



**GENERAL BUSINESS AND DELIVERY TERMS AND CONDITIONS
of KOPOS KOLÍN a.s.,
in effect from 1 July 2020**

Article 1. Definitions

- 1.1 Terms and Conditions' means these General Business and Delivery Terms and Conditions.
- 1.2 Seller' means Kopos Kolín a.s., ID: 61672971, registered office: Havlíčkova 432, Kolín IV, 280 02 Kolín, Czech Republic, registered in the Commercial Register maintained by the Municipal Court in Prague, section B, file No. 3689.
- 1.3 Buyer' means the person or legal entity who enters into a Purchase Contract with the Seller.
- 1.4 Purchase Contract' means the agreement formed between the Buyer and the Seller regarding the sale by Seller and the purchase by Buyer of goods and delivery thereof by Seller to Buyer, satisfying the requirements set out in these Terms and Conditions.
- 1.5 The term 'written' in these Terms and Conditions means: in a letter, by telefax or via e-mail.

Article 2. Application of the Terms and Conditions

- 2.1 These Terms and Conditions apply to and form an integral part of all orders made by Buyer with Seller, all quotations and offers made by Seller, all acceptances, acknowledgements and confirmations by Seller of any orders by Buyer and all Purchase Contracts, unless and to the extent Seller explicitly agrees to otherwise in writing.
- 2.2 Any terms and conditions set forth in any document or documents issued by Buyer either before or after issuance of any document by Seller setting forth or referring to these Terms and Conditions are hereby explicitly rejected and disregarded by Seller, and any such terms shall be wholly inapplicable to any sale made by Seller to Buyer and shall not be binding in any way on Seller.
- 2.3 If the Buyer refers in a bid or in the acceptance of a bid to trading terms that contravene these Terms and Conditions, the Purchase Contract is concluded to the extent to which it does not contravene these Terms and Conditions. However, no Purchase Contract is concluded if the conclusion is ruled out by the Seller or at the latest without undue delay after exchanging expressions of intent.

Article 3. Conclusion of a Purchase Contract

A Purchase Contract shall only be concluded upon receipt by the Seller of a written order by the Buyer, confirmed in writing by the Seller that meets the following requirements:

- 3.1 The Buyer shall send to the Seller a written order precisely specifying the required goods in accordance with the Seller's assortment according to the current catalogue of the Seller or a written offer by the Seller. An order of goods must specifically contain:
 - a) a specification of the goods ordered (quantity and technical data – name according to a catalogue, type number or EAN, packing);
 - b) the price;
 - c) the date of delivery of the ordered goods;
 - d) the delivery address;
 - e) the applicable delivery terms as per the INCOTERMS 2020, issued by the International Chamber of Commerce, being FCA (KOPOS KOLÍN a.s., Havlíčkova 432, Kolín IV, 280 02 Kolín, Czech Republic) unless otherwise specified in the order and confirmed by the Seller;
 - f) details of the Buyer (e.g. registration number with commercial register, VAT identification number valid in the country of the delivery address (ID, VAT ID). The first order shall include an extract from the Commercial Register or the trade licence. The Buyer shall notify the Seller without undue delay of any changes of the facts stated in the aforesaid documents.

- 3.2 If the Seller accepts the order, Seller shall confirm the order without undue delay and send it to the Buyer at the latest within 3 working days from its delivery to the Seller. The Purchase Contract is concluded upon the delivery by the Seller to the Buyer as per the order details set out under Article 3.1.
- 3.3 A Purchase Contract may also be concluded by:
- delivering the goods under an agreement signed by the Seller and the Buyer including the details specified under Article 3.1;
 - dispatching and invoicing the goods to the Buyer.
- 3.4 The Purchase Contract shall replace and cancel all previous arrangements and agreements relating to the relevant order;
- 3.5 All deliveries shall be made in accordance with these Terms and Conditions.
- 3.6 The Seller's proposal to supply goods at the designated catalogue price is an offer subject to stocks or the loss of the Seller's ability to perform.

Article 4. Pricing, Payment Terms, Date of Performance

- 4.1 The purchase price stated in the Purchase Contract is based on the delivery term FCA (KOPOS KOLÍN a.s., Havlíčkova 432, Kolín IV, 280 02 Kolín, Czech Republic) according to INCOTERMS 2010, unless agreed otherwise in the Purchase Contract.
- 4.2 For the purpose of confirmation of delivery of the goods by the Seller to the Buyer, a delivery note or another similar document shall be issued, in which the Buyer or the carrier on the Buyer's behalf (as applicable) shall confirm delivery of the goods by the Seller to the Buyer.
- 4.3 The purchase price shall be paid on or before the due date stated in the tax document (invoice) and otherwise in accordance with the payment instructions and currency set out therein, unless otherwise agreed in the relevant Purchase Contract. Payment must be made to the Seller's bank account or at the Seller's cash office at their registered office on business days during common working hours.
- 4.4 The invoice must fulfil all terms stipulated in the applicable legal regulations. The Buyer is entitled to complain about any incorrect or incomplete data included in an invoice by returning the invoice at the latest within 5 business days from receipt, specifying the missing or incorrect data. Any incorrect or incomplete data shall have no effect on the terms and conditions included in the relevant Purchase Contract. The Seller and the Buyer declare that a corrected invoice delivered electronically by the Seller to the Buyer's e-mail address in a format that secures authenticity of the document (preferably in the PDF format, or a PNG or JPG image) shall be deemed constitute a document of equal value that fulfils the terms under the applicable legal regulations. A printed form of a tax document shall be prepared by the Seller only at the Buyer's express request. The Buyer is obliged to notify the e-mail address for sending tax documents. The Buyer undertakes to confirm the receipt of a corrective tax document (credit note) – stating the date of the receipt thereof – in electronic form or by mail to the address of the Seller.
- 4.5 The contracting parties may also agree on different payment terms, e.g. down payments or advance payments or discount on payment before maturity date. Late receipt of any such payment according to individually agreed payment terms and conditions shall be deemed to constitute a substantial breach of the Purchase Contract. Where instalments of the purchase price are agreed, late payment of one or more instalments shall result in an obligation of the Buyer to pay the full amount of the purchase price immediately. Where discount on payment before maturity date is agreed, this discount on negotiated purchase price can be provided only in case that Buyer has paid all previous liabilities before the maturity date and has kept the payment order.
- 4.6 If the Buyer does not pay the purchase price or any part thereof when due and payable or breaches any other obligation under a Purchase Contract, the Seller shall be entitled to fully or partially cancel or suspend its obligations under the relevant Purchase Contract and any other Purchase Contracts (notably the obligation to deliver the purchased goods) or to terminate or rescind such Purchase Contract, and the Seller shall also be entitled to claim damages from the Buyer up to the amount of all costs incurred by the Seller in connection with the delivery and intermediation of the production of the agreed goods and all related costs as well as the loss of profit.
- 4.7 Any payment made by the Buyer may be applied by the Seller unilaterally for the settlement of any claims of the Seller – liabilities due from the Buyer.

- 4.8 Payment shall be deemed to have been made when the Seller's account specified in the relevant invoices is credited with the full amount then due or when the due amounts are fully received in cash as specified in Article 4.3.
- 4.9 The agreed purchase price shall not include packing, returnable containers, safety fixtures for the goods during the carriage and the cost of carriage, unless agreed otherwise in the relevant Purchase Contract.
- 4.10 The banking expenses connected with the payment of the purchase price shall be borne by the Buyer.
- 4.11 The Buyer is not entitled to set-off any amount owing to the Seller against any amount the Seller may owe to the Buyer without the Seller's written consent. If any such amount is set-off without the Seller's prior written consent, the Seller shall be entitled to payment of a fine amounting to 50,000 CZK for each such set-off, without prejudice any right of the Seller's to claim damages.
- 4.12 The Buyer is not allowed to withhold payments and/or to reduce the purchase price in the event of any (alleged) default by the Seller on any obligation under the relevant Purchase Contract.
- 4.13 If a payment is received from the Buyer without sufficient identification of the Purchase Contract to which it relates a variable symbol of the payment indicated, the Seller shall decide on the use of the payment.
- 4.14 The quantity, prices, dimensions and/or weights stated by the Seller shall be deemed to constitute conclusive evidence thereof, absent manifest error.
- 4.15 If any amount is not fully paid by the Buyer when due, the Seller shall be entitled to charge default interest amounting to 0.05 % on the due but unpaid amount for each day on which such payment has not been received. In addition to any such claim of default interest, the Seller may claim damages up to the amount of all the costs incurred by the Seller in connection with the late payment, including all costs relating to the collection thereof.
- 4.16 Notwithstanding the agreed due dates of payment, all amounts invoiced by the Seller to the Buyer in accordance with the relevant Purchase Contracts shall become immediately due and payable if the Buyer fails to pay any amount when due or if the Seller learns about any circumstances that materially adversely affect the ability of the Buyer to satisfy its obligations under any Purchase Contract. In such case, the Seller shall be entitled to demand advance payment in relation to both current and new deliveries under any Purchase Contract or to terminate or rescind the Purchase Contracts with the Buyer and to claim damages from the Buyer on the grounds of frustration of the contract.
- 4.17 If the Buyer undertakes to arrange the carriage of the goods by themselves, they must do so within 10 days from the receipt of the Seller's advice. If the Buyer does not ship the goods within 10 days, the Seller shall have the right to:
- send the goods at the expense and risk of the Buyer,
 - store the goods at the expense and risk of the Buyer in the Seller's warehouse or in a warehouse of any other party. If the goods are stored, the Seller is entitled to charge the Buyer the storage costs for the storage required, which shall be determined by the Seller.
- 4.18 Any additional requirements of the Buyer for a change of the goods, which are accepted by the Seller, proportionally extend the agreed delivery term by the time required by the Seller to so change the goods. The Seller shall be entitled to charge the costs connected with the change.

Article 5. Delivery

- 5.1 The risk of loss of, or damage to the goods shall pass to the Buyer when the goods are loaded by the first carrier.
- 5.2 The goods are deemed delivered upon their handover to the first carrier.
- 5.3 In the event of a delayed delivery or failure to deliver the goods the Seller shall not be held liable for any damages that may occur as a result thereof.
- 5.4 The Seller shall not be liable for any indirect damages, such as the loss of possible future profit, loss of contract, loss of deal, loss of future deals, loss of production, loss of cooperation, loss or damage of image, loss of income, loss of profit, capital costs, costs connected with interruption of production or operation, etc.

- 5.5 The seller shall not be liable for any delays caused by quarantine or similar measures taken by the government or other public institutions as a consequence of the COVID-19 (coronavirus) epidemic or a similar extraordinary event threatening the public health. Such delays shall not mean a breach of the contract and the buyer is therefore not entitled to any damages and/or contractual penalties, which would otherwise result from such delays.
- 5.6 The seller is also not liable for ordinary surface mechanical damage (marks, dents, scratches, rib deformation) of the outer wall of the pipe (KOPOFLEX, KOPODUR, DUODREN, KOPODREN) caused by production technology or transport, which do not affect the functionality of the goods.
- 5.7 The Seller shall not be held liable for the Buyer's selection of goods for their end use nor shall the Seller be liable to the Buyer for any damage incurred due to inappropriate use of the goods.

Article 6. FORCE MAJEURE

- 6.1 Seller shall not be liable for any failure or delay in performance if:
- (i) such failure or delay results from interruptions in the manufacturing process of the goods, however, this shall not apply in cases of gross negligence or intent; or
 - (ii) such failure or delay is caused by Force Majeure as defined below or by law.

In case of such a failure as set forth above, the performance of the relevant part(s) of the Agreement will be suspended for the period such failure continues, without Seller being responsible or liable to Buyer for any damage resulting therefrom.

The expression "Force Majeure" shall mean and include any circumstances or occurrences beyond Seller's reasonable control - whether or not foreseeable at the time of the Purchase Contract - as a result of which Seller cannot reasonably be required to execute its obligations including force majeure and/or default by one of Seller's suppliers, including but not limited to war, war threat, rebellion, sabotage, fire, storm, flood, explosion, natural disasters, government orders or restrictions of the European Union, strike, complete or partial destruction of the factory or production line of the Seller or their contractors, deliveries of contractors, amendment of customs regulations, amendment of import and export quotas, export or import ban or any other causes. In the event that the Force Majeure extends for a period of three (3) consecutive months (or in the event that the delay is reasonably expected by Seller to extend for a period of three (3) consecutive months), Seller shall be entitled to cancel all or any part of the Agreement without any liability towards Buyer.

Article 7. Retention of title

- 7.1 The goods delivered to the Buyer shall remain the Seller's property until full payment of all claims in respect of the business relationship with the Buyer has been made, including any future claims. This retention of title shall also extend to any goods delivered by way of exchange.
- 7.2 If the goods under retention of title should be processed, mixed or combined with other items that do not belong to Seller, Seller shall have a right to co-ownership of the new item in the same ratio as that between the value of the goods under retention of title, including VAT, and the value of the other items processed or combined at the time of processing or combination. Buyer shall store the item on behalf of Seller free of charge.
- 7.3 Until further notice Buyer is authorized to dispose of the goods under retention of title within the framework of its ordinary business operations. For this event Buyer hereby assigns to Seller his claims from a resale of the goods under retention of title (the resale price including VAT) including the corresponding claims from bills of exchange and together with all ancillary claims. If Buyer should sell the goods under retention of title together with goods that do not belong to Seller at a total price the assignment shall only apply to the sum which Seller has charged Buyer for the goods under retention of title which have been sold.
- 7.4 Until further notice Buyer shall be entitled to collect the claims that have been assigned to Seller. Any assignment or pledging of such a claim shall only be permissible with Seller's written consent. If Buyer defaults on payment or fails to comply with his obligations in respect of the retention of title, Buyer shall, on Seller's request, provide the debtors with written notification of the assignment, supply Seller with all information, submit and send Seller the documents and transfer any bills of exchange. If necessary, Buyer must grant Seller access to the relevant documents.

- 7.5 On the occurrence of the circumstances set out in Article 7.4 sentence 3 Buyer must grant Seller access to the goods under retention of title which are still in his possession and send Seller an exact list of the goods. Buyer must separate these from other goods and return them to Seller after Seller has withdrawn from the contract.
- 7.6 Buyer must immediately notify Seller in writing if any third parties should seize the goods under retention of title or take possession of the claims assigned to Seller and must give Seller every possible support in the intervention.
- 7.7 The costs for complying with the said duty to co-operate in enforcing all rights in respect of the retention of title and for all arrangements made for the maintenance and storage of the goods shall be borne by Buyer.
- 7.8 The Buyer shall liable to the Seller for any damage of the goods within the meaning of section 462 of the Czech Commercial Code.

Article 8. Defects of Goods and Complaints

- 8.1 The Buyer is entitled to exercise any claims relating to defective performance in accordance with the provisions of the generally binding regulations.
Complaints of apparent quality defects of the goods (such as a damaged shape of trenches, mouldings, an incorrect shape of goods, dirt) shall be lodged by the Buyer within 3 working days from the goods delivery to the place of delivery stated in the purchase contract. Where the apparent defect involves a missing quantity of goods, this fact shall be immediately stated in the delivery note and handed over to the Seller without undue delay. Complaints of hidden quality defects of the goods shall be lodged by the Buyer without undue delay from the moment when they were ascertained but no later than within 6 months from the date of delivery to the place stated in the purchase contract.
- 8.2 The Buyer shall be obliged to deliver the Seller a complaint in a written form. A written complaint must contain identification data of the product:
1. name of the product
 2. number of the purchase contract/order
 3. number and date of issue of the delivery note or invoice or a copy of the invoice
 4. description of the defect
 5. enclosed sample with the defect under complaint, if possible
 6. proposed settlement of the complaint – estimated amount of the damage
 7. date when the Seller should preferably visit the Buyer in order to inspect the product under complaint
- If the goods become damaged in the course of the carriage arranged by the Seller, the Buyer shall be obliged to submit the following documents:
1. Record of damage with a preliminary estimate of its amount
 2. Commercial record confirmed by the carrier
 3. Consignment note (CIM, CMR, B/L)
- 8.3 The goods under complaint must be stored in the original unchanged condition separately from the other goods and must be protected from impairment. Until the complaint is settled by the Seller, the goods must not be used, sold, processed, changed or modified in any other manner. If the goods under complaint or a part thereof are transferred to a third party at the time after the Seller is notified of the complaint of the goods defect, the Buyer's entitlements from the liability for defects shall cease to exist automatically.
- 8.4 The Buyer shall be obliged to allow the Seller to inspect the defective goods in order to settle the complaint.
- 8.5 A complaint shall not be recognized if the defective goods are not properly stored and are damaged in the consequence of inappropriate storage and handling. For storage the technical conditions have to be adhered, as well as the specified requirements for storage to be mentioned in Conditions for Goods Storage, to be published at following website:
<https://www.kopos.com/en/storage-specifications>.
- 8.6 In the matter of defective goods the Buyer shall be obliged to take all measures required to avert or mitigate the damage.

- 8.7 The Seller's liability for defects subject to the quality warranty shall not arise if such defects were caused by external events and not by the Seller after the passage of the risk of damage to the goods.
- 8.8 Within the scope of a complaint about defects of the goods the Buyer shall be entitled to:
- demand rectification of defects by delivering substitute goods to replace the defective goods or by the delivery of missing goods, or
 - demand rectification of defects by repairing the goods if the defects are repairable, or
 - demand a reasonable reduction of the purchase price.
- 8.9 The Buyer shall be entitled to choose an entitlement stated in the previous provision only if they notify the Seller of their choice in a timely sent complaint of defects. The Buyer cannot change the exercised entitlement without the Seller's consent. If it turns out that the goods defects are irreparable or that their repair would involve unreasonable costs, the Buyer may demand delivery of substitute goods if they request the Seller to do so without undue delay after the Seller notified them of such fact. If the Seller fails to rectify the goods defects within a reasonable additional period or if they notify the Buyer before expiry of the period that they will not rectify the defects, the Buyer may demand replacement of the defective goods for goods free of defects or demand a reduction of the purchase price.
- 8.10 Out-of-court Settlement of Consumer Disputes

At present, consumers – Buyers have the possibility of using court settlement, arbitration or mediation for the settlement of disputes with the Seller. The Seller, within the fulfilment of the information obligation, hereby advises the consumer - Buyer that the Consumer Protection Act No. 634/1992 Coll., through its Amendment No. 378/2015 Coll. (CPA), stipulated the option of out-of-court settlement of consumer disputes. Pursuant to Section 20d of the Act (CPA), the consumer is entitled to out-of-court-settlement of a consumer dispute arisen from a purchase agreement or a service contract. Out-of-court settlement of a consumer dispute is initiated at the instigation of the consumer which shall contain essentials as defined by law (Section 20n of CPA), especially the documents demonstrating that the consumer did not manage to directly settle the dispute with the other party, and other documents demonstrating the stated facts, if available. The consumer may file a proposal at the Czech Trade Inspection no later than within one year from the day when they exercised their right at the Seller for the first time. The Seller is then asked to, within fifteen working days from the delivery of the notification, provide the Czech Trade Inspection with a standpoint to the facts mentioned in the proposal whereas the Seller is obliged to cooperate and provide assistance to the Trade Inspection Office required for efficient progress of the out-of-court settlement of the consumer dispute. The Act defines the maximum duration of the out-of-court settlement of the consumer dispute which shall be concluded within 90 days from its commencement (in particularly complicated disputes the time period can be extended by maximum 90 additional days). The out-of-court settlement of the consumer dispute may only be voluntarily terminated by the consumer and can be further terminated especially by agreement between the consumer and the entrepreneur. The out-of-court settlement of a consumer dispute is not charged, contrary to the above-mentioned manners; each of the Parties (the consumer and the entrepreneur) however shall bear their costs, if any, (e.g. associated with legal representation) by themselves.

The proceedings are held before the Czech Trade Inspection.

Contact Details:

Czech Trade Inspection

Central Inspectorate - ADR Department

Štěpánská 15
120 00 Praha 2

Email: adr@coi.cz

Web: adr.coi.cz

The Czech Trade Inspection has issued, on grounds of Section 20x CPA, the "Rules of procedure in out-of-court settlement of consumer disputes (ADR)". The Rules are published on the above-mentioned website of the CTI.

Article 9. Delivery terms for the online shop in the Czech Republic for Czech buyers with deliveries in the Czech Republic only

9.1 The Buyer orders the requisite products in the online shop by:

- 1) clicking "Search" and "Searched text", linked to "Parameter", "Item Number" or "EAN Code" and clicking the "ORDER" button, or
- 2) selecting from the list of products in the "Catalogue" menu and clicking "ORDER", or
- 3) using the separate "Orders" menu

In all cases, products can be clicked and then studied for their technical specifications and their documentation: item number, product name, EAN code, price excluding VAT, number of items in pack, and other important technical information (colour, material, dimensions, etc.). The other tabs display images, accessories for the selected product, certificates.

The Buyer is obliged to complete all the compulsory data in the internet order, including a contact telephone number so the Buyer can be contacted by the appropriate carrier, if necessary.

The Buyer will receive electronic confirmation of receipt of the order. If an item in the order will not be delivered, the Seller will inform the Buyer and will agree on an alternative deadline.

9.2 The Seller will send goods ordered from the internet shop to the Buyer C.O.D. through a carrier. The Buyer will pay for the goods upon receipt. The Buyer has the right to return the goods without stating the reason within 14 days of receipt. If the goods are returned unused within 14 days, the Buyer may request that the goods be replaced or the payment be refunded.

9.3. If the Buyer withdraws from the contract or does not take delivery of the goods or takes delivery of only part of the goods, the injured party is entitled to claim a contractual penalty amounting to 10% of the value of the products cancelled, not accepted or not produced.

9.4 Privacy policy

By completing the internet shop registration form, the consumer consents to allow all the data in the form ("data") to be listed in the database of KOPOS KOLÍN a.s., based at Havlíčková 432, Kolín IV, 280 02 Kolín, as the administrator (the "company"), and subsequently processed through the processor for the company's marketing purposes, i.e. offering products and services, including sending information about organised events, products and other activities, as well as sending commercial information electronically in accordance with Act No. 480/2004 Coll., until such consent is retracted (for a maximum of 10 years); other data may also be added to these data. The consumer also consents to allow the company to send information about upcoming events and offers from its commercial partners. The consumer is aware that under § 11, 21 of Act No. 101/2000 Coll., which particularly states that data are provided voluntarily, this consent may be retracted free of charge at any time at the company's address, that the consumer has the right to access or modify his or her personal data, block or delete incorrect personal data, etc.

Article 10. Miscellaneous

10.1 Partial deliveries are admissible.

10.2 If any event occurs that could not be expected at the time of entering into the Purchase Contract and that causes an impediment to the performance of the Seller's contractual obligations, the Seller shall be entitled to suspend performance until the impediment ceases to exist.

10.3. In all events involving circumstances excluding the liability the Seller is entitled to withdraw from the contract, without the Buyer being entitled to damages.

10.4 Returnable packaging will be taken over by the seller for repurchase only in undamaged condition. In the case of damaged packaging, the seller is not obliged to buy back these packaging. The buyer is entitled to return the packaging, but only within 6 months after delivery of the goods. The seller will issue a tax document for the number of returned undamaged packaging. Packaging returned after a period of 6 months The seller is not obliged to buy back. The price of packaging, both for sale and for purchase, is stated in the price list listed on the Seller's website.

10.5 If any provision of these Terms and Conditions is or becomes invalid, this shall not affect the validity of the other provisions. The contracting parties undertake to replace the invalid provision with a valid one that most closely approximates the economic intent of the invalid provision.



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www.kopos.cz

- 10.6 The Buyer's rights and obligations are not transferable to any third parties without the Seller's written consent.
- 10.7 All data included in a Purchase Contract and any information or documents obtained in connection with a purchase contract shall be treated by the parties as confidential.
- 10.8 The contractual relations to which these Terms and Conditions apply shall be governed by the Czech law, particularly by the applicable provisions of Act No. 89/2012 Coll., as amended; all disputes shall be settled in Czech language before the general court of the Seller in the Czech Republic.
- 10.9 The contracting parties shall be obliged to ensure that anything that may lead to disputes is eliminated when regulating the contractual relations or making mutual performances.
- 10.10 Each party shall notify the other party in writing without undue delay of any change of the data in the trade licence, in the Commercial Register or any other register or a fact that a petition in bankruptcy was filed or that bankruptcy was declared, that a petition was dismissed due to lack of property or that a petition for settlement was filed.
- 10.11 All deliveries shall be made under these Terms and Conditions, which form an integral part of purchase, general or other unspecified contracts, unless the parties have agreed otherwise.
- 10.12 All communication between the parties shall take place in Czech language, unless the parties have agreed otherwise.
- 10.13 If the contracting parties use international rules of interpretation when entering into a contract, the rules shall be governed by the international rules of interpretation of delivery terms issued by the International Chamber of Commerce in Paris INCOTERMS 2010, or by the agreement of the parties.