoszcz in Bydgoszcz, 13<sup>th</sup> Commercial Division of the National Court Register, under KRS no. 0000903671, NIP no.: 899-14-32-896, share capital in the amount of PLN 50.000, represented by:

[...]

– hereinafter referred to as “the Seller”

And

a company duly organized and existing under the laws of foreign country – hereinafter referred to as “the Buyer”.

### 1. Preamble

- 1.1. The provisions of this Sales conditions shall exclusively apply to all orders for, save as varied by express agreement accepted in writing by both Parties.
- 1.2. The offer, order acknowledgment, order acceptance of sale of any products of the Seller (hereinafter: “**the Contractual Products**”) is conditioned upon the terms contained in this instrument. Any conditional or different terms proposed by the Buyer are objected to and will not be binding upon the Seller unless assented in writing by the Seller.
- 1.3. This Sales conditions shall govern any future individual contract of sale between the Seller and the Buyer to the exclusion of any other terms and conditions subject to which any such quotation is accepted or purported to be accepted, or any such order is made or purported to be made, by the Buyer.
- 1.4. Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document of information issued by the Seller shall be subject to correction without any liability on the part of the Seller.
- 1.5. The provisions of this Sales conditions extend to standard contract conditions which are used in a contract with a merchant in the course of business only.

### 2. Orders and Specifications

- 2.1. No order submitted by the Buyer shall be deemed to be accepted by the Seller unless and until confirmed in writing by the Seller or the Seller's representative within 21 days after submission.
- 2.2. The quantity, quality and description of and any specification for the Contractual Products shall be those set out in the Seller's quotation (if accepted by the Buyer) or the Buyer's order (if accepted by the Seller). Any such specification, sales literature, quotation, etc. shall be strictly confidential and must not be made available to third parties.
- 2.3. The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any order submitted by the Buyer, and for giving the Seller any and all necessary information relating to the Contractual Products within a sufficient time in order to enable the Seller to perform the Agreement in accordance with its terms.
- 2.4. If the Contractual Products are to be manufactured or any process is to be applied to the Contractual Products by the Seller in accordance with a specification submitted by the Buyer, the Buyer shall indemnify the Seller against all loss, damages, costs and expenses awarded against or incurred by the Seller in connection with or paid or agreed to be paid by the Seller in settlement of any claim for infringement of any patent, copyright, design, trade mark or other industrial or intellectual rights of any other person which results from the Seller's use of the Buyer's specification.

### **3. Price of the Contractual Products**

- 3.1. The price of the Contractual Products shall be the Seller's quoted price or, where no price has been quoted, the price listed in the Seller's published price list current at the date of acceptance of the order. Where the Contractual Products are supplied for export from Poland, the Seller's published export price list shall apply.
- 3.2. The Seller reserves the right, by giving notice to the Buyer at any time before delivery, to increase the price of the Contractual Products to reflect an increase in the costs to the Seller which is due to any external factor beyond the control of the Seller (such as foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of materials or other costs of manufacture) or any change in delivery dates.
- 3.3. Except as otherwise stated under the terms of any quotation or in any price list of the Seller, and unless otherwise agreed in writing between the Buyer and the Seller, all prices are given by the Seller on an EXW (Incoterms 2020) basis, and where the Seller agrees to deliver the Contractual Products otherwise than at the Seller's premises, the Buyer shall be liable to pay the Seller's charges for transport, packaging and insurance.

- 3.4. The price is exclusive of any applicable value added tax, which the Buyer shall be additionally liable to pay to the Seller.

#### **4. Terms of Payment**

- 4.1. The Buyer shall pay the price of the Contractual Products not later than 7 days before the agreed delivery date, however not sooner than after receipt of the Seller's invoice.
- 4.2. Payment shall be effected by interbank payment transaction only; no cheque or bill of exchange will be considered as fulfilment of the payment obligation.
- 4.3. It may be agreed between the parties that the buyer has to deliver a letter of credit issued by his bank (or any bank acceptable to the seller). In this individual case it is assumed that any letter of credit will be issued in accordance with the Uniform Customs and Practice for Documentary Credits, 2007 Revision, ICC Publication No. 600.
- 4.4. If the Buyer fails to make any payment on the due date then, without any prejudice to any other right or remedy available to the Seller, the Seller shall at his discretion be entitled to:
  - 4.4.1. Cancel the contract or suspend any further deliveries to the purchase;  
or
  - 4.4.2. Charge the Buyer interest on the price of the Contractual Products at a rate equal to the rate of statutory interest due for late payment in commercial transactions [*"odsetki ustawowe za opóźnienie w transakcjach handlowych"*].

#### **5. Delivery**

- 5.1. Delivery of the Contractual Products shall be made by the Buyer collecting the Contractual Products at the Seller's premises at any time after the Seller has notified the Buyer that the Contractual Products are ready for collection or, if some other place for delivery is agreed by the Seller, by the Seller delivering the Contractual Products to that place.
- 5.2. Where delivery of the Contractual Products is to be made by the Seller in bulk, the Seller reserves the right to deliver up to 3% more or 3% less than the quantity ordered without any adjustment in the price, and the quantity so delivered shall be deemed to be in the quantity ordered.
- 5.3. If delivery is not made on time, or if the Buyer refuses to take delivery of the Contractual Products because it does not conform with the contract the Buyer shall only be entitled to legal remedies after the Buyer has given the Seller a reasonable time to cure. If the period to cure has

expired without delivery being made, the Buyer may immediately terminate the contract or claim damages as permitted by law subject to the conditions in Article 9 of this Agreement.

- 5.4. If the Buyer fails to accept the delivery of the Contractual Products on due date, he shall nevertheless make any payment conditional on delivery as if the Contractual Products had been delivered. The Seller shall arrange for the storage of the Contractual Products at the risk and cost of the Buyer. If required by the Buyer the Seller shall insure the Contractual Products at the cost of the Buyer.

## **6. Transfer of Risks**

- 6.1. Risk of damage to or loss of the Contractual Products shall pass to the Buyer as follows:

- 6.1.1. In case of the Contractual Products to be delivered otherwise than at the Seller's premises, at the time of delivery or, if the Buyer wrongfully fails to take delivery of the Contractual Products, the time when the Seller has tendered delivery of the Contractual Products;

- 6.1.2. In the case of Contractual Products to be delivered at the Seller's premises in accordance with EXW Incoterms 2020, at that time when the Seller notifies the Buyer that the Contractual Products are available for collection.

## **7. Retention of Title**

- 7.1. Notwithstanding delivery and the passing of risk in the Contractual Products, or any other provision of this Agreement, the property in the Contractual Products shall not pass to the Buyer until the Seller has received payment in full of the price of the Contractual Products and all other Products agreed to be sold by the Seller to the Buyer for which payment is then due.
- 7.2. After termination of the contract the Seller shall have absolute authority to retake, sell or otherwise deal with or dispose of all or any part of the Contractual Products.
- 7.3. Until such time as the property in the Contractual Products passes to the Buyer, the Buyer shall hold the Contractual Products as the Seller's fiduciary agent, and shall keep the Contractual Products properly stored, protected and insured.
- 7.4. Until that time the Buyer shall be entitled to resell or use the Contractual Products in the ordinary course of its business, but shall account to the Seller for the proceeds of sale or otherwise of the Contractual Products

including insurance proceeds, and shall keep such proceeds separate from any moneys or properties of the Buyer and third parties.

- 7.5. If the Contractual Products are processed or reshaped by the Buyer and if processing is done with Products that seller has no property in, Seller shall become co-owner of the Contractual Products. The same shall apply if Seller's Contractual Products are completely reshaped and mixed with other Contractual Products.
- 7.6. If third parties take up steps to pledge to otherwise dispose of the Contractual Products, the Buyer shall immediately notify the Seller in order to enable the seller to seek a court injunction. If the Buyer fails to do so in due time he will be held liable for any damages caused.
- 7.7. The Seller shall on demand of the Buyer release any part of the collateral if the value of the collateral held in favour of the Seller exceeds the value of the claims being secured. It is to the Seller's decision to release those parts of the collateral suitable for him.

## **8. Warranty**

- 8.1. The Seller warrants that the Contractual Products, at the time of delivery to the carrier, will conform with the specifications agreed by the Parties, will be of satisfactory quality and will be fit for their original intended purpose.
- 8.2. The above warranty is given by the Seller subject to the following conditions :
  - 8.2.1. The Seller shall not be liable in respect of any defect in the Contractual Products arising from any design or specification supplied by the Buyer;
  - 8.2.2. The Seller shall not be liable under the above warranty if the total price for the Contractual Products has not be paid by the due time for payment;
  - 8.2.3. The above warranty does not extend to parts, materials or equipment manufactured by or on behalf of the Buyer unless such warranty is given by the manufacturer to the Seller.
- 8.3. This warranty does not cover defects in or damage to the Contractual Products which are due to improper installation or maintenance, misuse, neglect or any cause other than ordinary commercial application.
- 8.4. The Buyer must examine the Contractual Products within 7 days of receipt from the carrier for any lack of conformity and give notice to the Seller of any such lack of conformity within a further 7 days. If non-

conformity of the Contractual Products can only be discovered at a later date, then the period for notification of non-conformity shall commence upon discovery.

- 8.5. If the Contractual Products do not conform with the contract, the Buyer shall have the right to demand repair, ruling out other claims. If the Seller refuses to repair, or if attempts to repair have failed and it is not reasonable to subject the Buyer to further attempts to repair, then the Buyer shall have the right to either terminate the agreement or demand a reduction in the Price.
- 8.6. The Buyer's remedies for breach of this agreement due to delivery of non-conforming Contractual Products are restricted to the above with the exception of liability for injury to life, body or health or - with respect to other rights and assets of the Buyer - to the extent that damages arise from the Seller's intentional or grossly negligent breach of this Agreement.

## **9. Liability**

- 9.1. Without prejudice to any further limitation set forth elsewhere, the Seller's liability for any breach of Agreement shall in any event prerequisite negligence or intentional misconduct of the Seller.
- 9.2. The Seller is not liable for damages resulting from the circumstances beyond the control of the Seller which cannot be overcome by the Seller using reasonable efforts, in particular because of natural disasters or similar cases of force majeure, governmental interference or industrial disputes.
- 9.3. Notwithstanding anything to the contrary elsewhere, the Seller shall in no event and irrespective of the legal basis (contract, tort (including negligence), statutory liability, misrepresentation, indemnity or any other area of law) be liable for loss of profit or revenue, loss of use or loss of production, loss of data, cost of capital, cost of substitute goods, property damage external to the contractual products and any damage, expenditure or loss arising out of such damage, any indirect or incidental or consequential damages or any of the foregoing suffered by any third party.
- 9.4. Furthermore, but without prejudice to any further limitation of liability stipulated elsewhere in this Agreement, the Seller's overall liability arising out of or related to this Agreement, irrespective of its legal basis, shall in the aggregate be limited to an amount of the Price specified in Article 3 section 1 of this Agreement.
- 9.5. The provisions of this Article 6 do not limit or exclude the liability of the Seller to the extent that the same may not be limited or excluded in accordance with the mandatory provisions of law, in particular to the

extent specified in article 473 § 2 of the Polish Civil Code (willful misconduct).

## **10. Set-off**

- 10.1. The Buyer may only set-off claims in accordance with the applicable law that are owed in the same currency as the main claim and that are either undisputed between the Parties or have finally been adjudicated.
- 10.2. The same restrictions shall apply mutatis mutandis to any right of retention of the Buyer.

## **11. Term and termination**

- 11.1. This Agreement is concluded for an indefinite period of time.
- 11.2. Either Party may terminate this Agreement subject to 1-months' prior written notice, effective to the end of a calendar month.
- 11.3. Either Party may terminate this Agreement with the immediate effect if the respective other Party (i) is in material breach of this agreement and, unless the breach is not capable of remedy, (ii) has failed to remedy such breach within 14 days after remedial measures have been requested by the first Party.
- 11.4. The termination of this Agreement shall not affect any contractual provision which is intended to survive a termination or which is required to give effect to such termination or the consequences thereof.

## **12. Written Form, Severability, Exclusion of GT&Cs, Language, Interpretation**

- 12.1. Any amendments additions to, or the termination by mutual agreement of this Agreement must be in writing to be valid. The same shall apply to any other declarations of the Parties that are necessary for the substantiation, assertion or exercise of their rights, in particular notices of non-conformity, setting of deadlines, or unilateral notices of termination.
- 12.2. To the extent one or more provisions of this Agreement are or become void or unenforceable, the remaining provisions shall remain in effect.
- 12.3. This Agreement is the only binding document for both Parties and excludes other general terms and conditions of selling and purchasing for both Parties.
- 12.4. The governing language of this Agreement is English.

12.5. This Agreement is to be construed under Polish law paying regard to the use of English as a language of convenience. All terms shall have the meaning under Polish law without recourse to English or any other law. English is not the native language of the Parties nor of their advisors. The Parties acknowledge and agree that this Agreement has been jointly drafted by the Parties and accordingly it should not be strictly construed against either Party.

### **13. Jurisdiction**

The competent court of the registered office of the Seller shall have jurisdiction over all disputes in relation to this Agreement. However each party to this Sales conditions is also allowed to bring an action against the other party in the jurisdiction generally competent for such other party.

### **14. Governing Law**

This Agreement, including any and all orders submitted in accordance with its provisions, is governed by the substantive laws of Poland including the United Nations Convention of 11 April 1980 on Contracts for the International Sale of Goods (CISG).

### **15. Miscellaneous**

15.1. Any changes, additions or amendments to this Agreement shall only be valid and come into effect if made in writing. The same shall apply to any agreement setting aside this written-form requirement.

15.2. This Sales conditions shall come into force on the date of its confirmation.

Refloactive LLC.