



# Bagnik

*TERMS AND CONDITIONS FOR  
SUPPLIERS OF GOODS TO*

*Bagnik Sp. z o.o. Sp. k.*

*of 13 July 2020*

## **Terms and Conditions for Suppliers of Goods to Bagsik Sp. z o.o.**

Our services and deliveries shall only take place based on the following terms and conditions, which must be accepted by the buyer upon the fulfilment of the order or purchase of the goods. Any conditions set by the Customer shall not be accepted even if Bagsik does not explicitly reject them.

### **1. Offer and contract conclusion**

- 1.1 Announcements, as well as information contained in advertisements and price lists, and other information, including that published through the website by Bagsik Sp. z o.o. (hereinafter also referred to as the "Company") is subject to change and shall only constitute an invitation to conclude a contract while not constituting an offer within the meaning of Article 66 sec. 1 of the Act of 23 April 1964 – the Civil Code.
- 1.2 An offer to conclude a contract extended by Bagsik Sp. z o.o. shall remain binding for 14 days from its submission; any extension of this offer must be made in writing or be deemed null and void.
- 1.3 A contract shall be concluded upon the receipt by the Customer of written confirmation of order acceptance. The confirmation referred to in the first sentence must be submitted in writing or else be deemed null and void. No oral arrangements between the parties shall be binding upon either party.
- 1.4 Documents provided by the Customer (i.e.: technical data, drawings, manuals, samples, models etc.) constitute instrumental information in the valuation process and the Customer assumes full responsibility for the accuracy of the technical finish and completeness of all documents provided. Bagsik sp. z o.o. shall not be obliged to verify the correctness of any documentation delivered. The Customer also warrants that the use of such documents provided by it shall violate no rights of third parties and that it is liable towards Bagsik sp. z o.o. for any inconveniences and infringements of third-party rights.
- 1.5 Bagsik sp z o.o. reserves the title to and copyright in all valuations, drawings, cost estimates, and any semblance of technical solutions. Documents shall not be made available to third parties, without the consent of Bagsik sp. z o.o. expressed in writing under pain of nullity.

### **2. Scope of delivery**

- 2.1 The document specifying the features and characteristics of the goods, as well as the conditions for performance of services, is a written order confirmation.
- 2.2 Information about the supply of equipment or services provided (e.g. weight, mass, dimensions, performance values, load, tolerances, quality, durability, technical data, etc.) and drawings and documentation (e.g. drawings and illustrations) contains approximate data unless its suitability for the intended

purpose specified in the contract, which is known to Bagsik sp. z o.o. requires such information to be precise.

- 2.3 If explicitly agreed otherwise in individual cases, statements, premises, textures, strength, or other knowledge must be made available, but only through a description or identification of the goods or services. Any deviations that occur or technical improvements resulting from applicable regulations, as well as the use of other equivalent elements, structures or materials are permitted without consultation with the Customer provided that their purpose intended in the contract is not jeopardised due to their usefulness, with such purpose being known to both parties to the contract.
- 2.4 The foregoing provisions shall apply mutatis mutandis to the information contained in catalogues, brochures, advertisements, or any disclosed information concerning dimensions, weights, textures, durability, performance and value, shipping weight, crate sizes, and similar specifications where providing such information is required on a case-by-case basis as determined. Order details must always be confirmed in writing or else be deemed null and void.
- 2.5 If required by law or expressly agreed upon, the Customer shall be obliged to provide safety devices – except for the boundaries of hazard zones during works. Expenses for such equipment shall not be included in the price unless otherwise noted in the order confirmation.
- 2.6 In any case, it is the responsibility of the purchaser to ensure compliance with the applicable workplace regulations regarding labour laws, environmental laws, as well as accident prevention laws.

### **3. Prices and payment**

- 3.1 Unless otherwise agreed, the price is included in the written order confirmation and the factory delivery scope.
- 3.2 All costs associated with transportation, including insurance, shall be covered by the Customer. The Customer shall also bear the costs of any legal permits required, such as import licenses etc.
- 3.3 Any expenses incurred outside the territory of the Republic of Poland, i.e. taxes, fees, and other charges, shall be paid by the Customer. To have the goods released to it in another EU country, the Customer shall require its assigned sales tax identification number and a written shipment delivery confirmation. Should this information and documentation not be provided, Bagsik sp. z o.o. shall calculate the tax at the applicable level based on the laws and regulations of the Republic of Poland.
- 3.4 Unless otherwise agreed, payment is made in cash – without regard to

any deductions and in the following manner – for machinery and equipment: 40% of the price upon receipt of order confirmation and 50% of the price once the Customer has been informed that the main parts are ready. The entire balance is due upon receipt of the final invoice. Replacement parts and other services shall be payable 14 days after receipt of the invoice.

- 3.5 In the case of export deliveries (all deliveries to destinations outside the Republic of Poland), payments shall be made with the provision of a provisional, irrevocable, and accredited confirmation of the bank in which Bagsik sp. z o.o. has an account.
- 3.6 A payment of half the price may be accepted upon prior arrangement. Any discounts and fees shall be borne by the Customer.
- 3.7 Upon the payment of the full price or part thereof, the Customer shall also pay any applicable default interest, with its amount specified in the relevant laws and regulations.

#### **4. Delays and unenforceability**

- 4.1 Delivery and service dates are approximate unless other arrangements have been made. If the delivery date is the same as the date of order confirmation, production shall not commence until all documents have been received by Bagsik (e.g. specifications, drawings, permits, instructions, samples, models), as well as until the possible approval and clarification by the Customer, but not before the price to pay has been agreed upon, as set forth in sec. 3.2. Delivery time shall be extended by the period during which the Customer fails to comply with its obligations towards Bagsik sp. z o.o.
- 4.2 Delivery periods and deadlines shall be deemed to have been met if Bagsik sp. z o.o. forwards the goods to the selected carrier for shipment.
- 4.3 Compensation for delay shall be limited to a maximum of 2.5% of the value of the part of the shipment that was not delivered on time due to a delay or cannot be used in accordance with the contract.
- 4.4 Should the Buyer fail to collect the ordered goods within 14 days, the Seller shall be entitled to charge the Buyer with a contractual penalty in the amount of 1% of the gross value of the ordered and uncollected goods for each day of delay in the collection thereof.
- 4.5 In the event of force majeure and other events unforeseen at the time of concluding the contract (e.g. any breakdowns, communication delays, strikes, actions taken and blockades imposed by the government, difficulties in obtaining materials or energy, adverse weather conditions or failure to deliver, erroneous or

delayed deliveries by suppliers that Bagsik sp. z o.o. has no control over, the parties shall be entitled to terminate their legal relationship by withdrawing from the contract – if the above events are of a permanent nature and the order cannot be fulfilled within a reasonable period. In case of withdrawal from the contract, all payments made shall be refunded immediately.

- 4.6 Should any events referred to in section 4.5.1 occur, Bagsik Sp. z o.o. shall immediately inform the Customer about it.
- 4.7 Should Bagsik sp. z o.o. remain late with timely performance, it shall inform the Customer of the expected contract fulfilment period. If such a deadline is not met, the Customer shall be entitled to terminate the contract.

## **5. Risk transfer and shipping**

- 5.1 Risk in the transfer of a shipment passes to the carrier, freight forwarder, or other contractors no later than the time the shipment leaves the factory or warehouse for delivery to the Customer.
- 5.2 If delivery is delayed due to circumstances for which Bagsik Sp. z o.o. bears no liability, the risk of damage or loss shall pass to the Customer.
- 5.3 The Customer shall immediately accept the goods upon arrival and unloading, irrespective of their condition on the day of arrival.
- 5.4 Bagsik sp. z o.o. reserves the right to perform partial deliveries, as well as early deliveries.
- 5.5 Complaints concerning the goods and return of any packaging shall be carried out at the expense of the Customer. Should the complaint be justified, Bagsik shall only reimburse the cheapest transport costs, subject to section 6.3.3.

## **6. Warranty**

Customer's claims and rights concerning any damage shall be governed as follows:

- 6.1 If any visible damage is found by the Customer, it must be confirmed by the carrier. Deliveries shall be deemed accepted unless written notice of defects has been given within one week of their receipt.

- 6.2 The Company shall only be liable for defects of goods delivered if the goods are used properly and in line with the operating conditions specified by the Company and if the underlying risk is transferred, in particular, in cases where the design is defective or the workmanship is of poor quality. The Company shall bear no liability for other defects such as those resulting from natural wear and tear, mishandling, improper use, alteration and correction, and improper installation of the goods delivered.
- 6.3 Warranty services may be performed by repair or replacement of unserviceable parts, as the case may be and at the Company's sole discretion. All replaced parts shall become the Company's property. Any costs incurred by the Customer in repairing or replacing the parts, including transportation, shall be transferred to the Company. The Company shall provide the services of technicians and assistants if required.
- 6.4 In the event of a justified complaint, the Company shall reimburse the cost of delivery via the cheapest road transport route available. The above shall not apply if there is an increase in costs due to the delivery item being at a location other than where it had originally been delivered to the customer.
- 6.5 In cases where a complaint is unjustified, all costs shall be borne by the Customer.
- 6.6 If additional measures fail to remedy the problem, the Customer may demand a price reduction or terminate the contract but only in case of a material breach of obligations on the part of the Company, particularly if there are serious defects that preclude the use of the purchased item. In cases where the Customer continues to use the delivery item, the breach of contractual obligations shall be deemed insignificant.
- 6.7 The Company shall be given time to perform all necessary actions to correct the defect or supply the replacement part. Only in urgent cases where there exists a threat to occupational safety or a need to prevent excessive damage – which must be immediately reported – shall the Customer be entitled to rectify the defect or to have the defect rectified by a third party.
- 6.8 Warranty claims shall be excluded in cases where the delivery item is used goods.

## **7. Liability: compensations and exclusions**

The liability of Bagsik sp. z o.o. for damage and reimbursement of expenses, regardless of the legal basis (e.g. upon concluding the contract; due to consequential damages; due to breach of contract or statutory obligations; breach of obligation arising from the contractual relationship, in particular, inability to deliver, delay, damaged or incorrect component; tortious act), shall be excluded in accordance with the following provisions:

- 7.1 If it is not a breach of contract, subject to section 7.2;
- 7.1.1 In case of simple negligence by Bagsik sp. z o.o., its legal representatives, employees or others;
- 7.1.2 In case of gross negligence by employees or other factors.
- 7.2 In case of simple negligence, Bagsik sp. z o.o. shall be liable for damage covered by civil liability insurance.
- 7.3 Bagsik sp. z o.o. shall be liable unless the given case concerns a breach of contractual obligations pertaining to:
  - 7.3.1 Non-contractual but typical, unpredictable damage;
  - 7.3.2 If the Customer intentionally causes a hazard;
  - 7.3.3 If required for compensation claims;
  - 7.3.4 Any damage that may have been caused by the Purchaser.
- 7.4 Statutory claims arising from product liability and personal injuries shall remain unaffected.
- 7.5 The amount of compensation shall be limited to 5% of the order value.

## **8. Retention of title**

- 8.1 Any goods supplied by Bagsik sp. z o.o. shall remain its sole property until paid for in full (reservation of title). The given device shall remain available even if individual overdraft claims arise.
- 8.2 The same applies to export shipments (section 3.3). The Customer shall undertake to deliver backup copies of all documents if the state laws and regulations so require in cases of failure to include them in the above form.
- 8.3 As long as the delivery item is subject to the laws and regulations of Bagsik sp. z o.o.'s Sp.k. country of incorporation, the Customer shall not be entitled to pledge or have the item at its disposal without Bagsik's consent. Bagsik sp. z o.o. Sp. k. consents to the Customer being represented by a third party. Such a third party may only have the item at its disposal if Bagsik retains its title and lien.
  - 8.3.1 The goods delivered by Bagsik sp. z o.o. may be transferred as financial collateral to a third party financing the Customer; the Customer shall transfer its obligations. With the release of the delivery item, the title reverts to Bagsik sp. z o.o.
- 8.4 The Customer is obliged to act to protect the property of Bagsik sp. z o.o. The Customer must inform Bagsik sp. z o.o. about a seizure or debt enforcement and send Bagsik copies of all relevant documents without undue delay.
- 8.5 Bagsik sp. z o.o. reserves the right to insure the delivery item

against theft, destruction, fire, water, and other damage for the period after the conclusion of the contract during which the item remains Bagsik's property. This shall be done at the expense of the Customer unless the Customer fulfils the obligation to insure the item on its own and transfers the risk by presenting proof of insurance. In cases where the Customer elects to insure the item on its own, Bagsik sp. z o.o. shall be entitled to demand adequate insurance coverage. The Customer hereby authorises Bagsik sp. z o.o. to verify such insurance. The insurance is required for the period during which the item remains the property of Bagsik sp. z o.o. despite the conclusion of a contract. Accordingly, the Customer releases Bagsik sp. z o.o. from any confidentiality obligations.

- 8.6 In the event of a breach of contract, particularly late payment, Bagsik sp. z o.o. shall have the right to terminate the contract and take back the goods concerned.
- 8.7 Upon such termination, the proceeds shall be credited to the Customer's liabilities.
- 8.8 In case of processing or combining the goods of retention with other goods, the Buyer shall not be entitled to the ownership of the resulting new item.

## **9. Place of performance, jurisdiction, applicable law, severability**

- 9.1 All terms and conditions specified herein shall apply only to legal relations between the Company and entrepreneurs who make purchases in connection with their business activities.
- 9.2 The place of performance of all contractual obligations shall be the registered office of Bagsik sp z o.o., which may change from time to time.
- 9.3 The place of jurisdiction for all contractual relations and the contractual consequences arising out of litigation, including bills of exchange and checks, shall be the court of law having jurisdiction over the registered office of Bagsik sp. z o.o.
- 9.4 Additionally, INCOTERMS rules and the rules of uniform interpretation of the rulings of the International Chamber of Commerce in Paris apply to our terms of delivery.
- 9.5 The invalidity of individual provisions hereof shall not invalidate the entire contract or other terms and conditions of delivery. The parties shall be obliged to replace any invalid provisions with ones that comply with the applicable laws and regulations, as well as the principles of community life.