

# Terms and Conditions

## GENERAL TERMS AND CONDITIONS OF BBH Tsuchiya s.r.o.

### 1. General Terms and Conditions

1.1 These General Terms and Conditions (hereinafter referred to as "**GTC**") are commercial terms and conditions within the meaning of § 1751 of Act No. 89/2012 Coll. of the Civil Code (hereinafter referred to as "**CC**"), and apply to all relationships arising from a contract of purchase or of work (hereinafter referred to as "**Contract**") concluded between BBH Tsuchiya s.r.o, as the seller/contractor (hereinafter referred to as "**BBH TSUCHIYA S.R.O.**") and the buyer/customer (hereinafter referred to as "**Customer**"), and whose subject matter is the delivery of products or execution of work by BBH TSUCHIYA S.R.O. (hereinafter referred to as the "**Performance**").

1.2 In the event that the rights and obligations of BBH TSUCHIYA S.R.O. and the Customer are regulated differently in the Contract from the GTC, the provisions of the Contract shall prevail.

1.3 All documents of the Contract shall be deemed complementary and/or explanatory. In case of conflict, the interpretation of the documents and their order of priority shall be as follows unless otherwise stated in the Contract: (a) the Contract, including all specific terms and conditions incorporated in the Contract, (b) the annexes to the Contract, (c) these GTC, (d) if applicable, other documents.

1.4 Terms and conditions other than the GTC shall not apply to the above relationships, even if they are known to BBH TSUCHIYA S.R.O. or have been submitted to it. BBH TSUCHIYA S.R.O. is not bound by any terms and conditions unless they are expressly agreed to in writing by an authorised representative of BBH TSUCHIYA S.R.O.

### 2. Procedure for concluding the Contract

2.1 The Contract must be concluded in writing. An e-mail is considered a written document. The Contract shall become valid and effective as soon as any of the following events occurs: (a) on the date of signature by both parties, or (b) when BBH TSUCHIYA S.R.O. in writing or by e-mail, confirms the acceptance of the Customer's order, at any time within seven (7) days after its acceptance, whereby the confirmation with changes (including any variation contained in the GTC) shall be deemed to be a new proposal, which the Customer - in the event that they are interested in concluding the Contract - shall be obliged to accept within seven (7) days from the date on which such expression of intent is delivered to BBH TSUCHIYA S.R.O.

2.2 Documentation shall be part of the Performance only if the Customer has stipulated it in the Contract or order and BBH TSUCHIYA S.R.O. has subsequently confirmed or agreed in the Contract to the subsequent provision of documentation.

### 3. Performance, terms of delivery, documents for the Performance

3.1 BBH TSUCHIYA S.R.O. shall deliver the Performance at the place, time, quantity and quality agreed in the Contract. If the delivery period is determined by a time limit, BBH TSUCHIYA S.R.O. shall be entitled to deliver the Performance at any time during this

period. If the delivery period is not determined by a specific date, BBH TSUCHIYA S.R.O. shall invite the Customer to accept delivery of the Performance at least 5 (five) days before the date of the scheduled delivery of the Performance. Unless otherwise expressly agreed, the arranged delivery dates (deadlines) are only approximate.

3.2 Unless otherwise agreed in the Contract, the Performance shall be delivered according to EXW - České Budějovice trade parity, without packaging (INCOTERMS 2010). The Performance shall be deemed to be delivered at the moment when BBH TSUCHIYA S.R.O. allows the Customer to dispose of the Performance at the agreed place of the delivery of the Performance. In the event that BBH TSUCHIYA S.R.O. is to ship the goods, the Performance shall be deemed to have been delivered to the Customer at the moment the Performance is handed over to the first carrier that is to transport the Performance to the Customer. BBH TSUCHIYA S.R.O. is only obliged to insure the transport of the Performance if this is expressly stated in the Contract.

3.3 The delivery of the Performance by BBH TSUCHIYA S.R.O. is conditional upon the timely delivery of all necessary documents by the Customer, the receipt of the necessary permits, consents and approvals, provision of the necessary cooperation, compliance with the agreed terms of payment and other obligations of the Customer. If the above conditions are not met in time, the delivery period set for the Performance shall be extended accordingly. The Performance of BBH TSUCHIYA S.R.O. is also conditional upon the Customer not being in default of any payment to it for the Performance already made. During the period of such default by the Customer, BBH TSUCHIYA S.R.O. shall not be in default in the delivery of the Performance and the agreed delivery period shall be extended by a period corresponding to the length of the aforementioned default by the Customer. If the provision of advance payment(s) has been agreed, BBH TSUCHIYA S.R.O. shall not be obliged to deliver the Performance before such payment(s) has been provided.

3.4 The Customer is obliged to (a) accept the Performance on the agreed date and/or on the date notified by BBH TSUCHIYA S.R.O. in accordance with Article 3.1 of the GTC, (b) confirm its acceptance in writing in the delivery note or handover report and (c) send (hand over) the confirmed copy to BBH TSUCHIYA S.R.O. A functional Performance shall be deemed to be a proper Performance if it has only such defects or imperfections which do not prevent its proper use for the purpose agreed in the Contract or for the usual purpose in relation to the nature and object of Performance. BBH TSUCHIYA S.R.O. is entitled to deliver the Performance also before the agreed date. Together with the Performance, BBH TSUCHIYA S.R.O. shall deliver to the Customer the documentation and documents necessary for the acceptance and proper use of the Performance, or any other agreed documentation. Whether the Customer uses the Performance or transfers it, the Performance shall be deemed to have been duly delivered and accepted by the Customer.

3.5 In the event that the Customer fails to take over the Performance within fifteen (15) days from the date of delivery, BBH TSUCHIYA S.R.O. shall be entitled to store the Performance at the expense and risk of the Customer. In this case the storage fee is set at the rate of 0.1% of the price of the Performance for each day of storage. If the Customer fails to take over the Performance even within a subsequently specified period of at least thirty (30) days, BBH TSUCHIYA S.R.O. shall be entitled to withdraw from the Contract without further notice

and to charge the Customer, in addition to compensation for damages and storage fees, a contractual penalty of fifteen (15) % of the total price of the Performance.

3.6 If the Performance is delayed at the request of the Customer, BBH TSUCHIYA S.R.O. shall be entitled to charge the Customer for storage costs or the cost of interrupting the work.

3.7 Unless expressly agreed otherwise, BBH TSUCHIYA S.R.O. is not obliged to deliver the Performance before payment of the full price of the Performance. Similarly, BBH TSUCHIYA S.R.O. is entitled to suspend the Performance or part thereof in the event that it has an existing overdue claim on the Customer, including claims from other orders and business relationships.

3.8 The technical parameters of the Performance (quality and workmanship) are determined by the internal regulations of BBH TSUCHIYA S.R.O. (work procedures and instructions) and, where applicable, by reference samples, if agreed between the parties prior to the conclusion of the Contract. If the product is shaped by hand (e.g. cutting, punching, etc.), tolerances of  $\pm 0.8$  mm are applied to all dimensions.

3.9 All documents relating to the Performance shall be drawn up in Czech. BBH TSUCHIYA S.R.O. is obliged to provide a translation only if the Contract so requires.

3.10 The Performance shall be delivered by BBH TSUCHIYA S.R.O. unpackaged or packaged in a manner adequate to preserve and protect the Performance with standard packaging normally used by BBH TSUCHIYA S.R.O. for such a Performance. The products and goods are delivered in bulk or on wooden pallets. Lightweight wooden pallets or EURO pallets with dimensions of 120 x 80 cm or 80 x 60 cm are used. For a sold pallet (packaging), the Customer is charged the current list price taxed at the current basic VAT rate, which is always payable with the price of the products, goods and services.

#### **4. Price, method of payment and payment terms**

4.1 The price is agreed upon by negotiation and is stated exclusive of value added tax (hereinafter referred to as "VAT"), which will be added to the price in accordance with the relevant legislation. The price does not include transport, postage, packaging, etc., unless otherwise agreed.

4.2 The price shall be paid by the Customer on the basis of an invoice issued by BBH TSUCHIYA S.R.O. - a tax document sent to the Customer, which is issued after the conclusion of the Contract. The invoice shall contain all the elements of a tax document as required by the relevant legislation. Unless otherwise agreed, the invoice shall be due 14 days from the date of issue of the invoice. The price must be paid into the bank account of BBH TSUCHIYA S.R.O., without any deduction or unilateral reduction or withholding. The Customer's obligation to pay the price is fulfilled when the amount for the Performance is credited to the account of BBH TSUCHIYA S.R.O.

4.3 If an advance payment is agreed upon, the Customer is obliged to provide it on time to the account of BBH TSUCHIYA S.R.O. on the basis of an advance invoice issued by BBH TSUCHIYA S.R.O.

4.5 The Customer is entitled to unilaterally offset only such receivables as are due, enforceable, not time-barred, and not in dispute between the parties, provided that such set-

off has been agreed in writing by BBH TSUCHIYA S.R.O. BBH TSUCHIYA S.R.O. is entitled to offset against the Customer any receivables due. The Customer shall not be entitled to assign any claim against BBH TSUCHIYA S.R.O. arising from this Contract and/or this Contract or any part thereof to a third party without the prior written consent of BBH TSUCHIYA S.R.O. If the Customer defaults on any payment in relation to BBH TSUCHIYA S.R.O., then all claims of BBH TSUCHIYA S.R.O. against the Customer arising from a mutual business relationship shall become due and payable.

4.6 BBH TSUCHIYA S.R.O. hereby declares that it has concluded a contract on joint performance with an authorised packaging company. The Customer is therefore obliged to dispose of the packaging in which the Performance has been delivered in accordance with the provisions of Act No. 185/2001 Coll., on waste, as amended.

4.7 The unused Performance is classified as ordinary waste and may be disposed of in municipal landfills (waste code 2003001) or recycled. The Performance may only be incinerated in approved incinerators.

## **5. Contractual penalties and sanctions**

5.1 In the event of delay in payment of the price by the Customer, BBH TSUCHIYA S.R.O. is entitled to demand a contractual penalty of 0.05% of the amount due for each day of delay and subsequently a contractual penalty of 0.3% of the amount due for each day of delay if the Customer is in default for more than 15 days. The contractual penalty is payable within 15 days from the date of invoicing the Customer.

5.2 Total liability of BBH TSUCHIYA S.R.O. for damages incurred by the Customer in connection with the performance of this Contract or breach of law shall be limited to ten (10) % of the total price of the Performance under this Contract (excluding VAT) for all damages in total. The parties agree that only actual damages shall be compensated. Lost profits and other types of damages shall not be compensated. The parties agree that any contractual fines or other penalties paid by BBH TSUCHIYA S.R.O. to the Customer shall be offset against the compensation in full. The above agreed limitation shall not apply to damages caused intentionally.

## **6. Transfer of risk of damage to the property and transfer of ownership rights**

6.1 Ownership right to the Performance shall pass to the Customer upon full payment of the price, or other performances stipulated in the Contract. Until the Customer has acquired ownership of the Performance, they may not undertake a dispositive act with the Performance without the prior written consent of BBH TSUCHIYA S.R.O. If the Customer undertakes a dispositive act with the Performance, they are obliged to notify the person, against whom they undertake the dispositive act, of the reservation of ownership of BBH TSUCHIYA S.R.O. Pending the transfer of ownership right, BBH TSUCHIYA S.R.O. is entitled to take back the Performance at the expense of the Customer and for such purpose to enter the premises and land where the Performance is located.

6.2 The risk of damage to the Performance shall pass to the Customer at the moment of delivery of the Performance to the Customer or its dispatch or handover to the first carrier for transport of the Performance to the Customer.

6.3 If for reasons on the part of the Customer there is a delay in acceptance of the Performance, the risk of damage to the Performance shall pass to the Customer on the first day of such delay.

6.4 Ownership right to price quotations, drawings and other documents belongs exclusively to BBH TSUCHIYA S.R.O. even after they have been provided to the Customer. They may only be disclosed to third parties with the prior written consent of BBH TSUCHIYA S.R.O. and must be returned to BBH TSUCHIYA S.R.O. immediately upon request.

## **7. Quality and workmanship of goods, liability for defects, quantity of goods**

7.1 BBH TSUCHIYA S.R.O. is obliged to deliver the Performance in the quality and workmanship that meet the conditions stipulated by the applicable Czech technical standards, as well as by Act No. 22/1997 Coll. as amended and, where applicable, by the internal regulations of BBH TSUCHIYA S.R.O. (work procedures and instructions). In the case of the production of a reference sample, this reference sample will be agreed upon by the parties of the Contract, and a protocol shall be drawn up between the parties and signed by both sides. The reference samples shall be stored at BBH TSUCHIYA S.R.O. The Performance is defective if it does not meet the conditions set out above or does not correspond to the reference sample agreed upon by both parties.

7.2 BBH TSUCHIYA S.R.O. is obliged to deliver the products according to the Customer's specifications. The Customer shall provide the relevant drawings. In the event that the drawings are not provided by the Customer, BBH TSUCHIYA S.R.O. shall prepare its own drawings or preview documentation based on the Customer's input, which shall be sent to the Customer for approval. and invoiced to the Customer at a price determined according to the scope of work performed. The Customer is obliged to approve this documentation within 3 working days of it having been sent. If this documentation is not approved by the Customer within this time limit, it shall be taken as approved and shall be used for production at BBH TSUCHIYA S.R.O.

7.3 BBH TSUCHIYA S.R.O. is liable for defects which the Performance has in the moment when the risk of damage to the Performance passes to the Customer, even if the defect becomes apparent after this moment.

7.4 If, in accordance with the Contract, items handed over by the Customer were used in the production of the Performance, BBH TSUCHIYA S.R.O. shall not be liable for defects in the Performance caused by the use of such items, if BBH TSUCHIYA S.R.O., by exercising professional care, could not have discovered the unsuitability of these items for the production of the Performance, or if BBH TSUCHIYA S.R.O. notified the Customer of the unsuitability of these items, but the Customer insisted on their use.

7.5 If BBH TSUCHIYA S.R.O. delivers the Performance before the expiry of the time limit for delivery, it may, until the expiry of the time limit for delivery, additionally deliver the missing part or the missing quantity of the delivered Performance or deliver a substitute Performance for the defective one or correct the defects of the delivered Performance. In this case, the Performance shall be deemed to have been delivered without defects.

7.6 The quantity of the Performance actually delivered may deviate from the agreed quantity in the Contract by +/-5%, and the price for the quantity actually delivered shall be charged.

## **8. Warranty and claims**

8.1 The warranty period for the delivered Performance is 24 months and starts at the moment of the transfer of the risk of damage to the goods from BBH TSUCHIYA S.R.O. to the Customer, unless otherwise agreed in the Contract.

8.2 The provision of the warranty is conditional upon the payment of all outstanding obligations of the Customer towards BBH TSUCHIYA S.R.O. If at the time of a claim for a defective Performance the Customer is in default in the payment of any of their due obligations to BBH TSUCHIYA S.R.O., BBH TSUCHIYA S.R.O. shall be entitled to suspend the settlement of the claim for the duration of the Customer's default in the payment of their obligations to BBH TSUCHIYA S.R.O., without, however, interrupting or extending the warranty period.

8.3 BBH TSUCHIYA S.R.O. shall only be liable for the products of other suppliers used in the production of the Performance or supplied with the Performance to the extent that their subcontractor is liable for them. BBH TSUCHIYA S.R.O. shall be entitled to settle claims relating to such products by assigning the claims against the subcontractor to the Customer.

8.4 BBH TSUCHIYA S.R.O shall not be liable for minor or insignificant defects that do not affect the functionality and use of the delivered Performance by the Customer or if they are caused by unqualified activities of the Customer, a third party or force majeure circumstances, or if they arise as a result of undue stress, non-compliance with the delivered operating regulations, non-compliance with the storage method, faulty maintenance, freezing, corrosion, chemical, electrical or electrolytic influences. The warranty shall be the exclusive right of the Customer, who shall not be entitled to transfer this right to a third party without the prior written consent of BBH TSUCHIYA S.R.O.

8.5 The Customer is obliged to inspect the Performance upon acceptance with due care and to file a claim in writing to BBH TSUCHIYA S.R.O about any defects that can be detected by such inspection without delay and within 14 (fourteen) days at the latest from the moment the defect is detected, or from the moment the defect could have been detected with due care (but no later than the end of the warranty period), otherwise their rights from the defective Performance as well as their rights under the warranty shall be forfeited. The existence of defects or the filing of a claim shall not entitle the Customer to withdraw from the Contract, suspend payments or otherwise fail to fulfil their obligations under the Contract. In the claim, the Customer must always describe the defects, state their requirements for settling the complaint and attach appropriate means of proof. A complaint made in violation of these Terms and Conditions or the Contract shall be deemed invalid. Representatives of BBH TSUCHIYA S.R.O shall be entitled to ascertain the claimed defects on the spot and in the presence of the Customer, and a report shall always be drawn up on the result of the investigation. In the event of a legitimate claim of a defect acknowledged in writing by BBH TSUCHIYA S.R.O., BBH TSUCHIYA S.R.O shall be obliged to decide whether to remedy the defect or to grant a reasonable discount on the price. BBH TSUCHIYA S.R.O shall inform the Customer of the chosen method to settle the claim immediately after assessing the claim. By removing the defect or providing a discount, the claim is fully settled, the Customer is not entitled to any further claims, and the application of provisions § 1923, § 1924, § 2615 a §§ 2106 – 2110 of the CC is expressly excluded by the parties.

8.6 If the price has already been paid, BBH TSUCHIYA S.R.O undertakes to return the amount corresponding to the agreed discount on the price of the Performance to the Customer within 1 (one) month from the date of conclusion of the Contract on the settlement of the claim. In this case, the Customer is not entitled to interest on late payment. If the price has not already been paid in full, the Customer is not entitled to set off the price discount claim unilaterally against the claim of BBH TSUCHIYA S.R.O. for payment.

## **9. Withdrawal from the Contract**

9.1 Without limiting any other rights and claims of BBH TSUCHIYA S.R.O., BBH TSUCHIYA S.R.O. may immediately terminate the whole or any part of the Contract by sending a written notice to the Customer without any obligation to the Customer if (a) the Customer has materially breached their obligations, including any breach of the Contract which the Customer has failed to remedy within thirty (30) days after being notified by BBH TSUCHIYA S.R.O.; (b) the Customer has failed to provide adequate cooperation under the Contract or is otherwise in arrears and fails to provide adequate assurance that the Customer will be able to meet their obligations under the Contract in a timely and proper manner; (c) the Customer goes bankrupt or becomes insolvent, as a result of which the Customer needs to deal with creditors, has appointed a liquidator or administrator, commences liquidation or similar proceedings, or reduces the activity of the business or threatens to cease the business or is unable to pay the debts due; (d) the Customer makes unauthorised use of the results of the intellectual property of BBH TSUCHIYA S.R.O. In the event that BBH TSUCHIYA S.R.O. withdraws from the Contract for any of the above reasons, the Customer shall not be entitled to compensation for the costs and damages related thereto. BBH TSUCHIYA S.R.O. shall not be entitled to withdraw from the Contract pursuant to this clause if the Customer at its request promptly pays the full price for the Performance or provides sufficient guarantees for its payment.

9.2 The Customer shall only be entitled to withdraw from this Contract in the cases expressly provided for in the Contract or in these Terms and Conditions.

9.3 If there was a valid and effective withdrawal from the Contract, the parties to the Contract shall be obliged to return to the other party everything provided by the other party under the Contract prior to the withdrawal. In the event of returning the provided monetary performance, the other party shall not be entitled to interest. If documents in paper or electronic form have been provided with the goods/work, the Customer undertakes to return these documents together with the goods/work, undamaged and complete.

## **10. Dispute Resolution**

10.1 If a dispute arises between the parties in connection with this Contract, the parties agree as a matter of priority to resolve the dispute amicably. If the dispute is not resolved after mutual negotiations, it shall be submitted to the competent court for resolution. In accordance with the provisions of § 89a of Act No. 99/1963 Coll., the Code of Civil Procedure, it has been agreed between the parties that the court, in whose district BBH TSUCHIYA S.R.O. has its registered office, shall have local jurisdiction to adjudicate the dispute between them. The applicable law shall always be the law of the Czech Republic, excluding the application of the UN Vienna Convention on Contracts for the International Sale of Goods of 11 April 1980.

## **11. Protection of information**

11.1 Each party shall keep strictly confidential all information and materials provided by the other party in connection with this Contract, except for information that is generally known, and shall not disclose it to a third party or use it contrary to the purpose for which it was provided for its own purposes. The parties undertake to take such measures as will ensure that their employees and directors also comply with the foregoing obligations, even after the termination of their employment or other similar relationship. In the event of a breach of these obligations by such persons, the party concerned shall be liable in the same way as if it had itself breached the obligation in question.

11.2 All information provided by BBH TSUCHIYA S.R.O. in connection with the contract, as well as any documents or data derived from or based on such information, shall remain the property of BBH TSUCHIYA S.R.O. and shall be subject to commercial confidentiality. All intellectual property rights arising from the performance of the Contract shall become the property of BBH TSUCHIYA S.R.O.

## **12. Miscellaneous**

12.1 Except where the Contract expressly states otherwise, all amendments to the Contract shall be binding only in writing and signed by the duly authorised representative(s) of the parties.

12.2 The Contract constitutes and shall constitute the entire agreement and understanding of the parties with respect to all matters contained herein and supersedes all prior oral and written representations, negotiations, undertakings, communications and statements of any kind.

12.3 The Customer shall not be entitled to exercise any lien or security interest over any of the assets of BBH TSUCHIYA S.R.O.

12.4 Any breach by the Customer shall be deemed a material breach of this Contract unless otherwise agreed by the parties.

12.5 Any notification to be given to either party under the Contract shall be in writing and shall be delivered by personal delivery or sent by courier, post or email to the relevant address specified for that purpose in the Contract. Any notification under this Contract shall be deemed to have been delivered (a) on the date of personal delivery or refusal to accept personal delivery, (b) on the first business day in the country of the receiving party after dispatch if sent by facsimile, (c) on the date of delivery if delivered by courier, post or email. Either party may change its specified address by written notice to the other party.

All communications dealing with day-to-day business between the parties may be made by electronic mail (email).

## **13. Final provisions**

13.1 All additions, modifications and changes to these GTC must be made in writing in the Contract, specifying exactly which parts of the GTC are modified for the given business case and how, and must be signed by authorized representatives of both parties.

13.2 These GTC shall come into force and effect on the date of their publication by BBH  
TSUCHIYA S.R.O.