

NEFAB GENERAL CONDITIONS OF SALE OF GOODS AND SERVICES (THE “GENERAL CONDITIONS”)

Valid from 2020-07-09

DEFINITIONS

In these General Conditions, the following terms shall have the meaning set forth below.

“**Buyer**” means any person who has entered into a Contract with the Seller for purchase and supply of Deliverables.

“**Contract**” means an agreement entered into by the Buyer and the Seller for sale and supply of Deliverables, including the Seller’s order confirmation, these General Conditions, any agreed specifications or any other agreement made in writing by the parties in relation to the Deliverables.

“**Deliverables**” shall mean the Goods and/or the Services, as applicable.

“**Goods**” shall mean the goods sold and delivered by the Seller to the Buyer under the Contract.

“**Seller**” shall mean Nefab Packaging, UAB and/or any of its affiliates.

“**Services**” means packing, storage and other logistic services as well as any other services agreed between the parties to be sold and provided by the Seller to the Buyer under the Contract.

APPLICABILITY

1. These General Conditions shall apply on all sales and supplies of Deliverables by the Seller to the Buyer. Deviations from these General Conditions shall not apply unless agreed specifically in writing by authorized representative of the Seller.

ORDERS

2. No Contract shall be considered as entered into until an order confirmation has been provided from the Seller to the Buyer. If the Buyer does not accept the order confirmation it must immediately notify the Seller thereof in writing. If no such notification is given by the Buyer within two (2) business days, the Buyer is bound by the price and other conditions contained in the Seller’s order confirmation.
3. Orders by the Buyer for Deliverables may not be subject to cancellations or changes without the Seller’s written consent. The Seller reserves the right to charge the Buyer for any costs and expenses incurred in relation to cancellations or changes of orders requested by the Buyer.

DELIVERY OF GOODS

4. The Buyer shall with due care make a customary inspection of the Goods upon delivery and notify the Seller in writing of any defects or shortcomings immediately and in no case later than five (5) business days after the delivery of the Goods. The notice shall contain a description of how the defect manifests itself. If the Buyer fails to notify the Seller of defects or shortcomings, which should reasonably have been discovered through customary inspection, in writing and within the above time limits, it loses its right to make any claim towards the Seller in respect of the defects or shortcomings.
5. Where a delivery term has been agreed in the Contract in relation to delivery of Goods, it shall be interpreted in accordance with the INCOTERMS in force at the formation of the Contract. If no trade term is specifically agreed, the delivery term shall be FCA (defined INCOTERMS 2012, as amended) to the place specified in the Seller’s order confirmation.
6. Unless otherwise agreed in writing, the lead time stated in the Contract for delivery of Goods shall be taken as commencing on the date of the Contract. The date of delivery shall be taken as the date on which the Goods, according to the agreed delivery term, are to be regarded as handed over.

TRANSPORTATION AGREEMENTS

7. These General Conditions apply to all transportation agreements which the Seller concludes with the Buyer. All activities and agreements including transport are, if applicable, subject to the following, (i) for domestic transport in Lithuania LEBES 2015, (ii) for international transport by road, Convention on the Contract for the International Carriage of Goods by Road (CMR), (iii) for international transport by air, International Convention for the Unification of Certain Rules relating to International Carriage by Air (Warsaw Convention), (iv) for international transport on rail, Convention Concerning International Carriage by Rail (COTIF), and (v) for international transport on sea, United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea (UNCITRAL).

TOOLING AND EQUIPMENT

8. All the tooling and equipment used to manufacture the Goods that the Buyer has paid for separately, or that the Buyer has provided the Seller with are, and shall remain, the Buyer’s sole property. The Seller shall label these items so that it is evident that they belong to the Buyer and keep a record of all tooling and equipment in its possession.
9. The Seller agrees to carry out regular maintenance at its own cost in respect of the tooling and equipment paid for or provided by the Buyer so to ensure that they are kept in proper condition and to inform the Buyer promptly of any unexpected matters relating to such tooling or equipment. Buyer shall, in respect of such tooling and equipment, be responsible for adherence to industry safety legislation, to any occupational safety regulations, and to the functionality of the tooling and equipment. The Seller shall, however, inform the Buyer if the tooling and equipment need to be altered or repaired to adhere to such regulations. Repairs and replacements of parts in the tooling and equipment, including but not exclusively, due to fair wear and tear, and for the adherence to said regulations shall be paid for by the Buyer, even if such repairs and replacements take place in connection with or as a result of regular maintenance. Such repairs, replacements and/or alterations shall be separately agreed.
10. The Seller agrees to keep such tooling and equipment for a period of six (6) months from the Buyer’s last Order requiring such tooling and equipment to be utilized. The Buyer shall arrange for pick-up of such tooling and equipment, at its own expense, or pay to the Seller reasonable storage fees from the date when the aforementioned six (6) month period has passed for as long as the Seller has such tooling and equipment in its custody or a new Order (which is not insignificant) has been placed and for which such tooling and equipment can be utilized, whichever is earlier. If the Buyer opts not to, or remains silent regarding, pick-up of the tooling and equipment or does not pay for storage, the Buyer accepts that title to tooling and the equipment is automatically transferred to the Seller and that the Seller may scrap the tooling and equipment at its own discretion at Buyer’s cost. Such title transfer will occur one (1) year from the date when the last Order utilizing the tooling and equipment was placed by the Buyer.

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PROVISION OF SERVICES

11. The Seller undertakes to provide the Services specified in the Contract during the service term and pursuant to the other terms and conditions set forth in the Contract.
12. In case the Services include storage of property of the Buyer on the Seller's premises to which the Buyer shall have access, the Buyer is not entitled to make any modifications to the facilities of the Seller. The Buyer shall, upon the request of the Seller and in connection with the entering into of the Contract, conduct a walkthrough of the relevant facilities to document the conditions thereof. At the expiration of the service term, the Buyer is liable to restore the facilities to such conditions.
13. In case the Services include quality inspections of the Buyer's goods, the Seller shall, solely be liable to (i) conduct a general ocular inspection of the relevant goods; and (ii) report such defects or shortcomings which are clearly visible or easily observable by the Seller to the Buyer.
14. Such employees, representatives, agents, contractors etc. of the Buyer, as agreed in writing with the Seller at least one business day prior to the visit, (“Permitted Visitors”) will during normal business hours of the Seller be permitted access to relevant facilities on the Seller's premises in relation to the provision of the Services. The Buyer shall procure that the Permitted Visitors undertake to at all times comply with the Seller's instructions.
15. In case Services are to be provided by the Seller at the Buyer's or a third party's premises, such employees, representatives, agents, contractors etc. of the Seller, as notified to the Buyer, shall be permitted access at the agreed time and place to relevant facilities at the Buyer's or third party's premises for the purpose of providing the Services. The Buyer is responsible for securing that such premises fulfill the requirements necessary for the provisions of the Services and otherwise comply with all applicable laws and regulations, including but not limited to work environment. Delay in providing the necessary requirements from the Buyer will be subject to reasonable compensation to the Seller.
16. All right, title and interest in any of the Buyer's goods to be packed, shipped, handled, stored etc. by the Seller as part of the Services shall remain with the Buyer and any and all risk, including but not limited to loss or damage, in relation to such property shall remain solely with the Buyer.
17. The Buyer shall in relation to any property handled by the Seller as part of the Services maintain full insurance adequate to cover any such property on an “open peril” or “all risk” basis under a policy that grants a waiver of any insurers subrogation rights in relation to the Seller. Permitted Visitors should be covered by the Buyer's insurance coverage for all reasonable events or circumstances that could occur whilst at the Seller's facilities. The Seller may at any time request that the Buyer shall provide the Seller copies of its or relevant Permitted Visitors' certificates of insurance.
18. Following the expiration or termination of the service term (i) the Seller shall have no obligations towards the Buyer in relation to the provided Services, including property of the Buyer on the Seller's premises (except in case of breach of the Contract by the Seller); (ii) the Seller may charge the Buyer current market price for storage (as reasonably determined by the Seller) for any property or goods of the Buyer that remains on the Seller's premises; and (iii) either party may, at its own discretion, return to the Buyer, at the Buyer's costs and risk, the property or goods of the Buyer remaining at the Seller's premises.
19. Subject to clause 42, in case the Seller fails to carry out the Services in accordance with the Contract and does not

remedy such failure within thirty (30) business days following the Buyer's written notice to the Seller specifying the failure in reasonable detail, the Seller undertakes, as exclusive and only remedy, to compensate the Buyer for direct damages it has suffered due to the failure, provided that the failure is not solely of a minor significance to the Buyer.

20. For the avoidance of doubt, the Seller has no liability for failure in providing the Services (including delay in delivery) to the extent the failure is directly or indirectly attributable to the Buyer (including its employees and representatives) or any third party engaged by the Buyer.

21. The Buyer agrees to defend, indemnify and hold harmless the Seller and its employees and representatives from and against any and all claims, loss, damage, cost or expense resulting from breach of or other non-compliance with applicable rules and regulations, the Seller's instructions in relation to Deliverables, or the general misuse of any Deliverables, including but not limited to, death, personal injury, bodily injury and damage to property and the environment.

PRICE AND PAYMENT

22. The applicable prices for the Deliverables are set forth in the Contract. All prices are net taxes, VAT, customs duties and other similar levies or costs, unless otherwise provided in the agreed delivery term or set forth in the Contract.
23. Payment terms: 30 days net from the date of invoice.
24. Delayed payment shall carry late payment interest with 2% per month on any outstanding amount. Any part payment shall first be deducted from the penalty interest due.
25. If the Buyer fails to pay by the due date, the Seller may suspend further performance of its contractual obligations until full payment of all outstanding invoices are made.

If the Buyer has failed to pay the amount due within 60 days after the due date, the Seller may terminate the Contract by giving a prior 3 business days' written notice to the Buyer. The Seller shall furthermore be entitled to full payment for the Deliverables even if it has not been delivered in full and, in addition, to interest on late payment as well as to claim compensation for all the losses suffered.

RETENTION OF TITLE

26. The Goods shall remain the property of the Seller until paid for in full, to the extent that such retention of title is legally valid.

INTELLECTUAL PROPERTY

27. The intellectual property entailed in or related to the Deliverables shall at all times be the property of the Seller. Consequently, nothing in the Contract shall be construed as transferring any intellectual property in connection with the sale and delivery of the Deliverables. Consequently, the intellectual property entailed in the goods or in the packaging solutions provided by the Seller will never form part of a Contract and will thus always remain the sole property of the Seller, unless so expressly agreed in each individual case and the Buyer has paid separately and specifically for the specific intellectual property.

DELAYED DELIVERY OF DELIVERABLES

28. If the Seller finds that it will not be able to meet the agreed delivery date in relation to the delivery of Deliverables it shall notify the Buyer thereof in writing, stating the cause of the delay and indicating the date on which it expects to be able to deliver.

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29. Should a delivery or part-delivery of Deliverables be delayed because the Seller has materially neglected its obligations to begin work or to take other steps within such a time that it can effect delivery of the Deliverables by the due date, the Buyer shall be entitled to cancel the Contract upon giving written notice thereof to the Seller, although such cancellation may be resorted to only if the delay is of material significance to the Buyer and the Seller has realized or should have realized this.

The Buyer may, regardless of the cause of the delay, not cancel a Contract if it has not objected to a prolonged delivery time upon receiving notice from the Seller in accordance with clause 28. If the Buyer has raised such objection, the Seller shall have reasonable time to deliver.

30. If the Buyer does not take delivery of the Goods on the agreed delivery date, the Buyer is liable for every cost, loss and expense incurred by the Seller as if the Goods in question had been delivered. The Seller shall, if the Goods are still in the hands of the Seller, arrange for the Goods to be stored at the Buyer's risk and expense. The Seller may also, at its sole discretion, terminate the Contract and/or claim damages for cost, loss and expense suffered in relation hereto.

LIABILITY FOR DEFECTS IN THE GOODS

31. The Seller undertakes to deliver the Goods in the condition agreed to between the parties and free from faulty design, materials and workmanship in relation to the specifications of the Goods.

32. The Goods shall be regarded as defective if not in compliance with clause 31. In case of defective Goods, the Seller shall remedy the defect by way of (at the Seller's choice) either repairing or replacing the Goods at the Seller's own cost or by refunding the purchase price paid to the Seller for such defective Goods.

33. The Seller's liability for defects does not cover defects caused by circumstances, which arise after the risk has passed to the Buyer, nor does it cover normal wear and tear or deterioration. Furthermore, the Seller's liability does not cover defects due to mishandling, overloading or otherwise attributable to the Buyer or third parties.

34. The Seller's liability is limited to defects which appear within a period of three (3) months from the date of delivery of the Goods, unless the Goods are intended to be used within a shorter period of time in which case the liability is limited to defects which appear within the intended period of use.

For parts of the Goods, which have been repaired or replaced under clause 32, the Seller shall have the same liability for defects as for the original Goods for a period of three (3) months. For other parts of the Goods, the liability period referred to in paragraph one shall be extended only by the period during which the Goods could not be used due to a defect for which the Seller is liable.

Regardless of the provisions of clauses 32-38, the Seller shall have no liability for defects in any part of the Goods or any claim, cost, damage or expense related thereto for more than two (2) years from the original delivery date. In addition, the Seller shall have no liability what so ever for any defects in any Goods or any claim, cost, damage or expense related thereto (i) if Goods is used on multiple occasions and/or for multiple trips if such Goods is delivered as expendable packaging, (ii) if Goods in any way or part is used for or in transports which the Goods is not originally intended for, or (iii) the Goods in any other way are used in breach of the Buyer's instructions or for any other purpose than the Goods were originally delivered for.

35. After receipt of a written notice under clause 4, the Seller shall remedy the defect without undue delay. The Seller shall bear the costs as specified in clauses 32-38. Remedial work shall be carried out at a location of the Seller's choice. If the Buyer gives such notice as referred to in clause 4, and no defect is found for which the Seller is liable, the Seller shall be entitled to compensation for work and costs incurred as a result of the notice.

36. If remedy of the defect in the Goods requires intervention in other equipment than the Goods, the Buyer shall be responsible for any work or costs caused thereby.

37. All transports in connection with repair or replacement of Goods shall be at the Seller's risk and expense. The Buyer shall follow the Seller's instructions regarding how the transport shall be carried out.

The Buyer shall bear the increase in costs for remedying a defect which the Seller incurs when the Goods are located elsewhere than at the destination stated in the Contract or – if no destination has been stated – the place of delivery.

38. If the Seller fails to fulfil its obligations under clause 35 within a reasonable time, the Buyer may by written notice require it to do so within a final time period. If the defect is substantial or of the defect is not remedied within the final time period, the Buyer may instead terminate the Contract by a prior 3 business days' written notice to the Seller.

39. The Seller shall have no liability for defects save as expressly set forth in clauses 32-38.

LIMITATION OF LIABILITY

40. The Seller shall have no liability for damage to property or physical persons caused by any Deliverable. If a third-party lodges a claim for compensation against the Seller or the Buyer for loss or damage referred to in this clause, the other party shall forthwith be notified thereof in writing.

41. It is acknowledged and agreed that the representations and warranties set forth in these General Conditions in relation to the sale and supply of the Deliverables are exclusive and in lieu of all warranties of quality and performance, written, oral or implied, whether in contract tort, negligence, strict liability or otherwise. All other representations or warranties, including but not limited to any future performance warranties and any implied warranties of merchantability and fitness for a particular purpose, are hereby disclaimed.

42. In no event shall the Seller be liable for any consequential or indirect damages, including, but not limited to, costs for third parties (e.g. end customers), loss of profit, loss of goodwill, cost of capital and costs incurred in connection with substitute sources of supply. Furthermore, in no event shall the aggregate liabilities of the Seller exceed the purchase price actually paid by the Buyer to the Seller with respect to the Deliverables in question.

GROUND FOR RELIEF (FORCE MAJEURE)

43. The following circumstances shall constitute grounds for relief if they impede the performance of the Contract or makes performance unreasonably onerous and could not reasonably be foreseen: industrial disputes and any other circumstance beyond the control of the parties, such as fire, war, mobilization or military call up of a comparable scope, requisition, seizure, trade and currency restrictions, insurrection and civil commotion, shortage of transport, general shortage of materials, restrictions in the supply of power and defects or delays in deliveries by sub-contractors caused by any such circumstance as referred to in this clause.

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44. The party wishing to claim relief under clause 43 shall without delay notify the other party in writing on the intervention and on the cessation of such circumstance.

If grounds for relief prevent the Buyer from fulfilling its obligations, the Buyer shall reimburse the expenses incurred by the Seller in securing and protecting the Goods.

45. Notwithstanding other provisions of these General Conditions, either party shall be entitled to terminate the Contract by notice in writing to the other party, if performance of the Contract is delayed more than six months by reason of any grounds for relief as described in clause 43.

CONFIDENTIALITY

46. All information exchanged or otherwise transferred between the parties during the term of the Contract shall be treated as confidential, not be disclosed to any third parties and only used for the purposes of the Contract.

DISPUTES, APPLICABLE LAW

47. Any dispute, controversy or claim arising out of or in connection with these General Conditions and any Contract, or the breach, termination or invalidity thereof, shall be finally settled by arbitration in accordance with the Arbitration Rules of the Vilnius Court of Commercial Arbitration. The arbitral tribunal shall be composed of three arbitrators. The seat of arbitration shall be Vilnius, Lithuania. The language to be used in the arbitral proceedings shall be English. All procedural documents shall be served via parties' e-mails indicated in the Contract.

48. Lithuanian substantive law shall apply for these General Conditions and Contracts as well as any disputes relating to these.

DATA PROTECTION

49. Data subject to data protection laws may be provided by the Buyer to the Seller and will in such case be processed by the Seller in order to manage the existing business relationship between the Buyer and the Seller, to provide the Deliverables and related products and services, and for administrative and marketing purposes. The Seller shall only process the data in accordance with applicable law. Upon written request, the Seller will correct any data that is incorrect, incomplete or misleading. The Seller will also, once per year and free of charge upon written request, give information on what personal data that is processed about the requesting registered company or person.

50. Should the Seller under applicable law be considered as a personal data processor on behalf of the Buyer, the Seller undertakes to take appropriate technical and organizational measures to protect the data as required by applicable law.