

## **GENERAL TERMS and CONDITIONS of SALE of ORLEN Asphalt Česká republika s.r.o.**

**D 2012**

**to purchase contracts for refinery products**

### **Preamble**

Unless explicitly stipulated otherwise by written agreement of the parties, these general delivery terms apply for mutual relations between the contractual parties established by a purchase or framework purchase contract, respectively a confirmed order. These general delivery terms (hereinafter the "GTCS") take precedence before the provisions of the law which are not of a cogent nature. For other relations not regulated in writing, the generally binding legal regulations will apply.

### **I. Orders**

1.1

All of the buyer's orders become binding for the seller only upon written confirmation of the order by the seller or upon coming into effect of the corresponding contract. The order must contain the following prerequisites: type of goods including quality parameters (quality standard), delivery parity and manner and place of shipping, potentially destination of the goods and for transport of goods in the seller's cistern vehicles, also the characteristics of the takeover delivery location and schedule of deliveries, if the buyer requires shipping at specific times.

### **II. Payment Conditions, Price Maturity**

2.1

The maturity period of invoices is 14 days from the sending date, unless the contractual parties agree otherwise, but no longer than 30 days.

2.2

The date of payment refers to the date when the funds are credited to the seller's account at the banking institution designated for this purpose. In the event of a difference found between the invoiced amount and the actually paid amount according to the contract, the buyer is obliged to inform the seller of the found difference. The remaining part of the invoice that is not contradictory must be paid by the buyer within the maturity deadline. Within five days, the seller is obliged to verify the disputed facts and in justified cases to settle the difference or propose a different procedure leading to the prompt settlement of the found difference.

2.3

The banking fees of the buyer's bank including the costs and fees of all correspondence banks of the buyer related to delivery of the payment in favour of the seller are borne by the buyer. The banking fees of the seller's bank including the costs and fees of all correspondence banks of the seller are borne by the seller. If by fault of the buyer the payment is made to a different bank account than that indicated in the invoice, and for this reason the company incurs additional costs, these costs will be paid with priority from the credited amount. The remaining amount will be considered the unpaid part of the original receivable.

2.4

The buyer explicitly authorises the seller, regardless of the different designation of the order of payment of funds by the buyer, to offset these payments for the payment of all of its due liabilities towards the seller from the title of the concluded framework purchase contract and from the individual purchase sub-contracts in accordance with the framework contract, in the following order: i) contractual fines, ii) interest on arrears for payment of the purchase price, iii) principal of the purchase price, always for the liability in the given order that is due first.

2.5

The buyer undertakes duly and punctually to pay its financial obligation, respectively the purchase price to the seller from the title of the concluded contract, and only afterwards to pay the obligation from the title of compensation of damages caused by the buyer by violating its obligations arising from the contract.

2.6

In the event of delay in payment, the seller is authorised to demand and the buyer is obliged to pay interest on arrears. The value of interest on arrears will be stipulated according to Government Regulation No. 142/1994 Coll., which stipulates the value of interest on arrears and fees on arrears according to the Civil Code, as amended.

2.7

If the buyer delay in paying due invoices by more than 10 calendar days, the seller is authorised with immediate validity to suspend supplies of goods (services) and to withdraw from the contract. Failure to fulfil deliveries according to the previous sentence is not a violation of the contract and the seller is not liable for any damages incurred as a result.

2.8

The buyer is not authorised to request the delivery of goods and the seller is not obliged to deliver the goods if the value of all of the buyer's receivables registered with the seller upon delivery of such goods would exceed the credit limit stipulated by the seller, i.e. the maximum permitted balance of receivables stipulated by the seller based on an evaluation of the buyer's credit risk. When signing this contract or without undue delay afterwards, the buyer will be informed of the current credit limit. Every change to the credit limit will be disclosed to the buyer in writing by the seller's authorised representative.

### **III. Securing of the Buyer's Obligations**

#### **3.1**

The seller is not obliged to fulfil if the buyer does not provide adequate security for payment of its existing receivables and receivables accrued by fulfilment of the deliveries according to the concluded contract upon the seller's request. This provision applies even if the buyer is in delay in the payment of previously fulfilled deliveries.

#### **3.2**

If the seller concludes an insurance contract with an insurer on insurance of receivables towards the buyer, the seller may give the buyer a credit limit equal to maximally the total value of the indemnification limit stipulated by the insurer.

For the purpose of insurance of fulfilment of the liabilities arising from this contract, the buyer undertakes to provide the necessary information and documents and any other cooperation.

If the insurer cancels the indemnification limit to cover the buyer's liabilities and/or if the seller evaluates the buyer's payment discipline as insufficient, the seller is authorised to cancel the buyer's credit limit. Cancellation of the credit limit does not affect the buyer's obligation to pay its liabilities towards the seller that were accrued before cancellation of the credit limit. In the event of cancellation of the credit limit, payment for goods in advance will be applied with immediate effect.

If the insurer reduces the indemnification limit for coverage of the buyer's liabilities, the seller is authorised to reduce the buyer's credit limit to the new value of the indemnification limit stipulated by the insurer. Potential failure to fulfil deliveries from the date of reduction of the credit limit until the reduction of the buyer's liabilities corresponding to the credit limit reduced according to the previous sentence is not a violation of the contract and the seller bears no liability for potential damages thus incurred.

The provisions of this paragraph apply likewise to securing receivables by means of a bank guarantee.

### **IV. Transfer of Rights**

#### **4.1**

The buyer acquires ownership rights to the goods at the moment of full payment of the purchase price by crediting the price to the seller's account.

#### **4.2**

The risk of damage to the goods and delivery conditions are governed by the international rules for interpretation of delivery terms INCOTERMS 2010, as amended.

In the event of delivery abroad based on FCA or EXW parity, the buyer declares that the goods will be carried by itself or by its authorised carriers in accordance with the provisions of Act No. 235/2004 Coll., on value added tax, as amended. Damage to the goods which occurred after the transfer of the risk of damage to the goods to the buyer does not relieve the buyer of the obligation to pay the purchase price.

#### **4.3**

The risk of damage to the goods is transferred to the buyer at the time when it takes over the goods from the seller, or if it fails to do so on time, then at the time when the seller enables the buyer to handle the goods and the buyer violates the purchase contract by not taking over the good.

If the seller is obliged to hand over the goods to the carrier at a certain location for transport to the buyer according to the purchase contract, the risk of damage to the goods is transferred to the buyer at the moment of handover of the goods to the carrier at the agreed location.

If the seller is obliged to send the goods according to the purchase contract, but is not obliged to hand over the goods to the carrier at a specific location, the risk of damage to the goods is transferred to the buyer at the moment when the goods are handed over to the first carrier for transport to the destination.

Damage to the goods that occurred after transfer of the risk of damage to the goods to the buyer does not relieve the buyer of the obligation to pay the purchase price.

### **V. Third-party Receivables**

#### **5.1**

If a third party (e.g. carrier) applies its claim against one of the contractual parties, although the other contractual obligation is obliged to satisfy it, the contacted contractual party is not authorised to satisfy the applied claim and is obliged to inform the other contractual party of this fact without undue delay. This provision applies likewise to claims from contractual fines.

### **VI. Quality, Quality Certification and Attestation**

#### **6.1**

The delivered goods must have the quality according to the respective provisions acknowledged or usual for delivery of the required type of goods. Quality certification of the shipment is conducted by marking the goods with the respective quality standard in the delivery sheet or by means of a quality attestation. The attestation certifying the quality of the goods is given to the cistern vehicle driver.

### **VII. Takeover of Goods, Transport**

#### **7.1**

During takeover of the delivery, the buyer is obliged to perform a quality inspection. If it fails to inspect the quality, it will be liable for damages incurred by it during the filling and use of the contents of such delivery.

#### **a) Quality claims**

When taking over a delivery that does not correspond to the quality agreed in the quality standard, the buyer is obliged to inform the seller as quickly as possible (electronically, via fax or telephone), to stop takeover of the goods and call for the compiling of a joint protocol on delivery quality. In the case of an unjustified quality claim, the buyer bears the related costs.

#### **b) Volume claims**

The buyer undertakes to accept measuring on the scale or filling terminal of the asphalt producer at the individual offtake locations.

#### 7.2

During deliveries using a cistern vehicle, the buyer undertakes to accept the seller's measuring. The delivery includes a delivery sheet.

During delivery using a cistern vehicle ensured by the seller, the tapping of goods must be performed at the location agreed in the order, using a technically appropriate device that fulfils the requirements of valid regulations.

### **VIII. Packaging**

#### 8.1

The goods are shipped using the cistern vehicles of the buyer or an authorised shipping company, or other packaging suitable for the purpose.

#### 8.2

If the buyer provides its own or hired cistern vehicles or other packing for filling, it guarantees that these meet all the requirements pertaining to such packaging. It takes into account that the seller will not examine their adequacy beyond the usual framework of obligations related to handling the provided means of transport or provided packaging. The buyer is liable to the seller for any damages arising from the provision of inappropriate packaging for filling.

#### 8.3

The manner of issuing goods into the buyer's own cistern vehicles or those of its carrier is governed by the operating rules of the filling facility. The buyer undertakes to become familiar with the regulations and provisions related to operation of the seller's filling facility and to abide by them. Upon request from the buyer or its authorised shipping company, the seller will familiarise the operator of the cistern vehicle with the safety regulations valid for the operation of this facility. Damages caused by the buyer's shipper are deemed to be damages caused by the buyer.

#### 8.4

In the case of offtake of products in cistern vehicles, the buyer is obliged to ensure that they do not contain any residual products, water or other products and mixes. For example, if the content of the cistern vehicle foams up due to the presence of other substances, the buyer is obliged to bear all costs related to the liquidation of the result of such accident.

### **IX. Qualification for Transport and Vehicle Requirements (Cisterns)**

#### 9.1

The buyer or its carrier have all the permits, licenses and authorisation required to perform the transport of refinery products and are liable for the timely extension of their validity, should their validity expire during the validity of these general delivery terms.

#### 9.2

The buyer or its carrier has the appropriate types of vehicles to ensure the transport of refinery products. They must only use vehicles correspond to international regulations on the carriage of hazardous goods (ADR).

The vehicle carrying the refinery goods must be operated in good technical condition and must be clean.

#### 9.3

The buyer or its carrier are responsible for ensuring that the vehicle is driven by a responsible and trained driver that meets all the requirement prescribed by the respective regulations. It is also liable for ensuring that the driver will adhere to all the valid legal regulations and instructions for transport and handling of the goods.

#### 9.4

Before starting the offtake of goods using its own cistern vehicles or third-party cistern vehicles, the buyer is obliged to submit a written list to the seller containing the vehicles, the names of drivers, and any shipping or carriage companies that are authorised to take over the goods. In the event of changes in authorisation, the buyer is obliged to inform the seller of this immediately in writing. The seller does not bear liability for potential damages incurred by the buyer due to the offtake of goods by a company or using equipment that was not removed from the list of authorised companies by the buyer.

### **X. Handover of documents**

#### 10.1

The carrier will take over the agreed transport documents on behalf of the seller at the takeover filling location, and the driver will confirm the correctness of the indication information with their signature. By signing and stamping the documents, the buyer confirms takeover of the goods. The carrier will only leave a copy of the confirmed bill of lading at the takeover filling location.

## **XI. Force Majeure**

### 11.1

Neither of the contractual parties is responsible for any failure to fulfil legal obligations, if such non-fulfilment or delay was caused by an obstacle that occurred independently of the will of the obliged party and prevented it from fulfilling its obligation, or if it cannot be reasonably assumed that the obliged party could have averted or overcome this obstacle or its consequence, and also if at the time when the obligation was established, the given obstacle could not realistically have been foreseen (hereinafter "force majeure"). However, liability for fulfilment of an obligation is not precluded by an obstacle that occurred only after the obliged party was already in delay of fulfilment of its obligation or which arose from its financial situation.

### 11.2

For the purposes of these GTCS, and provided it fulfils the conditions stipulated in the previous paragraph, force majeure refers in particular to:

- natural disasters, fires, earthquakes, landslides, floods, gales or other atmospheric occurrences and phenomena of a substantial scope, or
- wars, uprisings, revolts, civil unrest or strikes, or
- decisions or normative acts by public authorities, regulations, limitations, prohibitions or other intervention by the state, state or local government authorities, or
- outage of primary raw materials for the production of refinery products among the seller's suppliers (e.g. suspension or limitation of oil supplies), or
- explosions or other damage or breakdowns, or unplanned outages in the production or distribution facilities of the seller's suppliers.

### 11.3

In the event of any unplanned limitation of production among the seller's suppliers, the seller will curtail supplies to all of its contractual partners in the same manner. The basis for stipulating the extent of limiting supplies will be the actually oftaken quantity in the previous calendar month.

### 11.4

The contractual party that violates or, with regards to all the known facts, expects to violate its obligations from the purchase or framework purchase contract, respectively confirmed order in consequence of force majeure is obliged to inform the other contractual party of such violation or event immediately and undertake the utmost efforts to avert such event or its consequences and to remove them.

## **XII. Justified Interests**

### 12.1

In the interest of fulfilling the contract, the contractual parties are obliged to cooperate and proceed with care according to their justified interests. They are obliged to inform each other of all important circumstances concerning implementation of the contract, and upon request from the other party to immediately submit explanations. Both contractual parties are obliged to proceed within the framework of their standard capacities so as to minimise potential damages, losses or risks arising from activities related to the fulfilment of contractual relations or use of the products. Each contractual party must thoroughly ensure respect for the confidentiality of business information generated between them in consequence of the fulfilment of this contract.

## **XIII. Information**

### 13.1

The seller and buyer undertake to provide each other with all information related to any limitation of contract fulfilment, as soon as such information becomes known to them. Should one party fail to inform the other party of such limitations despite being aware of them, it must compensate the other party for all provable costs arising from such omission.

### 13.2

If during the conclusion of the contract or in the course of delivery of the goods, the contractual parties provide each other with information directly, indirectly, verbally or in writing, which is the subject of business secrecy or is marked as confidential, such information must not be provided, made accessible or otherwise disclosed to third parties or used for the parties' own benefit in a manner contrary to the interests of the other contractual party, or for a different purpose than for which it was provided; any violation of this obligation will be considered unfair competition by the affected party in the meaning of Section 44 of the Commercial Code, whereas this does not affect the right to compensation of damages according to Section 373 of the Commercial Code.

## **XIV. Withdrawal from the Contract**

### 14.1

Apart from cases of the buyer's delay in the takeover of goods or the buyer's delay in payment of the purchase price (Article II of these GTCS), the seller is also authorised to withdraw from the contract particularly if insolvency or liquidation proceedings concerning the buyer's assets are commenced, or if it becomes aware of circumstances that could threaten or impede the recoverability of the seller's receivables. In this case, the contract will expire upon delivery of the written notice of resignation from the contract to the buyer.

## **XV. Other Delivery Terms**

15.1

These delivery terms apply to all deliveries of refinery products. Potential offtake conditions stated or pre-printed in the buyer's order form, as well as another other conditions in the order which are contrary to these deliver terms shall be considered invalid, unless the seller has explicitly accepted them in the confirmed order. The buyer declares the agreement on acceptance of these general terms to be a fundamental prerequisite of the contract.

## **XVI. Work Safety**

16.1

The buyer is obliged to become familiar with all the rules and regulations at the filling location, concerning occupational health and safety, fire protection and environmental protection. It will also ensure that its employees and the employees of subcontractors work according to these rules and regulations and abide by them throughout the entire term. If the buyer's employees or those of its subcontractors do not fulfil these rules or regulations, this may result in their expulsion from the seller's compound.

16.2

The buyer undertakes to ensure and provide to all of its employees and representatives the necessary personal protective aides, which are required by the seller with regards to the character of the work environment.

16.3

The buyer is obliged to inform the operator of the filling location immediately of all work injuries and accidents suffered by the buyer's employees at the filling location. The buyer undertakes to cooperate with the seller during investigation of all injuries.

16.4

Ensuring fire protection is governed by generally binding legal regulations, in particular the provisions of Act No. 133/1985 Coll. and Public Notice No. 21/1996 Coll. and by the respective internal guidelines valid for the filling location, which the buyer is obliged to adhere to and which are binding for it.

Repeated violation of safety regulations will be considered a gross violation of the contract and will constitute a reason for withdrawal from the contract.

## **XVII. Governing Law and Solving Disputes**

17.1

The contractual parties have agreed that the legal relation, respectively the rights and obligations from the purchase or framework purchase contract, respectively from the confirmed order, their ensuring, alteration and expiry are governed exclusively by Czech law, in particular by Act No. 513/1991 Coll., Commercial Code, as amended.

17.2

The contractual parties have agreed that potential disputes arising between them from the legal relations established by the purchase or framework purchase contract or other contract, or in connection to it, shall be decided by the courts of the Czech Republic with local and substantive jurisdiction.

## **XVIII. Buyer's Declaration**

18.1

If the customer is a taxpayer in the EU and the goods are designated for delivery within the EU and are delivered with EXW, FCA or DAF/DAP parity CZK/EU border, the buyer declares that the goods which are the subject of this contract (order) will be transported by it or by its authorised carrier, not by the buyer's customer.

In the event of commencing tax proceedings with the seller, the buyer undertakes to provide the seller immediately with all documents proving the fact that the goods left the territory of the Czech Republic and that transport was performed by the buyer or its authorised carrier.

The buyer is obliged to compensate the seller for all taxes and levies which were additionally imposed in consequence of violation of the buyer's obligations set out in the previous two paragraphs above.

18.2

If the customer is from a 3<sup>rd</sup> country and the goods are designated for export and delivered with EXW, FCA or DAF/DAP parity CZ/EU border, the buyer declares that the goods which are the subject of this contract (order) will be transported by it or by its authorised carrier, not by the buyer's customer. The buyer also officially declares that it does not have its registered office, place of business or branch in the territory of the Czech Republic.

In the event of commencing tax proceedings with the seller, the buyer undertakes to provide the seller immediately with all documents proving the fact that the goods left the territory of the European Union and that transport was performed by the buyer or its authorised carrier.

The buyer is obliged to compensate the seller for all taxes and levies which were additionally imposed in consequence of violation of the buyer's obligations set out in the previous two paragraphs above.

18.3.

The buyer declares that according to Section 4(d) of Act No. 261/2007 Coll., on the stabilisation of public budgets, as amended, the goods are not purchased for use or offered for sale or use for heat production.

## **XIX. Miscellaneous Provisions**

19.1

The mutual relations not explicitly regulated by the contract and these generally binding legal regulations in their latest version are governed by the respective laws of the Czech Republic.

19.2

The buyer is not authorised to transfer any rights and obligations towards the seller to a third party without prior written consent from the seller.

19.3

These general delivery terms come into validity on 1 November 2012.