

General Terms and Conditions of Sale of "Power." Sp. z o.o.



The following General Terms and Conditions of Sale are valid from 1st November 2013/Rev.04-2020

I - General Provisions

1.1. The General Terms and Conditions of Sale (hereinafter referred to as 'GTCS') are an integral part of each offer submitted by "Power." Sp. z o.o. (hereinafter referred to as 'Seller') for sales/delivery of products and/or providing services. GTCS also apply to all contracts concluded by the Seller with the customer (hereinafter referred to as 'Customer') for sales/delivery of products and/or providing services.

1.2. GTCS do not apply to contracts concluded by the seller with consumers.

1.3. If GTCS or provisions of the contract to which GTCS apply require a written form or electronic mail message for a given activity, it is assumed that the form has been asserted under pain of nullity.

II - Commercial Information, Offers

2.1. All documents of the Seller which are not clearly marked as offers shall be considered only commercial information.

2.2. Data regarding product specifications provided in catalogues and other promotional materials of the seller, in particular: dimensions, weight, shapes, and colours, are indicative.

2.3. The Seller reserves the right to apply changes to technical parameters and product specifications, the presentation, description and specifications were provided in catalogues and promotional materials of the Seller, at any time.

2.4. Placing a product in a catalogue, price list, or other promotional materials of the Seller does not guarantee its availability.

2.5. If the Seller submitted an offer to the Customer, prices and other terms and conditions of the offer refer only to the products (specification and quantities) and services which are clearly provided in the offer. The Seller's offer remains valid for a period of one month, unless the offer provides a different term of validity.

2.6. The Seller's offer is accepted only in its entirety and without reservations. Each offer is issued basing on the best knowledge available to the Seller at the stage of the offer issue.

III - Conclusion of a Contract, Orders

3.1. The Contract is concluded when:

3.1.1. the Customer submits an order which is then confirmed by the Seller - in this case, the contract shall be deemed concluded upon the confirmation of the order by the Seller, or

3.1.2. a written contract is signed by both Parties.

3.2. Before the first order is submitted, the Customer shall be registered in the Seller's system. For this purpose, the Customer shall submit the following to the Seller:

3.2.1. current copy from the Register of Entrepreneurs of the National Court Register or Business Activity Register

3.2.2. certification of NIP number assignment

3.2.3. decision of REGON number assignment

3.3. Unless the Parties agree otherwise in writing, the Customer's orders may be submitted:

3.3.1. in writing, or

3.3.2. in email sent to the address agreed on with the Customer.

3.4. The Customer's order should contain at least the following:

3.4.1. precise data of the Customer and the person who submits the order on behalf of the Customer;

3.4.2. explicit description of the subject of the order with quantity;

3.4.3. place of delivery or services realisation.

3.5. The order should be submitted by persons who authorised to represent the Customer in accordance with the data disclosed in an appropriate register or by a person who has a written authorisation to submit orders, delivered earlier to the Seller.

3.6. The Seller confirms the order in writing or electronic message.

3.7 In case of the order modification and / or cancelation after 24 hours from the order placement The Customer is obligated to pay 100% of all costs already incurred by the Seller and all other financial commitments already undertaken by the Seller related to purchase of raw material and components/accessories for the production of the goods ordered. Furthermore in case of order cancelation and /or modification after 24 hours from the order placement the Seller does not exclude further addition fees referred to the order management.

IV - Intellectual Property and Confidentiality

4.1. The Seller shall not be obliged to provide the Customer with any data, plans, or projects concerning the production technology, even if the products are delivered with installation diagram.

However, projects, documents, and codes delivered to the Customer shall remain the exclusive property of the Seller and are strictly confidential.

4.2. The products' technology and know-how (both in patented and non-patented terms), all industrial property rights, and intellectual property rights related to the products shall be the exclusive property of the Seller. They are the Seller's company secret and should be kept confidential. This also concerns information specified in drawings and documents which may be attached to the product. As a consequence, the Customer is obliged to use them only for handling and maintenance of the products and shall not transfer them to any third party. The purchase of the products does not authorise the Customer to manufacture spare parts or commission such production to third parties.

4.3. The purchase of the products or service by the Customer shall not result in transferring any copyright on the Customer.

4.4. With regard to the technology of third parties, the Customer, in each case, acquires only a non-exclusive right to use the technology in order to use the products according to their specifications.

4.5. All studies, drawings, and technical documentation delivered to the Customer in relation to sales of products or providing services shall remain the property of the Seller and shall be returned on demand. None of the above may be used, including copying, distributing, or transferring to third parties, without the consent of the Seller for purposes other than those related to submitting orders/concluding contracts with the Seller.

V - Prices and Terms of Payment

5.1. Unless there are other indications in the Seller's offer, in the case of orders with delivery date no longer than three months from the day of order submission, the orders shall be realised according to prices given in the Seller's price lists at the date of the order. If the Customer wants to order products with a longer delivery date, the Parties are required to conclude a written contract.

5.2. The prices do not include taxes and customs, including VAT, both payable on Poland and the country where the products are delivered or the services are provided.

5.3. Unless the Parties agree otherwise in a contract, the Customer is obliged to make the entire payment for the ordered products and/or services before the products are delivered or the services are provided.

5.4. At the request of the Customer and based on secure payment submitted by the Customer, the Seller may fix an individual trade credit limit for the Customer, who will be informed about this in writing or electronic message. The decision to grant, change, or revoke the limit is exclusively up to the Seller. If the Customer is granted a trade credit limit, the Parties may fix a postponed maturity in writing.

5.5. Unless the Parties agree otherwise in a contract, the payment of the price should be made in the currency and to the bank account of the Seller indicated on the invoice.

5.6. If delays in payment occur, the seller has the right to demand statutory interest from the Customer.

5.7. If the Parties agreed on partial payments and any part of the payment is not paid on time, the entire amount due remaining to be paid by the Customer shall become payable.

5.8. If the total of amount due of the Customer towards the Seller (gross with VAT) and submitted, but not yet invoiced, orders (gross with VAT) exceeds the individual trade credit limit granted to the Customer by the Seller, the Seller has the right to withhold accepting orders from the Customer - until the amounts due are paid or the Customer delivers additional secure payments and the Seller agrees to increase the Customer's trade credit limit. Regardless of the above, if a risk that the Customer might default on payments occurs, the Seller reserves the right to make accepting the Customer's orders conditional on appropriate additional secure payments or pre-payment.

5.9. If the Customer delays the payment of any amount due to the Seller, the Seller, in addition to other rights stipulated in the contract, GTCS, and the law, has the right to immediately withhold all deliveries of products or services and refuse to accept further orders, until the amounts due are paid with interest. The full responsibility for withholding deliveries of products and realisation of services, including products storage and insurance costs, shall be incurred by the Customer.

5.10. Without the Seller's prior consent, the Customer does not have the right to set-off against the amounts due to the Seller.

5.11. By payments with the use of L/C or similar payment methods The Seller reserves the right to charge the Customer with all effective additional costs.

VI - Deliveries

6.1. Unless the offer states otherwise or the Parties agree otherwise in a contract, the Seller shall deliver the products ordered by the Customer to the address indicated by the Customer when registering or ordering.

6.2. If the transport of products offered by the Seller is executed at the expense and risk of the Seller, the seller has the right to choose means of transport.

6.3. The Customer shall provide unloading and installation of products, and shall incur costs and risk related to them.

6.4. The Customer shall ensure that a person authorised to receive the delivery on behalf of the Customer shall be present in the place and on the date of delivery; refusal to accept the product or absence of the person authorised by the Customer does not exempt the Customer from the obligation to pay for the product. It is presumed that the person who receives the delivery at the place of business of the Customer is authorised to receive the delivery.

6.5. When receiving the delivery, the Customer is obliged to check the delivered products for visible damages or possible shortages (quantity of bulk containers or damages to the bulk container) at the presence of the carrier. If visible damages of the product or shortages are found, the Customer should make an appropriate annotation on the carrier's waybill and make up a shipping damage report signed by the Customer and the carrier. Copies of these documents shall be delivered to the Seller together with a claim within 2 working days from the delivery date. The lack of annotations on the waybill or the lack of shipping damage report excludes the Seller's responsibility for a given damage or shortage.

6.6. The Customer shall thoroughly check the delivered product for possible shortages and qualitative defects other than mentioned in paragraph 6.5 above, and shall inform the Seller about discovered defects within 5 working days from the delivery date. The claim should include defects report and photographic documentation.

6.7. In every case the Customer shall secure the damaged product and allow the carrier, Seller or their insurers to inspect it. At the request of the Seller, the Customer shall send the damaged product back and shall handle it in accordance with the Seller's instructions.

6.8. The Seller is not responsible for damage or loss of product after it is handed over to the Customer.

6.9. The Failure to collect the ordered goods within the delivery terms agreed and without a written consent of the Seller could result in additional costs related to the storage and custody of the goods ordered and not withdrawn. In that case, the Seller reserves the right to invoice issue, even if the goods have not been sent to the Customer.

VII - Time of Delivery

7.1. The Seller shall indicate an approximate standard time of delivery or due date for the ordered products/services in order confirmation delivered to the Customer. The time of delivery may change.

7.2. Times of delivery of products/providing services start from the last of the dates below:

- unconditional acceptance of the Customer's order by the Seller,
- the Seller receives the information on which the order realisation depends; the Customer is responsible for delivering the information,
- the Seller receives a down payment to which the Customer obliged in accordance with terms and conditions of a contract if the price for products/services is payable before the product is delivered/the service is provided.

7.3. The Seller is automatically released from all obligations relating to the times of delivery of products / providing the service in the event of force majeure, delays for reasons attributable to the Customer, or events occurring at the Seller or the Seller's suppliers which may interrupt the company's organisation or business activity, such as lockout, strikes, war, embargoes, fire, flood, accident involving machinery, damage of a part in production process, interruptions or delays in transport or delivery of materials, energy or components, or other events beyond the control of the Seller or the Seller's suppliers.

7.4. The delivery date shall be the date the Carrier receives the products.

VIII - Retention of Title

8.1. The products delivered to the Customer are the Seller's property until the Customer fully pays for them (including interest for delays).

8.2. If the products have been processed or permanently incorporated into other equipment, the Seller shall have the lien on the processed product or device to which the Seller product was built in until full payment of the price by the Customer. The Customer shall oblige to inform third parties, to which the Seller's product is sold independently or as built in other devices, about the above-mentioned right.

8.3. If the Customer fails to pay the Seller on time, the seller has the right to demand the return of the products. Regardless of the demand to return the products, the Seller has the right to withhold all received down payments and payments received for these products from the Customer, without prejudice to the possibility to demand further compensation.

8.4. Subject to the mandatory provisions of law, from the date of delivery or receipt, the Customer bears all risks associated with the possession, storage and/or use of the products, including the risk of accidental loss or damage to products, and liability for damage caused by the products.

IX - Packing

9.1. The prices provided in the Seller's price lists or offers include the prices cost of a standard packing used by the Seller. The change, at the Customer's request, of the packing is made at the Customer's expense. Packing is irreclaimable.

X - Transport - Customs

10.1. Unless the Parties agree otherwise in a transport contract, the Customer shall bear the liability for insurance and/or customs.

XI - Environmental Regulations, Disassembly, and Waste Management

11.1. The party holding the waste is responsible for its management.

11.2. With regard to electrical and electronic equipment not intended for households (hereinafter referred to as 'EEE') introduced by the Seller on the market after 13th August 2005, subject to the Directive of the European Parliament and of the Council 2002/96/EC of 27th January 2003, Directive the European Parliament and of the Council 2006/66/EC of 6th September 2006, and the provisions of Polish law implementing these Directives, including the 29th July 2005 Act on waste electrical and electronic equipment, the obligation to finance the collection, treatment, recovery, including recycling, and disposal of this equipment is transferred directly to the Customer. The Customer assumes the responsibility, on one hand for the collection and disposal of waste from EEE covered by the sale, and on the other, for processing and recycling.

XII - Warranty

12.1. Defects covered by the warranty

12.1.1. The Seller issues a quality warranty for physical defects of the delivered products. As part of the warranty, the Seller undertakes to repair or replace any defective product performance resulting from defects in design, materials, or workmanship, provided, however, the above-mentioned commitment of the Seller shall not apply if:

- a. the products have not been used or maintained in accordance with technical documentation of these products or in the absence of such documentation, in accordance with common practice, or
- b. the defective performance results from inappropriate storage conditions, or
- c. the defective performance results from failure to comply with the Seller's requirements concerning installation or power supply.

12.1.2. The warranty applies only to the Buyer.

12.1.3. This warranty does not cover consumables and repairs that result from normal operation of the product, accidents and damage caused by inadequate supervision of the product or service that is incompatible with their intended use and/or instructions of the Seller, and, more generally, in each case for which the Seller is not responsible. The warranty does not apply if the Customer introduced modifications or additions to the products without the Seller's clear consent.

12.1.4. The Seller makes no warranty as to the usefulness of the product due to the aim pursued by the Customer, unless liability for such utility due to the specific purpose was expressly accepted by the Seller in writing.

12.2. Warranty period

12.2.1 The warranty is granted for the period of 12 months, unless other warranty period was indicated in the offer for a given product.

12.2.2. The warranty starts from the moment the products are received by the Customer.

12.2.3. Repair, modifications, or replacements of the product or its parts during the warranty period, in any case, do not extend the warranty period for the product, but it cannot be shorter than 3 months.

12.3. Terms and conditions of the warranty

12.3.1. As part of the warranty, the Seller shall remove the identified defects at the Seller's own expense, as soon as possible and by using measures that the Seller deems appropriate.

12.3.2. In order to take advantage of the warranty, the Customer shall inform the Seller in writing or by e-mail at office@powerfullstop.com or other mutually agreed upon, about defects which are assigned to products, within 5 working days after the discovery of the defect, and provide all documents proving these circumstances.

12.3.3. The Seller shall decide if the warranty is carried out by delivering a replacement to the Customer free of charge or by repairing the defective product at the Seller's service centre.

12.3.4. If the product is to be repaired at the Seller's service centre, the Customer is obliged to deliver the product at the Customer's expense.

12.3.5. Unless specified otherwise, the defective parts or products should be returned to the Seller within 30 calendar days, counted from the day when a given product was faulty. If the Customer fails to return the allegedly defective product in the above 30-days' period, the Seller shall be entitled to receive compensation for product replacement or repair cost.

12.3.6. On no account shall the warranty cover expenses related to exploration of a faulty element in the place of installation of the product, as well as dismantling and re-assembly of the product to the place of installation.

12.3.7. If, due to the nature of the product, the repair works must be performed at the place of installation of the product, the Seller shall cover the cost of these works (with the exception of the cost of the Seller's service awaiting in the place of installation due to the Customer's failure to make the products for repair available).

12.3.8. The Customer shall provide all necessary assistance to the Seller in order for the Seller to detect and repair the defects. Moreover, unless there is an explicit consent of the Seller, the Customer shall not perform repairs, also through a third party, under penalty of losing the warranty.

12.3.9. Product transport costs to the Seller's service centre shall be covered by the Customer.

12.4. Extension of Warranty Period

12.4.1. The Customer has the possibility of acquire warranty extended for an additional period, called the Extended Warranty, for selected products from the Sellers offer.

12.4.2. The Customer's payment for the Extended warranty shall be deemed tantamount to acceptance of terms and scope of obligations of the Parties arising under this Extended Warranty.

XIII - Liability

13.1. Terms and conditions of the contract in the form approved by the Seller and the terms and conditions of these General Terms and Conditions of Sale represent the Seller's liability and supersede all other warranties - whether statutory, express or implied - and exclude, to the fullest extent permitted by law, warranty for defects.

13.2. On no account shall the Seller be liable under the contract, or any other legal basis, for any special, indirect, incidental or consequential damages including the lost profits of the Customer or a third party, except for liability for damage from wilful misconduct of the Seller.

13.3. In any case, regardless of the cause or the subject of the claim, the aggregate liability of the Seller under or in connection with the performance, non-performance or improper performance of the contract is limited to the net amount of remuneration payable to the Seller under the contract.

XIV - Applicable Law - Litigations

14.1. The contract to which these GTCS apply is subject to the Polish law. The application of conflict rules of private international law and the UN Convention on Contracts for the International Sale of Goods, signed in Vienna on 11th April 1980, is excluded from this contract.

14.2. Any disputes relating to any of the offer or contract concluded by the Seller, which cannot be terminated amicably are subject to recognition by the Polish common court having jurisdiction over the registered office of the Seller.