

**BUSINESS TERMS AND CONDITIONS**  
**FOR THE SALE OF MONOMERS, POLYOLEFINS, AGRO PRODUCTS AND SULPHUR OF UNIPETROL RPA, s.r.o.**  
**effective from 1 January 2019**

**Preamble**

These BUSINESS TERMS AND CONDITIONS FOR THE SALE OF MONOMERS, POLYOLEFINS, AGRO PRODUCTS AND SULPHUR OF UNIPETROL RPA, s.r.o. (hereinafter referred to only as "Business Terms and Conditions") shall be applied to the legal relations created during sale of monomers, polyolefins, agro products and sulphur of UNIPETROL RPA, s.r.o. (hereinafter referred to only as the "Seller"), if the contracting parties expressly agree on their application in the purchase contract or framework purchase contract.

Different arrangements in the purchase contract or framework purchase contract shall take precedence over the respective provisions of these Business Terms and Conditions. These Business Terms and Conditions shall take precedence over those provisions of the law which are not of a compulsory nature.

Unless expressly stated that specific provisions of these Business Terms and Conditions apply only to a specific product of the Seller, the following provisions shall apply to all monomers, polyolefins, agro products and sulphur of the Seller.

**Personal data protection**

For the purpose of fulfilling the Contract, the Seller processes the personal data contained in the purchase contract (contact data) or personal data of the Buyer's employees, which it obtained in connection to performing the purchase contract and which it processes in accordance with the General Data Protection Regulation (EU) 2016/679 and other related or implementing regulations concerning personal data protection. Personal data provided by the Buyer pursuant to the purchase contract shall be processed and stored by the Seller maximally for the term of the purchase contract and for an additional 10 years afterwards. The Buyer's employees as the data subjects apply all of their rights to their employer - the Buyer.

**1 Contractual relationship**

1.1 Each contracting party shall inform the other contracting party without unnecessary delay about any changes of responsible persons, changes of the delivery address, as well as of the business name, registered address, company registration number, tax registration number, VAT registration number or of a change of the legal form and shall do so in writing or by an email sent to the address specified in the purchase contract. As of the proper delivery of this notice, the changes of the relevant data shall be considered effective without the necessity of concluding a written supplement to this Contract.

1.2 If case of a legislature change, the Seller is authorized to unilaterally change these Business Terms and Conditions in their full scope. The Buyer shall be informed about this change of the Business Terms and Conditions at least 30 days before the change of the Business Terms and Conditions enters into effect. The new version of the Business Terms and Conditions shall be sent to the Buyer using the contact information specified in the contract with the Seller and shall also be available at [www.unipetrolrpa.cz](http://www.unipetrolrpa.cz).

The Buyer is authorized not to accept these changes and may, following a unilateral change of the Business Terms and Conditions, unilaterally withdraw from the contract concluded between the Buyer and Seller to which these Business Terms and Conditions apply, at the latest within 15 days after the delivery of the notification of the change of the Business Terms and Conditions. In such case the contract shall be terminated as of the delivery of the termination notice to the Seller.

**2 Orders**

2.1 The Buyer's order is valid for the Seller only (i) after delivery of written confirmation of the order by the Seller to the Buyer in documentary format, whereby a purchase contract is concluded, or (ii) after coming into effect of the corresponding purchase contract, if the purchase contract is concluded with deferred effectiveness. The purchase contract may also be concluded implicitly, by delivery of the goods in the quality, quantity and deadline specified in the

Buyer's order. The order must contain the following requirements: type of goods, delivery terms and conditions (clauses) pursuant to Incoterms 2010 and manner and place of shipping, as well as the place of delivery of the goods and delivery schedule, if the Buyer requires delivery at specific times.

2.2 If (i) the Buyer orders the delivery of goods in the order with a delivery deadline of less than one month, or orders the repeated delivery of goods for a period of less than one month, and simultaneously (ii) the order is a reaction to a price offer for goods delivered via e-mail by the Seller to the Buyer, the purchase contract may be concluded electronically in the following manner:

2.2.1 If the Seller and Buyer have concluded a written framework purchase contract or similar contract in documentary format: the order must be sent by the Buyer from the e-mail address agreed in the framework purchase contract (or similar contract) for sending orders, and the purchase contract shall be concluded at the moment of delivery of e-mail confirmation of the order by the Seller to the Buyer. In this case, the sending of the order via e-mail with a simple electronic signature will suffice.

2.2.2 If the Seller and Buyer have not concluded a framework purchase contract or similar contract in documentary format: the Order must be sent by the Buyer via e-mail with a certified electronic signature, and the purchase contract shall be concluded at the moment of delivery of e-mail confirmation of the order by the Seller to the Buyer.

**3 Payment conditions**

3.1 The Seller shall issue an invoice, which shall perform the function of an accounting document in accordance with Act No. 563/1991 Coll., Accounting Act, as amended, and shall contain the particulars of a tax document in accordance with Act No. 235/2004 Coll., on Value Added Tax, as amended, or in accordance with other legislation. If the invoice is issued in a currency other than CZK and if the Buyer fills the same type of goods during the accounting period – each dispatch in the given accounting period shall represent a partial performance that shall be considered a separate taxable supply and shall be considered completed always as of the date of the last partial delivery of goods in the period in which the goods were dispatched.

3.2 The maturity of an invoice issued in accordance with the conditions of the purchase contract in CZK is 21 days from the date of its issue. If an invoice is, in accordance with the conditions of the purchase contract, issued in a currency other than CZK, the maturity of the invoice shall be 30 days from the date of its issue.

3.3 If the Buyer pays the purchase price via payment order, it does so preferably from the accounts specified in the contract. If it performs payment from an account other than that specified in the contract, it shall indicate the variable symbol with the payment in order to enable determination of which specific tax/pro forma invoice the payment refers to. If the Buyer sends the payment from an account other than that specified in the contract and does not indicate the variable symbol to identify the payment, it is deemed that the payment was intended to pay the oldest as yet partly/entirely unpaid receivable. If the Buyer has no unpaid liabilities towards the Seller, it is deemed that the payment from an account without a variable symbol is an advance payment for future performance. If the Seller does not register any unpaid receivables from the Buyer, and no future performance is agreed with the Buyer, the Seller shall return the received payment to the Buyer's account without undue delay.

3.4 If an invoice is issued in a currency other than CZK and the Buyer is an individual with residence or a legal entity with its registered office within the territory of the Czech Republic, the invoice shall be issued in the agreed currency including specification of VAT. VAT shall also be specified in CZK, whereas the market foreign exchange rate announced by the Czech National Bank on the date of taxable transaction. The Buyer shall settle VAT in CZK to the CZK account specified in the invoice.

3.5 All bank fees shall be settled by the Buyer. Payment shall be regarded as having been made if the whole invoiced amount is credited to the Seller's bank account. If payment is made to a different bank account than the bank account specified in the invoice through fault of the Buyer and additional costs are incurred by the

- Seller as a result of this, priority shall be given to settlement of these costs from the credited amount. The remaining amount shall be regarded as an outstanding amount of the original receivable.
- 3.6 In the event of delay in payment, the Seller shall be entitled to demand of the Buyer and the Buyer shall be obliged to pay punitive interest, the rate of punitive interest shall be determined in accordance with Government Regulation No. 351/2013 Coll., which determines the rate of punitive interest and the fee for delay pursuant to the Civil Code, as amended, or in accordance with the respective legislation which in the future replaces the above-mentioned regulation in the affected scope.
- 3.7 If the Buyer finds itself in delay with payment of due invoices, the Seller shall be entitled to discontinue further deliveries of goods and to withdraw from the purchase contract. Failure to perform deliveries in accordance with the previous sentence is not breach of the purchase contract and the Seller shall not be held liable for any possible damage caused by this.
- 3.8 The Buyer shall not be entitled to request delivery of goods and the Seller shall not be obliged to deliver goods if the level of all debts of the Buyer registered by the Seller after delivery of these goods would be greater than the current credit limit determined by the Seller, i.e. maximum permitted status of open receivables determined by the Seller on the basis of assessment of the Buyer's credit risk. On conclusion of a contract, the Buyer shall be informed of the current credit limit and the Buyer shall be informed immediately of every change to the credit limit by means of a message sent to the Buyer's e-mail address.
- 3.9 Tax documents shall be issued preferably in electronic form, or in case of an exceptional situation (if the portal is temporarily unavailable) in documentary / paper form. The tax document in electronic form ("electronic tax documents") shall be issued in accordance with §26, §29, §34 of Act No. 235/2004 Coll., as Amended in PDF format and shall be delivered as follows:
- Tax documents shall be uploaded to the invoicing portal of the Seller at <https://fakturace.unipetrol.cz/> (hereinafter the "invoicing portal") for which the Buyer shall be provided with a login and password, delivered separately from the Agreement on Issuing and Delivery Method of Tax Documents (hereinafter the "Agreement").
  - Corrective tax documents shall be downloaded from the invoicing portal of the Seller. The Seller undertakes to send issuance notifications for all tax documents in the invoicing portal to the email address(es) of the Buyer specified in the Agreement or directly in the framework purchase contract. In case of a change of the stated e-mail addresses, the Buyer shall inform the Seller of this fact at least 3 days in advance via an email to the email address of the Seller specified in the header of the Agreement or purchase contract. The Buyer is responsible for providing a correct and up-to-date email addresses and for regularly downloading electronic tax documents delivered via the invoicing portal of the Seller.
- 3.10 Pursuant to Section 45(1) of Act No. 353/2003 Coll., on Excise Duty, the reference for invoicing C4 fraction and primary gasoline shall be the quantity in litres at 15°C or in m3 or kg, depending on the type of goods, according to the delivery note/carriage document from the dispatch terminal.
- 4 Buyer's declaration and tax obligation**
- 4.1 If the customer is a tax payer in the EU and the goods are intended for delivery in the EU and it is supplied with parity EXW, FCA, or DAT, DAF / DAP border CR / EU, the buyer declares that the goods covered by the contract (purchase order) will be transported by him or by him authorized carrier, and not by a customer of the buyer.
- 4.2 Should tax proceedings be initiated with the Seller, the Buyer undertakes to immediately provide the Seller with all documents that demonstrate the fact that the goods left the Czech Republic and that the transport was executed by the Buyer or a transportation provider authorized by it. The Buyer shall be obliged to pay the Seller all taxes and fees that may be additionally assessed to it as a result of a breach of the obligations of the Buyer, mentioned in the previous two paragraphs.
- 4.3 If the customer is from the country outside of the EU and the goods are intended for export, and is supplied with parity EXW, FCA, DAF / DAP border CR/EU or DAT Incoterms 2010, the buyer declares that the goods covered by this contract (purchase order) will be transported by him or by him authorized carrier, and not by a customer of the buyer. Furthermore, the Buyer solemnly declares that it does not have a registered office, business establishment or location where it conducts its business in the Czech Republic.
- 4.4 Should customs and tax proceedings be initiated with the Seller, the Buyer undertakes immediately to provide the Seller with all documents that demonstrate the fact that the goods left the European Union and that the transport was executed by the Buyer or a carrier authorized by it. The Buyer shall be obliged to pay the Seller all taxes and fees that may be additionally assessed to it as a result of a breach of the obligations of the Buyer, mentioned in the previous two paragraphs.
- 4.5 For the sale of ethylene, propylene, benzene, BTX, C10, naphthalene concentrate and butadiene, it applies that: The customer acknowledges that these goods are primarily designated for purposes other than powering engines, heat production and production of the mixes specified in Section 45(2) of Act No. 353/2003 Coll., on Excise Duty, as amended. The customer confirms this with its written declaration. In the absence of such declaration, the customer acknowledges that excise duty shall be added to the price of the selected product pursuant to Act No. 353/2003 Coll., on Excise Duty, as amended.
- 4.6 The Buyer agrees to secure provision of excise duty for the transport of selected products under a conditional exemption mode pursuant to Section 24 and Section 25 of Act No. 353/2003 Coll., on Excise Duty, as amended or exemption mode under Section 50 of the Act on the Excise Duty or tax free circulation of liquefied petroleum gases pursuant to Section 60 of the Act on the Excise duty, unless otherwise agreed with the seller.
- If the seller secures the payment of excise tax for the period of transportation of selected products under Act. no. 353/2003 Coll., on Excise duty, as amended, the seller is entitled to require the buyer to put down a financial security or to arrange an issuance of a bank guarantee in its favour in the amount equivalent to the total tax liability that is subject to the security cover during transportation.
- 4.7 Under Section 27a of Act No. 353/2003 Coll., on Excise Duty, as amended, the Buyer (recipient) is obliged to submit to the locally competent customs office not later than 5 working days after the completion of the transport a notification of acceptance of selected products under the conditional tax exemption mode, using the electronic EMCS (Excise Movement and Control System). Particulars of notification of acceptance of selected products under the conditional tax exemption are set out in the Commission Regulation no. 684/2009 of 24 July 2009 in establishing implementation of the Council Directive concerning the general arrangements for excise duty (hereinafter also referred to as "e-AD").
- In the event that the notification will not be made by the buyer (the recipient) in a proper and punctual way, the seller is entitled to suspend further deliveries of goods to the buyer until the moment of termination of transportation by submitting a notice of acceptance of selected products under the above Act.
- Within the meaning of the provisions of Sections 2890 - 2893 of Act No. 89/2012 Coll., Civil Code, as amended, without prejudice to the privileges of the seller in the previous sentence, the buyer is obliged, in case it breaches its obligation to end the transport by submitting the notification of acceptance of selected products under the above mentioned Act, to compensate the seller for any costs and any damage suffered as a result of the buyer's delay. This damage may arise due to the fact that the seller becomes liable to pay the excise duty.
- 5 Loading, unloading and storage conditions**
- 5.1 If the Seller and Buyer agree on delivery via road transport, deliveries must take place in suitable vehicles – trailers, silo cisterns, auto cisterns or IBC containers on undercarriages. Transport of the shipment is secured by the Seller or Buyer depending on the specific selected delivery parity (Incoterms 2010) pursuant to the purchase contract or similar contract. If the Buyer performs the transport of goods using its carrier, it is obliged to inform the Seller sufficiently in advance (at least two business days before the planned loading) of the planned time of loading the vehicle, along with identification (code) of the loading. The Buyer is obliged to disclose the vehicle registration number to the Seller at least 2 hours before the planned time of loading. The Seller shall retroactively confirm the loading date to the Buyer, or propose a different date subject to confirmation by the Buyer. The mutually agreed date is binding for both parties. The Buyer is obliged to maintain it; otherwise the Buyer is obliged to compensate all damages arising from failure to fulfil the deadline by the carrier, including non-pecuniary losses. The Buyer and Seller shall inform each other immediately of any changes concerning the planned time of loading (cancellation, change of time, etc.) and shall agree on a substitute date that suits both parties. The Buyer is obliged to familiarise its contractual carrier with the rules and obligations specified in these Business Terms and Conditions. The Buyer is liable for the fulfilment of these rules and obligations by its contractual carrier and the Buyer obliged to compensate any losses incurred in consequence of their violation by the carrier, including potential non-pecuniary losses.

- 5.2 During sale of ethylene, the Seller notifies the Buyer, respectively its carrier that the transport of ethylene constitutes the transport of a high-risk dangerous substance. Cistern containers/cisterns must be suitable for transporting this dangerous substance and must meet all the requirements of legal regulations valid in all the countries of transit. For ground transport in the Czech Republic, it must meet in particular the Ministry of Foreign Affairs Decree of 26 May 1987, on the European Agreement concerning the International Carriage of Dangerous Goods (hereinafter referred to only as the "ADR"), for transport of fluid ethylene and marked with the code RxBN, RxCN or RxDN, where x is greater than or equal to three. The Buyer is obliged to bind its chosen carrier to equip the transport or carriage units in the scope specified in the ADR and respective instructions in case of an accident, valid certification of approval of the cistern container / cistern for transport of ethylene, certification of approval of the cistern / towing vehicle type "FL" and the original valid certification of training of the chosen carrier's driver about ADR regulations for class 2, as well as fulfilment of the obligations stipulated by legal regulations for the specific type of transport. The Buyer is obliged to give the carrier instructions for the case of an accident to train the crew of the vehicle before commencing transport. The permitted content of nitrogen in the empty container/cistern before filling is less than 0.2%. The Buyer is obliged to inform the Seller in advance of a higher content of nitrogen. The container / cistern with a nitrogen content of up to 1% inclusive will be loaded with release on a field burner. The Buyer is obliged to pay associated extra costs to the Seller. If the nitrogen content is higher than 1%, the container / cistern will not be filled. The Buyer is obliged to bind its carrier to the obligation to inform the Seller immediately (via any adequate means) and subsequently also in writing of any accident during the transport or unloading of ethylene which has impacted individuals, the environment or property. During the transport of more than 3 m<sup>3</sup> of ethylene per transport or carriage unit, the Buyer is obliged to bind its carrier to compile a Safety Plan for high-risk dangerous goods in the meaning of the requirement in Art. 1.10.3.2. of Annex A to the ADR.
- 5.3 Technical equipment for articulated vehicles to prevent contamination of the material being transported by foreign material (from the previous carriage), water (for washing, rainwater and condensed water), oil (from the compressor) and airborne dust, to prevent changes in the guaranteed quality characteristics of the material being transported, to prevent loss of part of the material during transportation and to prevent creation of injury to warehouse staff on the Seller's premises and in external warehouses, as well as requirements for minimum technical equipment of articulated vehicles for the carriage of the polymer materials Liten and Mosten and Chezacarb soot, are defined in the directive document entitled Unipetrol Standard, which is available on the Seller's website at [www.unipetrolrpa.cz](http://www.unipetrolrpa.cz) and is also an integral part of the Contract on provision of services (i.e. contract of carriage), or from the Seller's dispatch department (Transport Section). The Buyer undertakes to demonstrably familiarise the carrier with the content of the Unipetrol Standard guideline before the carrier's articulated vehicle is sent to transport goods for the Buyer.
- 5.4 The carrier may conduct transport of the packaged goods, usually using tarp trailers with a loading surface length of 13.6 m; or a silo cistern with a load bearing capacity of min. 25 tonnes for loosely loaded polyolefins. The technical of the tarp trailer during loading and unloading must allow the entry of a forklift onto its loading surface (from the side or rear of the trailer). The vehicles must be empty, ready for immediate loading. The vehicles must be clean, free of odour and without damage in the loading area of the vehicle.
- 5.5 Drivers will register at least one hour before the planned loading time with the Shipping desk of the Seller at the catchment "PETROCHEMISTRY PARKING LOT in block 69", or at the Seller's external warehouse locations. Each driver will submit a copy of the order or loading code, valid passport or valid ID card and certificate of vehicle registration. If any inaccuracy, ambiguity, error or other deficiency is found in any of the documents specified in the previous sentence, caused by the Buyer or carrier, the driver will be rejected and the vehicle will not be loaded. The next loading date after removal of the deficiencies will be specified by the Seller's Transport Section.
- 5.6 During registration, the driver will take over the map and use it to depart to the relevant warehouse in the Seller's compound. When driving through the Seller's compound, the driver must observe the maximum speed limit and other rules valid in the Seller's compound. In the event of a vehicle breakdown, accident or other unforeseen event, the carrier is obliged to inform the Seller's Transport Section immediately
- (viz.[http://www.unipetrolrpa.cz/CS/NabidkaProduktu/petrochemicke-produkty/EnergetickeProdukty/Documents/S402\\_Bezpecnost.doc](http://www.unipetrolrpa.cz/CS/NabidkaProduktu/petrochemicke-produkty/EnergetickeProdukty/Documents/S402_Bezpecnost.doc)).
- 5.7 The carrier must always deliver a clean, generally tarp trailer, container, auto cistern or clean silo cistern for loading of goods, based on the requirements for transport of the given. The carrier is liable for any contamination of the transported goods throughout the entire period of loading, transport and unloading. Before loading the auto cistern, silo cistern, FCL or IBC container, the driver will submit to the Seller's representative a document / certificate of cleaning the cargo area of the vehicle, including all accessories and equipment for loading and unloading the goods. It will also specify the facts about cleaning and the last transported material in the Seller's checklist. The provided data are binding for the carrier and it is fully liable for their completeness and accuracy.
- 5.8 During loading and unloading, the driver must check the obvious integrity of handling / storage units and their quantity, must immediately note any deficiencies or damage in the bill of lading and have this record confirmed by the Seller's representative. The driver will be allowed to participate in loading only if they are equipped with personal protective work equipment valid for the Seller. If the prescribed personal protective work equipment is not used, the driver shall be ordered out of the loading premises and returned to the loading gate.
- 5.9 The movement of trailers, silo cisterns or auto cisterns on the Seller's compound before loading, during and after loading will be carried out only with closed filling inlet lids.
- 5.10 Unloading of the silo cistern when transporting polyolefins must be carried out pursuant to the UNIPETROL Standard, in particular:
- temperature of outlet air on the micro filter casing max. 60° C,
  - pressure of outlet air on the micro filter casing max. 1.2 bar,
  - with a fitted micro filter with guaranteed filtration of particles larger than 5 µm,
  - using reinforced hoses DN 80 / DN 100 with undamaged white internal lining, or hoses made of stainless steel with a flat inner wall.
  - for unloading the goods, the carrier must use only those transport hoses whose cleaning has been proven by means of a certificate or record of cleaning
- 5.11 Before commencing activities in the Seller's compound, the carrier shall ensure:
- due familiarisation of all its employees and subcontractors with the binding standards valid in the Seller's compound, in particular those specified on the Seller's website at [www.unipetrolrpa.cz](http://www.unipetrolrpa.cz), and control their fulfilment,
  - due familiarisation of all its employees and subcontractors with the potential risks to the lives and health of persons moving about the Seller's compound in accordance with the safety instructions for presence and driving in the Seller's specific compound, available on the Seller's website at <http://www.unipetrolrpa.cz/CS/sluzby-areal/chempark-zaluzi/Stranky/default.aspx> (the document is also available via the following link: [http://www.unipetrolrpa.cz/CS/sluzby-areal/chempark-zaluzi/Documents/S402\\_RPA\\_V6Z0\\_FINAL.pdf](http://www.unipetrolrpa.cz/CS/sluzby-areal/chempark-zaluzi/Documents/S402_RPA_V6Z0_FINAL.pdf)) and observance of the stipulated measures to minimise these risks. The same rules apply to loading of sulphur in the Kralupy site.
- 5.12 If unloading loosely loaded polyolefins, the Buyer is obliged to check the integrity of the lead seals on the silo cistern and check their numbers against the data about lead seals indicated on the second page of the delivery note, before unloading. The Buyer is also obliged to inform the driver of the place of unloading (by completing/indicating the recipient's silo number) and again enter this given place of unloading on the second page of the delivery note.
- 5.13 The Buyer shall always confirm takeover of the goods in the delivery note and in the CMR document in the case of international carriage (signature, date and potential stamp) and send the documents thus confirmed to the Seller's customer service department.
- 5.14 The Buyer shall store loosely loaded goods only:
- in an empty, clean storage silo,
  - in an empty storage silo in which only the Seller's identical material had previously been stored,
  - in a partly filled storage silo in which the Seller's identical material is stored, and the remaining capacity of which is adequate to store the purchased material.
- If the Buyer stores materials in the storage silo otherwise than described above, the Buyer is not authorised to claim contamination of the material. The storage silo must be sealed so as to protect the material from climatic effects, and should be ventilated.
- 5.15 The Buyer shall store the purchase bagged polyolefins and Chezacarb soot on pallets in a dry, ventilated and roofed warehouse, so that the material is not exposed to direct sunlight, rain, snow and

other climatic effects and so that the pallet packaging cannot be contaminated by water, mud or other impurities.

5.15.1 For storing polyolefins, it applies that: The prescribed temperature in the warehouse is -20 to +50 degrees C. Pallets can be stacked in maximally two layers. At temperatures of below zero, it is necessary to exercise care during handling of the pallets, and it is also necessary to take into account the possible condensation of steam and water in the bags if they are heated up quickly. Pallets must be stored at a distance of minimally 1 m from heat sources. Pallets must be stored so as to prevent damage to the packaging during storage or offtake.

5.15.2 For storing Chezacarb soot it applies that: For safe loading and storage, it is necessary to observe all the fire prevention measures (smoking ban, ban on work with open flame, removal of all potential sources of ignition) and to ensure that there is no contact with the product (use personal protective equipment). The product must be stored in a dry and well-ventilated place with effective suction and away from sources of heat. We recommend storage in covered spaced protected from the direct effects of sunlight, and avoiding storage together with oils, other flammable substances or oxidising agents. The product may be stored in undamaged packaging for the lifetime of the packaging, if the outside temperature does not exceed 63°C. In a dry environment, the product may be stored without packaging for 12 months, if the temperature does not exceed 50°C. The product must be protected from contact with water, oils or oxidising agents and it is recommended to process it with priority, so as to avoid initiation when storing large quantities. Pallets must not be stacked.

If the Buyer stores the polyolefins and Chezacarb soot otherwise than described above, the Buyer is not authorised to claim their contamination by humidity and impurities, contamination of the packaging by steam and water, impurities, or damage to the packaging. The storage of chemicals is governed by European Parliament and Council Regulation (EC) No. 1907/2006, (REACH), as amended, the current version of which is available at <http://www.mpo.cz/dokument26065.html> or at [www.unipetrolrpa.cz](http://www.unipetrolrpa.cz) for the individual products.

5.16 In cases of potential exemption of deliveries of the Buyer's goods from VAT with a claim to VAT deduction in the meaning of Section 64 of Act No. 235/2004 Coll., on Value Added Tax, as amended, the Buyer is obliged to return the confirmed delivery note (confirmed with the signature and potential stamp from the place of delivery in the relevant EU member state other than the Czech Republic) at latest within 30 days from the date of loading the goods on the Seller's premises. If the Buyer fails to do so, the goods are considered as though they had remained in the Czech Republic. The Seller shall invite the Buyer to submit the confirmed delivery note, and if the Buyer fails to deliver the confirmed delivery note immediately even then, the Buyer shall be billed VAT and the Seller shall pay the tax authority this VAT in full. Furthermore, the Buyer shall be obliged to pay the Seller any potential sanctions imposed by the tax authority (including the potential assessed penalty). The Buyer is obliged to make the payments pursuant to the previous sentence always within 30 days from receiving the relevant tax document. For EXW, FCA or DAT, DAF/DAT (CZ/EU border), the Seller requires returning of the confirmed and signed CMR/CIM bill of lading (in international carriage) for the relevant delivery, as per Section 64(5) of Act No. 235/2004 Coll., on Value Added Tax, as amended. This confirmed document is to be submitted to the Seller at the latest within 2 months after the delivery. Otherwise the Seller shall additionally charge the Buyer the legal VAT. Furthermore, the Buyer shall be obliged to pay the Seller any potential sanctions imposed by the tax authority (including the potential assessed penalty). The Buyer is obliged to make the payments pursuant to the previous sentence always within 30 days from receiving the relevant tax document.

## 6 Conditions for deliveries in rail cisterns (RC)

6.1 If the Seller and Buyer agree on the shipping of goods in rail cisterns, deliveries will take place in these rail wagons leased by the Seller and in rail wagons owned or leased by the Buyer. If the Buyer provides rail wagons leased or owned by it (upon prior agreement with the Seller), it is obliged to ensure that these are suitable for filling and correspond to all the valid regulations, railway regulations and standards applicable to these cars. The Buyer takes into account that the Seller is unable to examine the adequacy of the wagons provided by the Buyer for filling beyond the standard framework of obligations related to the loading of provided rail wagons.

6.2 The Buyer is obliged to ensure complete emptying and swift return of rail wagons provided by the Seller within the deadline specified in

Art. 6.4, unless the contracting parties agree on other conditions in the respective purchase contract. A wagon with at most 2% residual amount calculated from the theoretical tare weight of the wagon shall be regarded as a completely emptied rail wagon. If the residual amount is more than 2% of the theoretical weight of the wagon and it is necessary to clean the wagon, then the Buyer shall bear all costs for cleaning and possible liquidation of residue.

6.3 After the rail wagons have been emptied, the Buyer shall be obliged to ensure closure and sealing of the dome lid, closure and sealing of the main and side valves with screwed on cap nuts and with a clean drum surface in compliance with the provisions of the RID Convention (<https://www.mdcz.cz/Dokumenty/Drazni-doprava/Preprava-nebezpecnych-veci-drazni-dopravou>) and UIC loading guidelines and in compliance with work procedures and instruction manuals for operation of the rail wagons. In the case of rail wagons equipped with heating coils/heating system and heated outlets, the steam outlet valve must be open. The Buyer declared on the return run in the bill of lading as the original buyer/recipient of the wagon consignment shall be obliged to return the rail wagons, after having been emptied, to the Seller's delivery track ("Siding Unipetrol RPA, Litvinov Ltd." Litvinov, station Most - new station, reg. No. 720847) or to another agreed location for mutual handover/takeover of rail wagons. The Buyer declared in the bill of lading as the original recipient of the wagon consignment is obliged to return the wagon immediately after emptying to the Seller. Only original buyer may perform a new sale (re-shipment) or amend the agreement on carriage only with the written consent from the Seller.

6.4 The deadline for return of an empty wagon without the billing of demurrage for all goods with the exception of goods transported by rail cisterns equipped with a heating system ("heating coils") used for filling – so called "heated substances" – is 48 hours of the wagon's presence on the Buyer's delivery track, for goods transported by rail cisterns equipped with a heating system ("heating coils") used for filling – so called "heated substances" – is 72 hours of the wagon's presence on the Buyer's delivery track, always calculated from handover of the wagon by the carrier at the Buyer's delivery track until handover of the empty wagon to the carrier for return (see stamp of the dispatching station in col. no. 92 of the bill of lading). For goods delivered by the Seller in the period from 1 December to 31 March and transported rail cisterns equipped with a heating system, the filling deadline is extended to 96 hours of the wagon's presence on the Buyer's delivery track. If any problems arise with the emptying of a RC, the Buyer shall be obliged to inform the Seller's contact person of this without delay, first via telephone and then via e-mail or by fax. The Buyer shall be obliged, if technically possible, to ensure the emptying of the wagon in an alternative manner (e.g. in the event of a defect to the wagon). If unloading of the RC is impossible, the Buyer shall inform the Seller of this and shall follow the Seller's instructions.

6.5 The Buyer shall be obliged to pay the Seller demurrage for non-return of a wagon provided by the Seller within the set deadline using the following rates for each started day of delay and each wagon, unless the Seller and the Buyer agree on different conditions:

	1-2 days	3-5 days	6 or more days
Pressurised rail cisterns	1300 CZK	1600 CZK	2100 CZK
Other rail wagons	600 CZK	900 CZK	1200 CZK

The total rate of demurrage shall be calculated as the sum total of the number of days of delay multiplied by the corresponding rate. Rates specified include VAT in accordance with current legislation. The maturity of invoices billing demurrage shall be 14 days from the date of their issue. In the event of any dispute by the Buyer over excess time spent by wagons on its premises, the Buyer shall be obliged to send the Seller photocopies of the bills of lading by letter or by e-mail, these including the printed rail stamp proving the date and time of arrival and departure of the RC. The provisions concerning time spent by wagons standing shall not be used if they delay and late return of a wagon was not caused by the Buyer.

6.6 The Buyer shall not pay the demurrage to the Seller if during the national or international transport to the Buyer the rail wagon was lost or damaged in a way that prevents its use on the Buyer's siding or its filling, or if wagon parts have been damaged before its arrival to the Buyer's siding, or if the rail wagon was returned late by the Buyer to the Seller due to its damage or damage or loss of wagon parts by the carrier before the arrival of the rail cistern to the Buyer's siding.

- 6.7 However, if the rail wagon or its parts have been damaged by the Buyer (recipient/dispatcher) or if the loss of the rail wagon was caused by the buyer (recipient/dispatcher) or a third party that was granted access to the rail wagon by the Buyer (recipient/dispatcher), the Buyer is obliged to cover all incurred costs for repair of the rail wagon, its parts and for spare parts, including additional costs, and to reimburse all damage incurred to the Seller, starting on the date when the Seller received a written notification from the Buyer (recipient/dispatcher) about this specific event.
- 7 Tolerance and contractual penalty**
- 7.1 The obligation of the Seller to deliver the agreed quantity of goods to the Buyer and the obligation of the Buyer to accept the agreed quantity of goods shall be regarded as having been met if the quantity of actually physically delivered and accepted goods differs from the quantity of goods agreed in the purchase contract by at most 10%.
- 7.2 If the Seller delivers a smaller quantity of goods than agreed in the purchase contract to the Buyer, decreased by the tolerance specified in Art. 7.1 of these Business Terms and Conditions, the Seller undertakes to pay the Buyer a contractual penalty equal to 2% of the price of this undelivered amount, decreased by the tolerance specified in Art. 7.1 of these Business Terms and Conditions.
- 7.3 If the Buyer accepts a smaller quantity of goods than agreed in the purchase contract from the Seller, decreased by the tolerance specified in Art. 7.1 of these Business Terms and Conditions, the Buyer undertakes to pay the Seller a contractual penalty in the level of 2% of the price of this undelivered amount, decreased by the tolerance specified in Art. 7.1 of these Business Terms and Conditions.
- 7.4 Payment of the contractual penalty specified in the previous provisions shall lead to expiry of the obligation to deliver and accept the remaining quantity of goods with regards to which the contractual penalty was paid, unless the Seller and the Buyer agree otherwise in writing.
- 7.5 The obligation to pay the contractual penalty specified in the previous provisions shall not arise if the breach of obligations by one of the contracting parties was a consequence of the breach of obligations by the other contracting party or a consequence of the effects of circumstances precluding liability, i.e. an extraordinary, unexpected and insurmountable obstacle arising independently of the will of the contracting party which is in breach of its obligation.
- 7.6 If either of the contracting parties withdraws from the purchase contract, the already existing entitlement to payment of a contractual penalty pursuant to the previous provisions shall be preserved.
- 8 Ownership right and risk of damage to goods**
- 8.1 The Buyer shall acquire ownership of the goods through payment of the purchase price in full, this being by its crediting to the Seller's account.
- 8.2 If the Buyer processes goods before transfer of ownership to the Buyer, or before payment in full of the purchase price for these goods to the Seller, the Seller shall become the owner of the products manufactured by the Buyer from the Seller's goods. If during processing of the goods of the Buyer, the goods of other owners or goods which are owned by the Buyer are involved in manufacturing of the Buyer's products, the Seller shall become the co-owner of the finished products in proportion to the share of the value of the Seller's goods and the value of the goods of other owners, or the value of the Buyer's goods.
- 8.3 If the Buyer finds itself in delay with meeting any debts towards the Seller, the Seller shall be entitled to demand issuance of the goods or products which its ownership relates to pursuant to this provision, without this being deemed to be withdrawal from the purchase contract.
- 8.4 The Buyer is authorised to sell the goods or products only if it fulfils its obligation to pay the purchase price for goods in full to the Seller, or if the Buyer's receivable for payment of the purchase price for the goods or products by a third party is assigned to the Seller.
- 8.5 The Buyer shall not be entitled to pledge goods or products of which the Seller is the owner or co-owner in favour of third parties or establish any right towards these goods or products which would in any way restrict or exclude the ownership of the Seller, or allow for the creation of right of retention to these goods or products, this being until the moment the Buyer's obligation towards the Seller is met in full. The Buyer shall also not be entitled to pledge or otherwise burden any possible receivables for settlement of a purchase price towards third parties if the Seller is the owner or co-owner of the goods or products specified in this provision.
- 8.6 Risk of damage to the goods shall be transferred to the Buyer at the moment when it accepts the goods from the Seller, or if it fails to do so on time, at the moment when the Seller allows the Buyer to dispose of the goods and the Buyer breaches the purchase contract by failing to accept the goods.
- 8.7 If the Seller is obliged, in accordance with the purchase contract, to hand over goods to the carrier at a specific location to the Buyer, risk of damage to the goods shall be transferred to the Buyer on handover of the goods to the carrier at the agreed location.
- 8.8 If the Seller is obliged, in accordance with the purchase contract, to send the goods, although he is not obliged to hand over the goods to a carrier at a specified location, risk of damage to the goods shall be transferred to the Buyer at the moment when the goods are handed over to the carrier at the agreed location.
- 8.9 Damage to goods which occurred after transfer of the risk of damage to the goods to the Buyer shall not relieve the Buyer of its obligation to pay the Seller the purchase price.
- 9 Liability for defects in goods**
- 9.1 If it is proven that the quantity, quality, design or packaging of the delivered goods do not correspond to the conditions specified in the purchase contract, the goods shall be deemed to be defective. The Buyer shall be obliged to prove defects to the goods to the Seller in a credible manner.
- 9.2 The Buyer shall be obliged to view the goods without unnecessary delay after transfer of risk of damage to the goods to the Buyer or after their delivery to the delivery location. Goods identified during the inspection must be reported by the Buyer in writing to the Seller immediately, at latest within 7 calendar days from the inspection. The Buyer shall be obliged to notify the Seller in writing of defects in quality in the case of goods delivered by road transportation and which can be ascertained by laboratory analysis, this being within 14 calendar days of the inspection having been made. The Seller shall bear no liability for defects which are reported later.
- 9.3 In the case of transport of the goods in RC which do not correspond to the agreed quality, the Buyer shall be obliged to notify the Seller without delay, to discontinue acceptance of the goods and to call on the Seller to draw up a joint record of quality of the delivery. Claimed goods must be kept in the original packaging until the record is drawn up.
- 9.4 The Buyer undertakes to accept measuring / ascertainment of weight on the Seller's weighbridge. On dispatch of goods in rail wagons, this ascertainment of weight is assigned the validity of official weighing. In the case of claims for quantity, the claim must be duly supported by a commercial record and weighing ticket with the validity of official weighing.
- 9.5 The Seller shall inform the Buyer, within the deadline as per valid international conventions (CMR, CIM) after the receipt of notification by the Buyer regarding defects ascertained, of its proposal for further course of action in resolution of the claim or reject the claim. The Seller shall be entitled to reject a claim even after this deadline if it proves to be unjustified.
- 9.6 The Buyer is obliged to store the goods, with respect to which it is claiming defects, separately from other goods, and must not handle the goods in a manner that could impede or prevent the inspection of the claimed goods by the Seller. The Seller shall be entitled to send its representatives to the Buyer for the purpose of checking the claim and the Buyer shall be obliged to allow the representatives of the Seller to inspect and verify the goods to which the claim pertains.
- 9.7 If a claim is acknowledged in writing by the Seller as justified, the Buyer may request delivery of the missing or defective goods or a discount on the purchase price. The Buyer may only withdraw from the purchase contract if the purchase contract was breached in a fundamental manner due to delivery of defective goods. The right to withdraw from the Contract shall not arise, however, if the Buyer is unable to return goods in the condition, quantity and packaging (if any was used by the Seller) in which it received them.
- 9.8 In the event of delivery of replacement goods or in the event of the Buyer withdrawing from the purchase contract, the Buyer shall be obliged to return goods to the Seller in the condition, quantity and packaging (if any was used by the Seller) in which it accepted them from the Seller. The Buyer shall not be entitled to return goods to the Seller before claims proceedings have ended without explicit written consent from the Seller.
- 9.9 If the Buyer breaches its obligation to perform timely inspection of the goods or to notify the Seller of defects in accordance with these Business Terms and Conditions, the Seller shall be entitled to reject such a claim and in such a case, no entitlement shall arise from liability for defects for the Buyer.

## **10 Withdrawal from the contract**

- 10.1 The Seller and the Buyer are entitled to withdraw from the purchase contract, in addition to the other cases determined herein, if the other contracting party is guilty of a fundamental breach of the obligations arising for it from the purchase contract. The following in particular shall be regarded as a fundamental breach of contractual obligations:
- 10.1.1 Delay on the part of the Buyer in payment of the purchase price or any amounts due in accordance with the purchase contract or these Business Terms and Conditions.
- 10.1.2 Delay on the part of the Seller in delivery of goods for a period of more than one month.
- 10.1.3 Delay on the part of the Buyer in acceptance of goods.
- 10.2 The contracting party shall also be entitled to withdraw from the purchase contract if the other contracting party submits an insolvency proposal as a debtor within the meaning of Section 98 of Act No. 182/2006 Coll., on Bankruptcy and Settlement (Insolvency Act), as amended (hereinafter referred to only as the "Insolvency Act"); the insolvency court does not arrive at a decision with regard to the insolvency proposal against the other contracting party within 3 months of commencement of the insolvency proceedings; the insolvency court issues a decision on bankruptcy of the other contracting party within the meaning of Section 136 of the Insolvency Act; the insolvency court initiates bankruptcy proceedings with regard to the assets of the other contracting party; or a decision is adopted on obligatory or voluntary dissolution of the other contracting party (excluding cases of company transformations).
- 10.3 Expiry in vain of the additional deadline provided by one contracting party to the other contracting party to meet its contractual obligations, the meeting of which the other contracting party is in delay with, shall not lead to withdrawal from the purchase contract, even if the entitled contracting party communicates that it shall no longer be extending the additional deadline for provision of performance.
- 10.4 Withdrawal from the purchase contract shall be effective on delivery of written notice by the contracting party withdrawing from the purchase contract to the other contracting party. If any doubts arise between the parties as to the date of delivery of notice of withdrawal from the purchase contract, the third day after notice has been sent shall be regarded as the date of delivery. Notice of withdrawal from the purchase contract must specifically state the reason for withdrawal.
- 10.5 Withdrawal from the purchase contract shall lead to expiry of all rights and obligations of the parties resulting from the purchase contract, with the exception of entitlement to compensation for damage and to payment of contractual penalties, and the provisions of the purchase contract and these Business Terms and Conditions which relate to the choice of governing law, resolution of disputes between the parties and regulation of the rights and obligations of the parties in the event of termination of the purchase contract.
- ## **11 Compensation of damages**
- 11.1 The contracting party which breaches any obligation arising from the purchase contract shall be obliged to provide the other contracting party with compensation for damage caused to this party through such breach of obligation.
- 11.2 The Seller shall be liable for damage up to the amount which is equal to the purchase price agreed in the purchase contract which the breach relates to. This provision shall not apply if property damage was caused intentionally or due to gross negligence.
- 11.3 The obligation to provide compensation for damage shall not arise if the obligation to pay a contractual penalty arose or if failure to meet the obligation by the obliged party was caused by the actions of the aggrieved party or lack of cooperation which the aggrieved party was obliged to provide. The contracting party which is guilty of the breach of obligation shall not be obliged to provide the other contracting party compensation of damages thus caused if it is proven that such breach of obligation was a consequence of the effects of circumstances precluding liability or force majeure.
- 11.4 If any obligation arising from the purchase contract is breached by either of the contracting parties and as a result of such breach of obligation, damage is caused to the other contracting party or both contracting parties, the contracting parties shall exert all possible efforts and means to ensure an amicable out-of-court solution for provision of compensation for this damage.
- 11.5 If either of the contracting parties withdraws from the purchase contract, entitlement to compensation for damage and contractual penalties which were established as a result of breach of obligation shall be preserved.

## **12 Force majeure**

- 12.1 The contracting parties shall be released from their liability for breach of obligation from the purchase contract if it is proven that they have been temporarily or permanently prevented from meeting the obligation by an extraordinary, unexpected and insurmountable obstacle which was created independently of their will (hereinafter referred to only as "force majeure"). However, liability for meeting of an obligation shall not be precluded if such an obstacle was created at a time when the obliged party was already in delay with meeting of its obligations or if the obstacle was created due to its economic situation.
- 12.2 The following in particular shall be regarded as force majeure if they meet the conditions specified in the previous paragraph:
- 12.2.1 natural disasters, fires, earthquakes, landslides, flooding, gales or other atmospheric disturbances and phenomena of a significant scope, or
- 12.2.2 wars, uprisings, revolts, civil unrest or strikes, or
- 12.2.3 decisions or normative acts of public authorities, regulations, restrictions, prohibitions or other interferences by the state, state administration authorities or local government, or
- 12.2.4 explosions or other damage or defects to the respective manufacturing or distribution equipment.
- 12.3 The contracting party which has breached, breaches or expects, with a view to all known facts, to breach its obligation arising from the purchase contract, this being as a consequence of a case of force majeure which has been created, shall be obliged to immediately inform the other contracting party of such a breach or event and to exert all possible efforts to avert such an event or to minimise its consequences and remedy them.
- ## **13 Preclusion of exclusivity**
- 13.1 None of the provisions of the purchase contract or these Business Terms and Conditions shall be interpreted as the provision of any exclusivity by the Seller to the Buyer for a specific region or for specific customers of the Buyer.
- ## **14 Governing law**
- 14.1 The legal relationship, respectively the rights and obligations of the contracting parties arising from the purchase contract, securing them, changes to them and their expiry shall be governed exclusively by Czech law, in particular by Act No. 89/2012 Coll., Civil Code, as amended.
- 14.2 The contracting parties hereby rule out application of the UN Convention on Contracts for the International Sale of Goods to the rights and obligations arising from the purchase contract. The contracting parties have also agreed that commercial practice shall not take precedence over the provisions of the law, even over the provisions of the law which do not have peremptory effects.
- ## **15 Resolving disputes**
- 15.1 If any disputes arise between the contracting parties in relation to the purchase contract, its application or interpretation, the contracting parties shall exert maximum efforts to ensure that such dispute is resolved amicably.
- 15.2 If a dispute between the contracting parties originating in relation to the purchase contract cannot be resolved amicably, the dispute shall be resolved by the designated court of the Czech Republic.
- ## **16 Handling non-recyclable packaging**
- 16.1 Packaging constitutes a part of the goods.
- 16.2 The Seller shall ensure fulfilment of the obligation to utilise waste from the packaging of packed products in accordance with Section 12 of Act No. 477/2001 Coll., on Packaging, as amended
- in the case of other end users, via contractual organisations, a list of which shall be provided to the Buyer subject to request by the Seller's sales department;
  - in the case of distributors, the Seller shall transfer the obligation to utilise waste from packaging to the Buyer together with transfer of ownership of the goods and their packaging.
- 16.3 The Seller declares that packaging meets the requirements of Act No. 477/2001 Coll., on Waste, as amended:
- 16.3.1 Packaging is designed and manufactured in accordance with the technical regulations for the weight and volume of the products for which it is intended.
- 16.3.2 Packaging material does not contain any classified hazardous substances.
- 16.3.3 The sum content of heavy metals Pb, Cd, Hg and CRVI in the packaging does not exceed the limit value of 100 µg/g.
- 16.3.4 Waste from used packaging can be recycled or used to create energy.

- 16.4 The Seller declares that the packaging meets the requirements of Sections 3 and 4 of Act No. 477/2001 Coll., on Packaging, and shall provide a written declaration upon request.
- 16.5 By purchasing the goods, the Buyer becomes the owner of the packaging with all the rights and obligations arising for it from Act No. 477/2001 Coll., in particular:
- It accepts from the Seller information about the type (material) of packaging and whether the packaging is reusable;
  - If the packaging is reusable, the Buyer shall ensure its reuse in accordance with the systems defined in Annex No. 2 to Act No. 477/2001 Coll., on Packaging.
  - If the packaging cannot be used in the defined system for reasons of damage or contamination, it shall ensure the handling of this packaging as waste pursuant to Section 4(1c) of Act No. 477/2001 Coll.;
  - If the packaging is not reusable, the customer must ensure its recycling or use in the production of energy so that the scope of overall use of waste is in accordance with Annex No. 3 to Act No. 477/2001 Coll., on Packaging.
- 16.6 The Buyer shall keep the necessary records of packaging managing to prove the foregoing. At the agreed intervals, the Buyer shall provide the Seller with summarised information about the manner of using packaging, i.e. the quantity of packaging that was recycled, used to produce energy, handed over as waste or reused.
- 16.7 If the Buyer is a distributor, the Seller transfers fulfilment of the obligations to reuse waste from industrial packaging pursuant to Section 12 of Act No. 477/2001 Coll., on waste, as amended, to the Buyer along with transfer of ownership of the goods and packaging thereof.
- 17 Extension of the statute of limitations**
- 17.1 In compliance with the provisions of Section 630 Civil Code (“*The parties may agree on a shorter or longer period of limitation calculated from the date on which the right could first have been exercised, than determined by law, which must however last at least one year and which may at most last fifteen years.*”) extension of the periods of limitation for all rights arising from the purchase contract is hereby agreed at a length of 4 years from the moment when this period begins. It is also agreed that extension of the periods of limitation shall also relate to rights created through withdrawal from the purchase contract. The agreement on extension of the period of limitation of the rights of the Seller cannot be separated from extension of the period of limitation of the rights of the Buyer.
- 18 Final provisions**
- 18.1 The provisions of Section 1740 (3) Civil Code (“*A reply with an amendment or difference which does not fundamentally alter the conditions of the offer shall be deemed acceptance of the offer unless the proposing party rejects such acceptance without unnecessary delay. The proposing party may rule out acceptance of the offer with an amendment or difference in advance, this already being in terms of the offer or in a different manner which does not give rise to any doubt*”), which determine that a purchase contract is also concluded even if complete agreement on the declarations of will of the contracting parties is not reached, shall not be applied to these contractual relations.
- 18.2 The provisions of Section 1799 Civil Code (“*A clause in a contract concluded as a standard form contract, which refers to conditions specified outside of the actual text of the contract, is valid if the weaker party was familiarised with the clause and its meaning or if it is proven that he must have known the meaning of the clause.*”) and Section 1800 Civil Code (“*(1) If a contract concluded as a standard form contract contains a clause which can only be read with great difficulties, or a clause which is incomprehensible to a person of average intelligence, such a clause shall be valid if it does not cause any injury to the weaker party or if the other party proves that the meaning of the clause was sufficiently explained to the weaker party. (2) If a contract concluded as a standard form contract contains a clause which is especially disadvantageous for the weaker party, without there even being a reasonable reason for this, in particular if the contract differs seriously and for no special reason from the usual conditions agreed in similar cases, the clause shall be invalid. If fair regulation of the rights and obligations of the parties so requires, the court shall decide similarly in accordance with Section 577.*”), which regulate references to business terms and conditions in standard form contracts, which define incomprehensible or especially disadvantageous clauses and conditions for their validity, shall not be applied to these contractual relations.
- 18.3 The Buyer assumes risk of change in circumstances within the meaning of Section 1765 Civil Code (“*(1) If any change in circumstances occurs which is so fundamental that such change establishes a particularly grave disproportion in the rights and obligations of the parties by putting one of them at a disadvantage either through a disproportionate increase in costs for performance, or disproportionate decrease in value of the subject of performance, the affected party shall be entitled to demand of the other contracting party renewal of negotiations on the contract, if it is proven that it could not have reasonably anticipated the change or influence it and that the fact did not occur until after conclusion of the contract, or it did not become known to the affected party until after conclusion of the contract. Exercising of this right shall not entitle the affected party to defer performance.*”) *(2) The right specified in clause (1) shall not arise for the affected party if it has assumed risk of change in circumstances.*”)
- 18.4 The contracting parties declare that neither of them feels or considers itself to be the weaker contracting party in comparison to the other contracting party and that they were able to familiarise themselves with the text and content of the contract and these Business Terms and Conditions, that they understand the content and they wish to be bound by it. They also declare that they have mutually and sufficiently consulted each other with regard to the individual contractual provisions. The contracting parties also declare that performance of the purchase contract shall not lead to either of the parties gaining a disproportionately worse deal than the other in accordance with Section 1793 of the Civil Code (“*If the parties undertake to provide mutual performance and if performance by the one party is grossly disproportionate to that which the other party provided, the contracting party which received the worse deal may demand cancellation of the contract and return of everything to the original state of affairs, unless the other party additionally provides the first party with performance to make the transaction fair, with an emphasis on the usual price at the time and in the location of conclusion of the contract. This shall not apply if the disproportion between mutual performances provided is based on a fact which the other party did not know of and need not necessarily have known of.*”).