

General Terms and Conditions of Explosia a.s. (Sale)

Effective from 1 September 2017

I. Initial Provisions

1. The General Terms and Conditions of Explosia a.s. (Sale) provide for contractual relationships arising between Explosia a.s., with its registered office: Semtín 107, 530 02 Pardubice, Czech Republic, Identification Number: 25291581, registered in the Commercial Register maintained by the Regional Court in Hradec Králové, Section B, File No. 1828 (hereinafter referred to as "Explosia a.s."), and its business partners.

2. For purposes of these GTC's, the capitalized expressions used herein and listed further below shall have the meaning as follows:

A Product Quality Certificate: a specification sheet or another document concerning the quality of Products, about which the Seller has informed the Purchaser;

The Purchaser: the person/entity purchasing the Products from the Seller based on the Agreement;

The Civil Code: Act No. 89/2012 Coll., the Civil Code, as amended;

Conditions (GTC's): these General Terms and Conditions of Explosia a.s. (sale) (GTC's) and the terms and conditions agreed herein;

An Instruction: an instruction to perform the Agreement;

The Seller: Explosia a.s., with its registered office: Semtín 107, 530 02 Pardubice, Czech Republic, Identification Number: 25291581, registered in the Commercial Register maintained by the Regional Court in Hradec Králové, Section B, File No. 1828;

The Agreement: an agreement concluded by and between the Parties concerning distribution, sale and purchase of Products within the meaning of these GTC's, and which refers to these Conditions and is governed hereby; the Agreement is also comprised of mutually approved terms and conditions (such as, for example, the offer, order, e-mail correspondence), even if such agreements are not made publicly available in the Register of Contracts due to the fact that the Act on the Register of Contracts so permits;

The Parties: jointly the Seller and the Purchaser;

Synthesia: Synthesia a.s., with its registered office: Semtín 103, 530 02 Pardubice, Czech Republic, Identification Number: 60108916, registered in the Commercial Register maintained by the Regional Court in Hradec Králové, Section B, File No. 1031;

A third party: a person/an entity that is not a Party;

Force Majeure: the meaning is explained in Article X. of GTC's;

Act on the Register of Contracts: Act No. 340/2015 Coll., on Special Preconditions to Effectiveness of Certain Agreements, Publication of Such Agreements

(Contracts) and on the Register of Contracts (the Act on the Register of Contracts), as amended.

Products: propellants, explosives, special products and other kinds of things (assets).

3. The Conditions shall apply to the contractual relationship between the Parties if they are attached to the Agreement or if a reference is made thereto in the Agreement.
4. The Conditions provide for cases of sale of Products by the Seller. The Conditions, however, will apply *mutatis mutandis* also to cases of other Agreements to which the Seller is a party that is obligated to its contractual partner to perform (provide supplies) of mostly non-monetary nature, in particular, an obligation to a work performance (including performance of work activities/tasks – for example, blasting and drilling work, aperture blasts, provision of services or performance of another activity).
5. With respect to the fact that the most frequently encountered case of an Agreement is a purchase agreement, the Parties are designated as the Seller and the Purchaser; the same shall apply for designation of the Parties in the Agreement. The Conditions, however, shall apply in compliance with Article I. paragraph 4 of GTC's also to any Agreement which is not a purchase agreement.
6. The Conditions form an integral part of the Agreement. In case of a discrepancy between the Agreement and the Conditions, the Agreement shall prevail.
7. The Agreement must be concluded in writing. Any amendments to the Agreement, as well as modifications of any side contracts to the Agreement also require a written agreement of both Parties. The written form is fulfilled even in case an Agreement, any amendments thereto or any side contracts are concluded over the e-mail.
8. The Parties may not, without a previous explicit and written consent of the other Party, transfer or in another manner dispose of any receivable and/or transfer their respective rights and obligations under the Agreement to a Third Party.

II. Subject of the Agreement

1. Based on the Agreement, the Seller assumes the obligation to deliver to the Purchaser those Products which are the subject of purchase, and to allow the Purchaser to acquire the ownership title to the Products.
2. The Purchaser undertakes that it will take over the duly delivered Products and will pay the purchase price for such Products to the Seller.

III. Quality of the Products and Quality Guarantee

1. The Seller shall deliver Products with qualities and design corresponding to Product Quality Certificates. In case of a discrepancy between the Agreement and a Product Quality Certificate, the Agreement shall prevail.
2. The length of a guarantee for the Product quality, if any, as well as other terms and conditions of the guarantee shall be governed by the Agreement and Product Quality Certificates.

IV. Framework Agreement

Explosia a.s.

With its registered office: Pardubice, Semtín 107, Postal Code: 530 02, Identification Number: 252 91 581, Tax Identification Number: CZ25291581, registered in the Commercial Register maintained by the Regional Court in Hradec Králové, Section B, File No. 1828, tel. number: + 420 466 825 202, fax number: + 420 466 822 939, e-mail: explosia@explosia.cz, www.explosia.cz

1. For the case that the Agreement is agreed as a framework agreement, and if the subject of the Agreement is non-monetary (in-kind) performance (supply) other than sale of the Products, the Parties have agreed that the Seller will supply such non-monetary (in-kind) performance to the Purchaser maximally up to the financial limit and under other terms and conditions stipulated in the Agreement and with respect to the established practice between the Parties. In such case, the unit price in the Agreement will mean the financial extent during the term of the Agreement's validity.
2. A specific performance (supply) will take place at all times based on an Instruction issued by the Purchaser sufficiently in advance. The Purchaser may give an Instruction for uninterrupted or regularly repeating performance (supply) (for example, on a monthly basis).
3. The Parties have agreed that upon conclusion of the Framework Agreement, the Purchaser does not become obligated to give Instructions to the Seller, nor does the Seller become obligated to perform (supply) according to the Purchaser's Instructions; this, however, does not apply if the Seller has indicated by its conduct that it will proceed according to a specific Instruction.
4. The Seller is entitled to receive a payment by the Purchaser of the purchase price in an amount about which the Purchaser was evidenceable informed before giving an Instruction (for example, through a price list), otherwise, with respect to the practice established between the Parties, a price usually charged for identical performances (supplies) to Third Parties.
5. In case of continuous or regularly repeated performances (supplies) the Purchaser is entitled to modify or cancel its Instruction with effects for the future. This, however, does not affect the Purchaser's duty to pay the purchase price for performance (supply) received until then.

V. Place and Time of Performance (Supply)

1. The Seller shall deliver Products to the Purchaser reasonably within the deadline stipulated by the Agreement.
2. If the deadline is determined as a period of a week or a month, the Seller and the Purchaser will discuss the specific date for the Products delivery in advance.
3. The Parties have agreed that late delivery of Products is not reason to the establishment of any rights and obligations under such later delivery and in order to provide for legal certainty, they waive any such rights that may arise with effects for the future.
4. Unless the Agreement stipulates otherwise, a delivery condition is agreed as follows: EXW – the registered office of Explosia a.s., Pardubice – Semtín (INCOTERMS 2010).

VI. Hand Over and Take Over of the Products

1. The Seller shall bear the risk of damage to Products until the Products are taken over by the Purchaser.
2. For the case that Products were handed over and taken over before the validity or effectiveness date of an Agreement, the Parties waive, with respect to their previous consent to

such procedure, all rights that could arise to the Parties therefrom.

3. If the Seller fails to deliver Products to the Purchaser, the Seller's liability is limited by costs and expenses of the Purchaser incurred to it in connection with delivery of substitution Products similar in the description and quality, with respect to the cheapest available Products in the market, reduced by the price for the Products. This provision, however, does not exclude the limitation of liability according to Article IX. paragraph 4 of the Conditions. The Seller shall not bear any liability for non-delivery of Products within the extent in which such non-delivery is caused by an impact of *Force Majeure* or by an error on the part of the Purchaser made during provision of information essential for delivery of the Products.

4. If the Purchaser is in delay with payment of monetary debts according to the Agreement, the Seller may suspend its deliveries (supplies) pursuant to any Agreement based on a written notice until the situation is remedied in full.

VII. Insolvency and Payment Incapacity on the Part of the Purchaser

1. If the Purchaser gets into a situation described in Article VII. paragraph 2 of GTC's, the Seller will be entitled to cancel or suspend all further performance (supplies) pursuant to any Agreement, including withdrawal from such Agreement, which establishing any obligation of the Seller towards the Purchaser. In such case all unpaid receivables in connection with delivery of Products to the Purchaser will become immediately due and payable. In cases described in Article VII. paragraph 2 of GTC's, the Seller is entitled to withdraw from any Agreement with effects as of the date of delivery of the relevant withdrawal notice.
2. For purposes of Article VII. paragraph 1 of GTC's, relevant events shall include the situations described below:
 - a. an application was filed concerning the Purchaser, demanding that insolvency proceedings be opened;
 - b. any event or proceedings occur, which, with respect to the laws applicable on the Purchaser, will have an impact on the Purchaser similar or identical as the one described in Article VII. paragraph 2 letter a) of GTC's;

VIII. Purchase Price and Payment Terms and Conditions

1. The purchase price was agreed upon mutual agreement of the Parties. The purchase price will be increased by applicable VAT charged at the statutory rate.
2. The Purchaser shall acquire a full ownership title to the Products upon full payment of the purchase price.
3. The Purchaser may not perform any set off of receivables or any counter-proposal against the Seller in order to justify any withholding in any amount, whether against the entire owed amount to be paid by the Purchaser to the Seller, or any portion thereof.

IX. Limitation of Liability

1. These Conditions neither restrict, nor exclude the Seller's liability for:
 - a. any damage caused intentionally or due to a gross negligence;
 - b. any product defect pursuant to Section 2939 *et seq.* of the Civil Code; or
 - c. any other situation in which it is unlawful for the Seller to restrict or exclude its liability.
2. The Seller is not liable to the Purchaser in case of a breach of obligations pursuant to the Agreement or pursuant to the law, or in case of a breach of another obligation, for any loss of profits on the part of the Purchaser (lost profit), or for any indirect losses incurred to the Purchaser in connection with the Agreement.
3. The overall responsibility of the Seller to the Purchaser for a breach of obligations arising from the Agreement or the law, or for another breach of the Seller's obligations, with respect to all losses sustained in connection with the Agreement will under no circumstances exceed 10% of the purchase price for the Products net of VAT.
4. Any damage foreseen by the Parties as possible consequence of a breach by the Seller of its obligations arising from the Agreement, or any damage that could be foreseen in the light of the facts that the Seller knew, or should have known with exercise of usual care, at the given time, will under no circumstances exceed 10% of the purchase price for the Products net of VAT.

X. Permits and Licenses

4. The Seller is obligated to obtain all necessary licenses and permits required for supply of Products to the Purchaser and for trading the Products according to the Agreement, as well as licenses and permits required for the use, storage and sale of Products in the relevant territories. The Purchaser is responsible for payment of all customs duties, clearance fees, taxes, agency fees and other amounts associated with the import and supply of the Products.
5. The Purchaser may not terminate the Agreement or withdraw from the Agreement in case the Purchaser fails to obtain any necessary license or permit within the meaning of Article X. paragraph 1 of the Conditions, or in case any such necessary license or permit is withdrawn from the Purchaser.

XI. Force Majeure

1. The Parties are not responsible for any non-fulfillment of their respective obligations pursuant to the Agreement within the extent in which such non-fulfillment is caused by an event of *Force Majeure*. An event of *Force Majeure* means any event outside the reasonable control and influence of the Parties, which intrinsically cannot be

foreseen, or, if foreseen, is intrinsically inevitable, including strikes, exclusions or other industrial disputes (irrespective if the event concerns own employees or employees of Third Parties), an outage of power resources or traffic network, wars, terroristic attacks, unrest, civil riots, intervention of civilian or military bodies, national or international (global) disasters, military and armed conflicts, intentionally caused damage, breakdowns of machinery or equipment, nuclear, chemical or biological contamination, aerodynamic bangs, explosions, collapses of construction structures, fires, floods, storms, earthquakes, epidemics or similar events, natural disasters or extraordinarily unfavorable climatic conditions.

2. Any failure on the part of a contractor or a subcontractor or any other party, including a prospective customer of the Purchaser, shall not be considered an impact of *Force Majeure* pursuant to GTC's, unless stipulated in the Agreement otherwise.
3. The Party which suffers an impact of a *Force Majeure* is not in discrepancy with the Agreement, as long as the suffering Party informs without undue delay the other Party in writing about the nature and extent of such impact of a *Force Majeure*.

XII. Other Rights and Obligations

1. When performing the Agreement in the Seller's plant, the Purchaser is obligated to ensure that internal regulations of the Seller concerning movement and working in the Seller's plant are observed, in particular, without limitation, the Directive OS E 52/5 Entrance of Persons and Vehicles to Explosia a.s. If the Purchaser is going to move around the Synthesia plant, it is obligated to ensure the observance of internal regulations of Synthesia, which are available at web pages www.synthesia.eu. The Purchaser declares that it knows and has fully understood all internal regulations pursuant to this section.
2. When moving around in the Seller's plant and in the enterprise of Synthesia, the Purchaser is obligated to take special care and to act so that the Purchaser does not jeopardize persons or things (assts) situated in the aforementioned places in any manner. Similarly, the Purchaser may not jeopardize or restrict in any manner the operation in both the aforementioned places.
3. The Purchaser is obligated to provide training to all its employees and other staff that the Purchaser is going to use for performance in the Seller's plant or within the enterprise of Synthesia, about all duties arising for the employees and other staff from the Agreement, legal regulations and internal regulations of the Seller and Synthesia.
4. The Purchaser is responsible for safety of all persons used by it for performance under the Agreement. The Purchaser is obligated to report any injuries without undue delay to the Seller and to prepare a protocol on such injuries.

XIII. Final Provisions

1. The Agreement and any and all disputes or claims arising in connection with the Agreement or with the subject of the Agreement's origin (including any out-of-the-court disputes or claims) shall be governed by the laws of the Czech Republic, in particular, without limitation, by provisions of the Civil Code. Pursuant to Section 89a of Act No. 99/1963 Coll., the Rules of Civil Procedure, as amended. The Parties have agreed that the court having local jurisdiction in all disputes arisen from the Agreement will be the court according to the place of the Seller's registered office.
2. The Agreement represents the entire understanding between the Parties and it supersedes and replaces any prior agreements between the Parties concerning the same subject of performance.
3. Any waiver of any right arising from the Agreement is effective only if made in writing. Waiver of a right, however, shall not be deemed a waive of any right from any subsequent breach or a failure to fulfill a duty. Any failure to raise a claim or any delay of the Parties in raising a claim and exercise of a right or fulfillment of a duty pursuant to the Agreement or to the law shall not be interpreted as a waiver of such right by the entitled party; such fact neither prevents, nor restricts the entitled party in subsequent exercise of such right in the future. No individual or partial exercise of a right and fulfillment of an obligation does not prevent or restrict any further exercise of rights and fulfillment of obligations.
4. The Seller declares that it is an obligated entity within the meaning of Section 2 paragraph 1 letter n) of the Act on the Register of Contracts. For the case that the duty to publish the Agreement in the Register of Contracts applies to the Agreement, the Parties have agreed that the Agreement will be published by the Seller. The Seller will publish the Agreement save for any data and information chosen by the Seller, the exclusion of which, or respectively, making them illegible, is permitted by the Act on the Register of Contracts and subsequent legal regulations. For avoidance of doubts, the Purchaser declares that the Seller may publish all content of the Agreement and that the Seller is not bound by any instructions of the Purchaser in this respect; this applies even if the duty to publish the Agreement is not stipulated in the Act on the Register of Contracts or is such duty is disputable and the Seller nevertheless publishes the Agreement in the Register of Contracts. All provisions of this paragraph shall apply also to Appendices to the Agreement, if any, ant amendments thereto and to any contracts concluded on its basis.
5. If the duty to publish the Agreement in the Register of Contracts applies thereto, the Purchaser will provide the Seller with a full wording of the Agreement for such purpose, the wording to be in an open and machine legible format.doc or .docx, unless the Agreement's wording was prepared by the Seller. The provision of the preceding sentence shall apply also to Appendices to the Agreement, if any, ant amendments thereto and to any contracts concluded on its basis.
6. The Purchaser undertakes to keep confidential the content of the Agreement as well as any facts of which the Purchaser has learned in connection with its performance thereunder. This does not affect possible confidentiality obligation of the Seller, arising based on another contract concluded between the Parties.
7. The Agreement becomes valid and effective on the day when it is signed by the last of the Parties. If the duty to publish the Agreement in the Register of Contracts, applies thereto, the Agreement will become effective only on the date of its publication in the Register of Contracts.
8. The Parties declare that the Agreement expresses their respective serious and unrestricted will, free and clear from errors, and that the Agreement is not concluded in duress or under apparently unfavorable conditions.
9. The Parties have read all provisions of the Agreement, they have understood them and in witness thereof they have acknowledged the Agreement in writing.
10. Any person/entity that is not a Party, shall not have any rights under or in connection with the Agreement.