

**GENERAL SALES CONDITIONS
APPLIED BY MARMITE SPÓŁKA Z OGRANICZONĄ ODPOWIEDZIALNOŚCIĄ
WITH ITS REGISTERED OFFICE IN ZAKRZEWO
WITHIN A PROFESSIONAL TRADE
BINDING AS OF JANUARY 01, 2018**

§ 1

Dictionary: The following terms included in these General Sales Conditions applied by Marmite Spółka z ograniczoną odpowiedzialnością with its registered office in Zakrzewo within a professional trade shall have the following meaning:

Confidential Information: has the meaning given in § 8 item 2 of GSC

Civil Code: the act of April 23, 1964 The Civil Code (Journal of Law of 2017, item 459, as amended)

Buyer: an entrepreneur who enters into the Contract with Seller

GSC: the General Sales Conditions applied by Marmite Spółka z ograniczoną odpowiedzialnością with its registered office in Zakrzewo within a professional trade

Order Confirmation: acceptance of the Order addressed to the Buyer by the Seller

Framework Cooperation Agreement: framework agreement regulating terms and conditions of cooperation between the Buyer and the Seller within the sales of Products

Seller: the Company – Marmite Spółka z ograniczoną odpowiedzialnością with its registered office in Zakrzewo at Przemysłowa 4, 62-070 Dopiewo, Poland, entered into the register of entrepreneurs of the National Court Register kept by the District Court Poznań – Nowe Miasto i Wilda in Poznań, VIII Commercial Division of the National Court Register, under KRS number: 0000581685, NIP [Tax Identification Number]: 7831732117

Party: the Seller or the Buyer

Parties: jointly the Seller and the Buyer

Products: any products on sale at the Seller, in particular washbasins, shower trays and bathtubs

Contract: each contract for the sale of Products concluded by the Seller and the Buyer on the basis of the Order placed with the Seller and the Order Confirmation on terms stipulated in GSC

Order: an offer placed to the Seller by the Buyer to conclude the Contract as provided for in the Civil Code

Business days: days from Monday to Friday excluding days which are public holidays in Poland

§ 2

General provisions

1. GSC regulate rights and obligations of the Parties to the Contract. GSC shall not apply to the Buyers being natural persons, acquiring Products for the purpose not related with the professional or business activity.
2. GSC constitute an integral part of the Contract and the Order, as well as the Framework Cooperation Agreement, unless the Parties decide otherwise.
3. In case of any discrepancies between the provisions of GSC and the Contract concluded between the Parties or the Framework Cooperation Agreement, the following provisions within this scope shall prevail: (a) first of all - the Contract, (b) second of all - the Framework Cooperation Agreement, (c) third of all - GSC.
4. The Seller is not bound by any conditions of purchase (including contract templates) applied by the Buyer. The conditions described in the previous sentence shall not apply to the Contract or to the Framework Cooperation Agreement.
5. GSC become binding for the Buyer at the moment of placing the Order or at the moment of the conclusion of the Framework Cooperation Agreement, or other contract regarding the sales of Products, depending on the day which occurs first. GSC shall apply to all Contracts concluded between the Parties.

6. Information presented by the Seller in any form and of any character, in particular as the announcement, advertisement, price lists and the so-called commercial conditions shall not have the character of an offer as provided for in the Civil Code and shall not be binding for the Seller, however they constitute at least an invitation to conclude the Contract under conditions indicated in this information.
7. Any illustrations, drawings, descriptions, data regarding the weight and measurements of the Products provided by the Seller are of visual and supportive character for the appropriate fitting of Products. The Seller hereby reserves any and all rights to the illustrations, drawings, descriptions presented to the Buyer. The Buyer is not entitled to use them within scope other than the fitting of Products, and moreover, he is not entitled to disclose them to third parties.
8. In case when the Seller manufactures the Products on the basis of designs provided by the Buyer, the Buyer states that he is entitled to the copyrights, in particular to proprietary copyrights, to the designs of Products within the scope essential for the Contract execution. The Buyer authorizes the Seller to use the designs of Products within the scope necessary for the Contract execution. The Buyer shall bear liability towards the Seller for lack of the authorization to the abovementioned rights, in particular he shall release the Seller from any obligations towards third parties related to the manufacture of Products pursuant to the Contract and to redress the damage incurred by the Seller.

§ 3

Orders and sales of Products

1. Orders shall be placed by the Buyer in writing or via e-mail to the contact details presented by the Seller. The Order constitutes an offer as provided for in the Civil Code.
2. The Order shall include:
 - a. designation of the Buyer, and name and surname of the person placing the Order on behalf of the Buyer,
 - b. designation of the ordered Products by providing names of Products or Products marking used by the Seller, as well as the quantity of Products,
 - c. price of Products,
 - d. day of collection of Products (Order execution period),
 - e. signature of the Buyer (in conformity with the representation rule, or of an ordering person authorized in advance by the Buyer) – in case of the Order placed in writing.
3. In case where the names of Products or Products marking used by the Seller have not been specified, but on the basis of the details of the Order it is possible to designate the Products, it is assumed that the Order concerns Products described in such a way by the Seller.
4. If the Seller accepts the Order, then within 3 (three) Business days from the date of receiving the Order, the Seller shall send the Order Confirmation to the Buyer by fax or e-mail. The Contract for the ordered Products is concluded at the moment of sending the Order Confirmation by the Seller.
5. The time period indicated in § 3 item 4 of GSC shall not apply to the implementation (realization) of new designs of Products; in these situations the time period for the order confirmation shall be each time agreed by the Parties. The sales Contract for the ordered Products is concluded at the moment of order confirmation by the Seller.
6. The Seller may modify the Order in the Order Confirmation within the quantity of Products and delivery date, or other conditions of the Contract, excluding the kind of Products covered by the Order. Within 3 (three) Business days from receiving of the modified Order Confirmation the Buyer may reject the execution of the Order under conditions indicated in the Order Confirmation by providing the Seller in writing or by e-mail with the appropriate statement. Failure to provide the Seller by the Buyer with the refusal of Order execution under the conditions of the modified Order Confirmation, the Contract shall be deemed concluded under conditions of the modified Order Confirmation at the moment of the expiry of 3 (three) Business days from sending by the Seller to the Buyer the modified Order Confirmation or earlier – if the Buyer provides the Seller with the statement on the acceptance of the modified Order Confirmation.
7. The Seller may make the Order acceptance conditional in particular on the payment of the outstanding financial liabilities together with their interest, ceasing other breaches and removing their effects or providing a security by the Buyer in a form agreed on between the Parties.

8. The Seller may not accept the Order in particular when the sum of unpaid receivables of the Buyer due to the delivery of Products (including overdue receivables) exceeds the value established between the Parties or this value would be exceeded if the next Order was accepted.
9. Withdrawal (cancelation) of the Order by the Buyer always requires a written consent of the Seller.
10. The Buyer states that any and all Orders placed by him or his employees with the use of fax or e-mail are binding for the Buyer and the Buyer undertakes not to make any claims within this scope towards the Seller.
11. The Seller shall be obliged to manufacture Products ordered by the Buyer and to release them to the Buyer at the place and time indicated in the Contract (Order execution period).
12. The Seller shall mark the Products and deliver the documentation related to the Products to the Buyer pursuant to the binding legal regulations and the Contract or Framework Cooperation Agreement.
13. The Seller provides and bears costs of standard packagings of Products.

§ 4

Collection of Products

1. EXW (Incoterms 2010) shall apply to the concluded Contracts, unless the Parties have agreed on otherwise.
2. The Buyer shall collect the Products in the agreed place of collection.
3. At the moment of releasing the Products, the risk of loss or damage of Products being the subject of the sales is transferred to the Buyer.
4. When collecting the Products in accordance with the conditions set forth in § 4 clause 1 of the GSC, the Buyer shall check the quantity and quality of packagings of Products. The confirmation of the collection shall be noted down on a copy of Delivery Note or a consignment note (including CMR) or the discrepancy report and shall include: (i) date of the collection of Products, (ii) name and surname of persons collecting the Products, (iii) legible signature of persons collecting the Products, (iv) objections concerning the quality or quantity of the packagings or the Products.
5. Raising objections regarding the quantity or the quality of Products does not release the Buyer from the obligation to pay the price within the period stipulated in the VAT invoice which includes the sale in part regarding the Products collected and not covered by the claim.
6. In case the Seller accepts the objections regarding shortage or quality of Products – the Seller shall be obliged to supplement missing quantities or deliver the Products free of defects without undue delay.
7. The Order execution period shall be deemed observed by the Seller, if the Seller releases the ordered Products to the Buyer in order to collect them within the time period agreed on by the Parties at the place of the collection of Products, unless the Products have not been collected due to reasons for which the Seller bears liability.
8. In case of a delay in the collection of the ordered Products due to reasons the Buyer shall be liable for, the Seller may:
 - a. at the cost and risk of the Buyer, deliver the ordered Products to the Buyer, which does not exclude the right of the Seller to redress damage resulting from the delay,
 - b. keep safe the Products or hand over the Products for safekeeping at the cost and risk of the Buyer.
9. In case the Seller fails to meet the Order execution period due to reasons for which the Seller bears liability, the Buyer shall be obliged - before the withdrawal from the Contract - to set for the Seller the additional period of at least 30 business days for the Order execution stipulated in the Contract.
10. The Seller reserves the right to partial deliveries.
11. The Buyer assures that the persons collecting the Products from the Seller will be authorized to such a collection of Products, and due to this fact he will not raise any objections within this scope towards the Seller.

§ 5
Quality guarantee

1. Scope, time period of the guarantee granted by the Seller, as well as the claims procedure, rights of the Buyer and the obligations of the Seller resulting from the defects of Products revealed during the guarantee period are stipulated in a document of guarantee enclosed to the Products or delivered to the Buyer by the Seller in another way.
2. The Parties exclude the application of the statutory warranty for physical and legal defects of Products.
3. The Parties exclude the liability of the Seller for non-performance or improper performance of the Contract, including indirect damages, consequential damages, lost profits and tort liability, unless the damage is a result of willful misconduct of the Seller.

§ 6
Payments

1. The sale of Products shall be done in EUR or PLN currency, pursuant to the arrangements between the Parties.
2. The Price of Products shall be agreed on by the Parties.
3. The Buyer shall pay the Seller the price for the ordered Products pursuant to the issued VAT invoice, by a bank transfer to the bank account indicated in the abovementioned VAT invoice within the period of 14 days from its issuance, unless other payment date is stipulated in a separate arrangement of the Parties. The VAT invoice shall be issued on the day of releasing the Products to the Buyer.
4. The Buyer hereby authorizes the Seller to issue VAT invoice without a signature of the Buyer.
5. The Buyer shall bear the costs of the collective packaging (EUR-pallets) of Products, unless it is otherwise agreed on between the Parties.
6. The ownership of Products shall be transferred to the Buyer on the day the Buyer makes the payment for these Products and if the payment of the whole price is made before the releasing of the Products to the Buyer – the ownership shall be transferred at the moment of releasing the Products to the Buyer. The payment day shall be the day of crediting the bank account of the Seller.
7. In case of default in payment by the Buyer, the Seller shall have the right to:
 - a. withhold the delivery of the next batches of Products until any and all outstanding payments are settled by the Buyer (time period for the performance of delivery of the next batches of Products shall be extended by the time during which the Buyer was in default in payment) and/or
 - b. after a prior request for the Buyer to settle the price within the period of 7 (seven) days and its ineffective expiry – withdraw from the sales contract regarding the unpaid batch of Products or from all concluded, but not executed by the Seller by that day sales contracts for the Products concluded with the Buyer and/or
 - c. demand the prepayment of the full price for the next ordered batches of Products from the Buyer, unless the Buyer provides the Seller with the security for payment for the next batches of Products in a form satisfactory for the Seller or
 - d. shorten the payment period for the next batches of Products which is stipulated in § 6 item 3 of GSC.
8. In case of a situation described in § 6 item 7 letter b of GSC, the Seller shall have the right to sell to third parties the Products ordered by the Buyer, towards which the Seller withdrew from the Contract, which fact shall be approved by the Buyer.
9. The Parties mutually decide that the Buyer, without a prior written consent of the Seller, is not allowed to set off any claims which he is entitled to against the Seller with the mutual claims of the Seller against the Buyer regarding the sales of Products.

§ 7

Force majeure

1. Each of the Parties is released from executing the Contract for the duration of force majeure which renders it impossible or extremely difficult to execute the Contract. The other Party shall be immediately informed about the occurrence of force majeure.
2. Force majeure shall not waive the obligation of settling executed orders on the nearest possible date.
3. Force majeure shall be construed as circumstances independent of the Parties of external nature, such as: military conflict, flood, riots, terrorist attacks, strikes, actions of state authorities which render the execution of the Contract impossible, etc.
4. The time for executing the Order shall be automatically prolonged by the duration of force majeure.
5. If force majeure lasts longer than 12 (twelve) months, each of the Parties shall have the right to terminate the Contract effective immediately without bearing any liability for damages. The date of the Contract termination shall be the date of receiving the notification about the occurrence of force majeure. If the delivery is impossible, it shall be sufficient to officially authenticate the date of the Contract termination and inform the other Party about such fact at the first opportunity.

§ 8

Confidentiality of information

1. Any Confidential Information, as defined below, received during the execution of the Contract or before its concluding which concerns the other Party shall be confidential and shall not be made available to third parties, disclosed or used for any reasons other than pertaining to the execution of the Contract or the Framework Cooperation Agreement, without a consent of the Party it relates to.
2. Confidentiality applies to the confidential information of the Party, in particular the information constituting a business secret, including the information on production, know-how of the Seller, trade, finances, technology and organization (hereinafter referred to as: "Confidential Information").
3. The Party which received information shall be released from the obligation of confidentiality of Confidential Information only in the following cases:
 - a. on the condition of receiving a prior written consent of the other Party, in the scope covered by the consent;
 - b. when the demand to disclose Confidential Information shall originate in a judicial authority or any other authority which acts within its rights based on current legal regulations;
 - c. the information is or becomes publicly available without breach hereof.
4. The Party obliged to disclose Confidential Information to authority stipulated in § 8 item 3 point b of GSC, shall inform the other Party within 5 (five) days about the existence of such an obligation.
5. The breach of the confidentiality clause shall entitle to demand from the other Party the payment of a contractual penalty in the amount of EUR 10,000 (ten thousand euro) for each breach. The reservation of contractual penalty shall not exclude the right to seek the payment of compensation exceeding the value of the reserved contractual penalty.

§ 9

Copyrights and industrial property rights

1. The Seller is entitled to the intellectual property rights and copyrights to the designs of Products, unless it is otherwise agreed on in writing by the Parties.
2. The Buyer hereby undertakes not to use the trademarks of the Seller („Marmite“ or „Evermite“) or any mark, name, domain name or designation that consists of or incorporates the abovementioned trademarks in any format, or otherwise is confusingly similar to these trademarks, unless it is done on the basis of and within the scope of an expressed written consent of the Seller.

3. With regard to the Products to the designs of which the Seller owns the intellectual property rights (e.g. copyrights), the Buyer shall be obliged towards the Seller not to: (a) manufacture Products being the subject matter of the Contract, as well as (b) commission the production of Products being the subject matter of the Contract to third parties. The Buyer shall not use in any way the designs of the Products, as well as know-how obtained under or in relation with the Contract. The breach of any of the obligations mentioned hereinabove shall entitle the Seller to demand from the Buyer the payment of contractual penalty in the amount of EUR 500,000 (five hundred thousand euro) for each breach. The reservation of the contractual penalty shall not exclude the right to seek the payment of compensation exceeding the value of the reserved contractual penalty.

§ 10

Dispute resolution

1. Any disputes arising in connection with the Contract shall be settled by the Polish common court having a jurisdiction over the seat of the Seller.
2. The Seller hereby reserves the right to assert his claims also in the court having jurisdiction over a domicile or a seat of the Buyer.

§ 11

Final provisions

1. GSC and the Contract shall be governed by the Polish law.
2. In case of any matters not stipulated in the Contract and GSC, the provisions of the Civil Code shall apply, unless the Contract or GSC stipulates that the regulation on a particular matter included therein is in-depth, and thereby the application of the provisions of the Civil Code is excluded.
3. The invalidity or ineffectiveness of any GSC provisions shall not influence the validity or effectiveness of other GSC provisions. In such a case, the appropriate rules of law shall prevail over the invalid or ineffective GSC provisions.
4. The Buyer is not entitled to assign any rights under the Contract to any third party without a prior written consent of the Seller.
5. Titles and numbers of paragraphs in GSC shall be only treated as information, and they shall not influence the interpretation of GSC.
6. Any notifications or statements provided for in GSC to be valid shall be done in writing, unless it is otherwise stipulated in GSC.
7. The Parties shall indicate persons authorized to place and accept on their behalf the statements related with the Contract performance, including placing Orders and accepting claims regarding Products, as well as they shall be obliged to inform each other about the changes regarding these persons or their contact details. Should the Party not notify of the change of a contact person or their contact details, the correspondence sent to the existing address shall be deemed affectively delivered.

Podpisy / Signatures:

Jens Stradtman