

**General Terms and Conditions of Sale  
valid and effective as of 1 January 2015**

These General Conditions of Sale (hereinafter “**GCS**”) are issued by the company Global Tungsten & Powders spol. s r.o., with its registered seat in Bruntál, Zahradní 1442/46, Postal Code 79201, Czech Republic, ID-No. 278 08 408, registered in the Commercial Register administered by the Regional Court in Ostrava under File No. C 52380 (hereinafter “**Global Tungsten & Powders**“ or the “**supplier**“) and shall apply to all contractual relationships which are entered into by and between Global Tungsten & Powders as a seller/ supplier, and third persons (legal entities) as buyers (hereinafter referred to as the “**customer**”). The GCS were issued on the date set above and shall supersede any and all general terms and conditions of sale which have been adopted by Global Tungsten & Powders or by its legal predecessors hitherto.

**1. GENERAL PROVISIONS**

**1.1** The contract is based exclusively on these GCS of Global Tungsten & Powders as the supplier. These GCS are valid by analogy also if the subject-matter of the contract is any work.

**1.2** These GCS are also valid for future businesses without further express agreement.

**1.3** Prior to placing the order itself, the customer was sufficiently acquainted of these GCS and had the opportunity to make itself familiar with them on the website of Global Tungsten & Powders (<http://www.globaltungsten.com> >>> Legal) where these GCS are published in Czech and English language in a manner enabling the customer their archiving and reproduction.

**1.4** Contact details of the supplier are as follows:

**Global Tungsten & Powders spol. s r.o.**

Zahradní 1442/46

792 01 Bruntál

Czech Republic

ID No.: 278 08 408

Tax ID No.: CZ27808408

Order number and reference number are to be mentioned in any commercial or other contract relevant correspondence.

**2. CONCLUSION OF CONTRACT**

**2.1** Offers of the supplier shall not be binding. If the offer contains any quantities, dimensions, weights or drawings, these are deemed to be approximate. If the customer requires the adherence to exact dimensions, he has to express this in his order.

**2.2** Plans, drawings, or other documentation are handed over to the customer for the purpose of conclusion of contract and, if applicable, for its completion. The supplier reserves property of these. No right of use is agreed. They must not be made accessible to third parties. The customer is obliged to return them if the contract negotiations fail or if they are no longer required for completion of the contract.

**2.3** Samples are only supplied for extra payment.

**2.4** Insofar as the customer places at disposal samples, plans, drawings, or other documentation, the provision of point 2.2 hereof shall be applicable likewise. The customer is liable towards the supplier for violation of rights of third parties by using this material. There is no obligation of the supplier to investigate this fact.

**2.5** The order of goods and / or services shall be deemed as the customer’s proposal for conclusion of the contract. By placing its order, the customer expresses its explicit consent with these GCS.

**2.6** The contract is concluded by the written order of the customer and the supplier's written confirmation of this order. The written form is also observed when the offer is placed via an e-mail sent to the abovementioned e-mail address of the supplier. In the absence of the order confirmation, the customer's contract offer may be accepted by the execution of the customer's order by the supplier.

**2.7** The customer undertakes to place its orders to the supplier in sufficient lead time, depending on the character of the goods.

**2.8** Order quantities may be exceeded by permitted quantity tolerance amounting to +/- 10%. In any case, invoicing is based on the actually supplied quantity.

**2.9** Changes or amendments to the contract concluded under these GCS require a written form. This applies also to an agreement on revocation of the requirement of written form.

**2.10** In doubt prices mentioned in the documents issued and/ or concluded by the supplier are net prices which are to be increased by the legal amount of VAT. These prices are EX WORKS. The costs for transport and packing are not contained in the price of goods.

**2.9** If raw material prices increase after conclusion of the contract the supplier has the right to increase the prices accordingly. This does not come into effect if the period between conclusion of the contract and the agreed time of contractual supply is less than four months. If the price increase exceeds 10% the customer has the right to withdraw from the contract. The supplier has the right to withdraw from the contract in the case that the raw material prices increase by 20% or more.

### **3. DELIVERY**

**3.1** In doubt, the term of delivery begins with the receipt of the customer's order, but in any case not before clarification of all details necessary for fulfilling the contract and not before furnishing of all documentation or parts by the customer. The delivery period is prolonged by the period of time necessary for any import and export procedures. It is furthermore prolonged by the period of time of any obstacle (strike etc.) at the supplier or on of its sub-suppliers or subcontractors out of the supplier's influence, and by the period of time of any right of retention of the supplier.

**3.2** The supplier has the right of retention as long as the customer is in delay with an obligation from this or another contract between the parties, except if this obligation is minor and does not affect the fulfilment of the contract by the supplier.

**3.3** The customer may deny partial shipments only if the supplied goods have major defects.

**3.4** If shipment is delayed upon the customer's request, the supplier may require prepayment in the agreed form. The time of delivery is considered to be fulfilled if the goods are shipped in time pursuant to the documents issued and/ or concluded by the supplier or if the customer is informed that the goods are ready for delivery. The date of delivery of the goods is the date of their delivery to the customer or to the first carrier for transport to the customer.

### **4. DISPATCH**

**4.1** Unless agreed otherwise, the risk shall pass to the customer at the time the goods are handed over to the shipping company or freight carrier, however no later than at the time the goods leave the supplier's factory.

**4.2.** Way and means of shipment are selected by the supplier's reasonable discretion. Any insurance of the goods has to be ordered and paid separately by the customer. The supplier has the right to supply COD, all costs arising are chargeable to the customer unless agreed otherwise.

**4.3** Goods ready for shipment have to be taken over by the customer immediately following the supplier's respective notice. Otherwise the supplier shall be entitled to store the goods at the customer's expenses.

**4.4** If, based on another agreement within the meaning of section 4.1, the supplier bears the risk even after the time referred to therein, the customer shall report any transportation damage to the transport company without undue delay and prepare a record of the damage jointly with the transport company.

**4.5** INCOTERMS 2010 shall apply for all trade clauses.

## 5. PAYMENTS

**5.1** The agreed price is due for payment net and thus without deduction of cash discount at receipt of invoice.

**5.2** The customer shall not be entitled to one-sidedly set off any of its receivables which it has towards the supplier, unless agreed otherwise between the parties. The customer is not entitled to transfer (assign) any of its claims (receivables) arising from the contract towards the supplier to any third party without the supplier's prior consent.

**5.3** A payment claim is considered in delay at latest 30 and more days after maturity and arrival of the invoice.

**5.4.** Any payment made by the customer is considered to be effected when the payment is credited to the supplier's account.

**5.5** In case of delay payment, the supplier has the right to prohibit resale, further use, or processing of the goods supplied, and to withdraw from the contract, as well as to charge to the customer interest on late payment in the amount calculated according to valid Czech Law.

**5.6** The customer who is in delay with the payment of the price of the goods shall be obliged to reimburse the supplier's costs incurred due to sending of reminder notices for outstanding payments and costs of legal representation connected with the reminder notices and / or recovering of the outstanding payments, and thus also in the context of extra-judicial proceedings; these costs will be calculated according to the decree No.177/1996 Coll., as amended.

**5.7** If payments are delayed or circumstances become known after conclusion of contract which indicates that the customer will not be able to pay, the supplier may require prepayment.

## 6. RIGHTS OF DEFECTIVE PERFORMANCE, WARRANTY, WARRANTY CLAIM, LIABILITY FOR DAMAGES

**6.1** The customer is obliged to notify the supplier immediately in writing of apparent defects and missing quantity of goods upon receipt of the delivered goods. Notice of other defects which could not be detected even after meticulous inspection at receipt of the goods is to be given by the customer immediately after they have been discovered or could have been discovered when exerting professional care. The notice has to be given in writing and per fax in advance. The customer has to allow the supplier to inspect the defects of the goods.

**6.2** The warranty shall not apply to defects resulting from normal wear and tear, failure to adhere to the supplier's instructions (e.g. with respect to storage, use of the goods, etc.) or the fact that the customer carried out modifications to the goods or performances, exchanged certain parts of the goods or used consumable supplies that do not correspond to the original specifications, or to defects attributable to incorrect materials, drawings, specifications, etc. of the customer.

**6.3** In terms of warranty claim for defects of goods the customer is entitled to:

- a) require the removal of the defects through the delivery of replacement goods in exchange for defective goods or delivery of the missing goods;
- b) require the removal of the defects through repair of the defective goods provided that the defects are repairable;
- c) a reasonable discount from the price of goods.

The customer is entitled to make choice between the above claims only if it is notified to the supplier without undue delay following the notification of defects under clause 6.1 hereof. The lodged claim cannot be changed by the customer without the supplier's prior consent.

**6.4** The limitation period for claims pursuant to section 6 shall be 12 (twelve) months from the date of delivery of the goods.

**6.5** The customer and supplier hereby exclude the application of Sec. 2108 of the Civil Code and therefore, the customer is obliged to pay the full price charged by the supplier in accordance with the contract concluded under these GCS even in case of the warranty claim for defects of the delivered goods.

**6.6** The customer has the right of claims for compensation only in the case of intention and gross negligence of the supplier. This limitation of liability does not come into effect for damages of injury of life,

body and healthy, and for the violation of any obligation which is part of the contract (cardinal obligation). Cardinal obligation in this sense shall be a duty which must necessarily be fulfilled to enable the proper performance of the contract, and on whose compliance the Customer would usually be entitled to rely.

## 7. RESERVATION OF TITLE

**7.1** The supplier reserves ownership (in Czech: *výhrada vlastnictví*) of the supplied goods until the fulfilment of all claims from the business relation with the customer. The customer will acquire the ownership of the supplied goods as of the moment of full payment of its price including VAT.

**7.2** If a reservation of ownership does not come into effect according to the laws in the country of the customer, the customer has to inform the supplier of this circumstance. In this case the customer is obliged to offer to the supplier an equal security. Instead, the supplier can require prepayment or a letter of credit.

**7.3** The customer is given the revocable right to sell, use, or process the goods in the normal course of business.

**7.4** For the case of resale, the customer assigns his claims towards his customer to the supplier at the time of conclusion of the contract between the customer and its customer. The supplier will accept this assignment. He has to support the supplier in the enforcement of his claims to the best of his ability. If the goods are resold together with other goods, the assignment is limited, in alteration to sentence 1, to the part of the claim which is in relation of the invoiced amount for the reserved material to the total claim of the customer to his customer.

**7.5** For the case of processing of goods being under the reservation of title (hereinafter referred to as "**reserved goods**"), the parties agree as follows: The supplier is co-owner of the new goods. The amount of co-ownership is based on the relation of the invoiced amount of the reserved material to the value of the new goods. Clause 7.4 is valid in analogy.

**7.6** Insofar as the value of the reserved goods exceeds 120% of the claim to be secured, upon request of the customer, the supplier has to set free the reserved goods of his choice by assigning the goods being under reservation of title to the customer or by re-assigning him the claims towards the customer's customer.

**7.7** In the case of loss, seizure, destruction, or damage of the reserved goods the supplier has to be informed immediately. The customer herewith assigns in advance his claims arising from this towards any third party, particularly the damaging party or the insurance.

## 8. TOOLS

**8.1** Tools or moulds which the supplier produced or procured for fulfilling the contract remain property of the supplier, also if these are invoiced to the customer.

## 9. LONG-TERM TRANSACTIONS

**9.1** In current long-term transactions, the customer has to make notification timely in advance of the required monthly quantities and request for delivery respectively. Otherwise the supplier has the right to fix the quantities to be supplied monthly himself and supply accordingly after the extension of the original time limit.

**9.2** If the agreed total quantity is exceeded by the total of individual requests for delivery, the supplier has the right to make the supply of the exceeding quantity dependent on a new price agreement.

## 10. COMPLIANCE WITH LAWS AND IMPORT AND EXPORT CONTROLS CLAUSE

**10.1** When concluding a contract in accordance with these GCS, the customer makes the following representations and warrants to the supplier that:

- a) it will comply with all laws, regulations or other legislation including government or court orders, in particular those concerning the fight against corruption, antitrust and fair competition, environmental, health & safety, and fair labor standards;
- b) it will comply with all applicable import and export control laws, including re-export and transfer restrictions, embargoes and sanctions regulations;
- c) it will obtain any and all necessary licenses, consents or other approvals that are required for the import, use or export of the goods according to the laws and regulations as are applicable to the customer;
- d) in the event that a ministry or other competent government agency requests documents from the supplier that requires the cooperation of the customer (e.g., End-Use Declaration, Import Certificates etc.), the customer undertakes to, in a timely and diligent manner, provide such documents or perform such actions as may be requested by the supplier to satisfy the request of the ministry or other competent government agency; should delays in shipment arise as a result of customer's failure to cooperate in a timely and diligent manner or due to the ministry or other competent government agency approval process, then the time for supplier's performance shall be extended accordingly;
- e) in the event that the delivery of the goods or the supplier's performance hereunder becomes impaired, whether temporarily or permanently, due to (i) the applicable national or international laws and regulations, in particular export controls, embargoes or other restrictions, or (ii) the denial or revocation of necessary approvals for reasons not attributable to the supplier, the supplier shall be under no further obligation to deliver or to perform hereunder and the customer waives any claims against the supplier and agrees not to seek any damages or exercise any rights against the supplier in such a case.

**10.2** The customer makes the above representations as of the day of conclusion of the contract concluded in accordance with these GCs and all representations will be considered made again by the customer as of each day of validity of the concluded contract.

**10.3** The customer is fully liable for the damage suffered by the supplier in connection with the customer's violation of any representation or obligation under Article 10.1 and 10.2 hereof, or due to the fact that some of the customers' representations will prove to be invalid, false or incomplete.

## **11. CONFIDENTIALITY**

**11.1** The customer shall treat as confidential and not disclose to third parties any and all secret information, documentation, documents pursuant to section 2.2 and data (inter alia those of a commercial and technical nature) that are not in the public domain and of which it becomes aware in the course of the contractual business relationship with the supplier, and shall use these solely in the context of the contractual business relationship with the supplier.

**11.2** The customer's use of the company name or trademarks of the supplier for advertising purposes or in giving references shall be subject to the supplier's prior written consent.

## **12. FINAL PROVISIONS**

**12.1** This GCS is subject to the Czech laws. Any relations of the parties not determined in this GCS or in the contract entered into between the parties are governed by respective provisions of the Civil Code and other related Czech legal regulations. The application of the UN Convention on Contract for the International Sale of Goods is excluded.

**12.2** The relevant provisions of Act No. 101/2000 Sb., on the Protection of Personal Data, as amended, shall apply to all personal data obtained from the customers.

**12.3** The place of jurisdiction is the court of law competent at the domicile of the supplier.

**12.4** The parties further agree that the supplier is entitled to set off any claims against the customer's claim, including its claim against the customer which can be deemed uncertain or vague within the meaning of Sec. 1987 (2) of the Civil Code.

**12.5** The customer's right to invoke the data records of legal proceedings and other matters in the supplier's electronic system pursuant to Section 562 (2) of the Civil Code to the customer's benefit shall be excluded. Furthermore, the customer's right to invoke the content and exposure time of the

documents relating to legal facts occurring during normal operation of the supplier's enterprise under Section 566 (2) of the Civil Code to the customer's benefit shall be excluded.

**12.6** The customer hereby accepts the risk of change of circumstances, and that no change of circumstances of whatever nature entitles the customer to make related claims of any kind whatsoever. The application of Sec. 1765 (1), Sec. 1766 and Sec. 2000 of the Civil Code is expressly ruled out.