

## **Amendment no.1 to the general purchase contract**

### **Purchaser:**

TATRAVAGÓNKA, a.s.

Štefánikova 887/53

058 01 Poprad

Company Identification Number: 31699847

Registered in the Companies' Register of the District Court of Prešov, Section Sa, File 191/P

Banks correspondent: 1306-562/0200

Represented by: Ing. Peter Macala – Vice-chairman of the Executive Board

Ing. Michal Škuta – Member of the Executive Board

**and**

### **Seller:**

### **conclude this amendment no.1 to the general purchase contract**

1. **The contracting parties** signed on ... the general purchase contract (hereinafter referred to as „**contract**“).
2. **The contracting parties** agreed upon following changes of the **contract**:
  - a. Text of points 3 and 4 of the article III is replaced by the following text: „
    3. Purchase price for delivered commodity is due within 60 days from the date of complete delivery of the commodity based on the properly issued invoice from the **seller** delivered to the **purchaser**. In order to eliminate any doubts, the **contracting parties** agree that the delivery of the commodity is complete when (i) complete commodity of corresponding delivery is supplied as well as (ii) complete accompanying documentation and (iii), in case of commodity delivered after 31st of December 2009, delivered commodity is marked with bar code in accordance with provisions of this contract. The **seller** is obliged to deliver to the **purchaser** a properly issued invoice.
    4. When the invoice of the **seller** does not contain the whole business name of the **seller**, seat of the **seller**, Company identification number of the **seller**, tax identification number, VAT identification number, banks correspondent of the **seller** – his bank account number, IBAN, name of the bank, SWIFT bank code, constant number, variable number, commodity delivery date, invoice serial number, date of invoice issue, due date, number, business name and seat of the commodity recipient, tax rate or data about tax exemption, the whole business name and the seat of the **purchaser**, Company identification number of the **purchaser**, tax identification number, VAT identification number of the **purchaser**, delivery note number and other requirements specified by generally binding legal enactments of the Slovak Republic, or, when it is issued in conflict with the point 3 of this article, the **purchaser** is entitled to return it to the **seller** for correction or supplementation. In such case, the time-limit for the invoice payment will be stopped and a new time-limit will start to run after delivery of properly issued invoice to the corresponding department of the **purchaser**.“

- b. Text of the article IV is replaced with the following text: „
1. Unless stated otherwise in the **purchase contract**, the seller is obliged to deliver commodities in parity FCA according to Incoterms 2000 on time and properly.
  2. **The seller** is obliged to deliver to the purchaser, together with accompanying documentation, commodity in quantity, quality, execution and of parameters and in terms specified in corresponding purchase contract. Accompanying documentation consists of following documents:
    - a) Delivery note,
    - b) attest (certificate)
    - c) invoice and
    - d) measurement protocol (measurement protocol example is attached as Annex 3 to this contract).
  3. If not stated otherwise in the **purchase contract**, the **seller** is obliged to pack and provide the commodity for transportation as stated in the Annex 4. When the commodity is not packed in accordance with the Annex 4 of this contract, the **purchaser** is entitled not to accept corresponding delivery, and obligation of the **seller** to deliver the commodity properly is fulfilled only when the commodity is delivered packed and provided for transportation in accordance with the Annex 4. In the case that the **purchaser** refuses to accept the commodity in accordance with this point, the **seller** is obliged to transport the commodity back on his own expenses.
  4. In the case of delay of delivery of the commodity from the **seller** to the **purchaser**, on the basis of the **purchase contract**, the **purchaser** has right for a contractual penalty in an amount of 0,03% from the price of delayed commodity for each day of delay. The claim for contractual penalty does not exclude the **purchaser's** claim for compensation of damage caused by delay.
  5. Commodity delivered on the basis of the **purchase contract** has to comply with valid UIC leaflets, provisions of RIV and corresponding reports of ORE/ERRI and TSI.
  6. **The seller** is entitled to deliver the commodity to the purchaser, according to the **purchase contract**, before the delivery date only on the basis of explicit written consent of the **purchaser**.
  7. Delivery note, submitted when the commodity is delivered to the **purchaser**, has to contain the number of the **purchase contract** and description of the commodity to the extent specified in the corresponding **purchase contract**.
  8. The **contracting parties** agree that the seller is obliged to mark the commodity, delivered on the basis of the **purchase contract** to the **purchaser** after December 31<sup>st</sup> 2009, with the bar code in accordance with specification stated in the Annex 5 of this contract.“
- c. Text of the article V is replaced with the following text: „
1. **The seller** shall assure and guarantee that quality of products leaving his factory within this purchase contract will fully comply with quality requirements and standards established and required by the **purchaser**. This requirement refers also to the accompanying documentation and/or certificates and other quality documents, if they are required.
  2. In the case that the **purchaser** will decide and introduce arrangements modifying the quality policy, by reason of increasing the level of quality assurance, either in the production processes or in the field of supply policy in order to better satisfy

his customer's requirements, the **seller** will also take over and introduce these arrangements into his own processes.

3. In order to introduce uniform and clear mutual conversation between the **seller** and the **purchaser**, the **seller** takes over and obliges himself to integrate to his processes and to fulfil obligations mentioned in the document „General conditions of the TVP suppliers quality“ (hereinafter referred to as „GCS) issued and valid at the **purchaser** to commodity delivery date in terms of corresponding **purchase contract**. GCS are published at the web page of the **purchaser** [www.tatravagonka.sk](http://www.tatravagonka.sk). The **contracting parties** agree that the **purchaser** is entitled to unilaterally modify the GCS, in such case, he shall notify the **seller** about this fact. Modification of the GCS comes into force for the **seller** within 30 days after its notification.
  4. On the basis of regulations and processes mentioned in the GCS to this contract, there shall be annually performed an evaluation of the **seller** by the **purchaser**.“
- d. Text of the article VI is replaced with the following text: „
1. **The seller** is obliged to deliver commodity to the **purchaser** in the quantity and quality required in the **purchase contract**, mainly with regard to agreed quality, volume or weight. Commodity delivered on the basis of the **purchase contract** has to comply with binding technical standards. If the **purchase contract** does not specify quality or layout of the commodity, the **seller** is obliged to deliver the commodity in quality and layout that is suitable for purpose mentioned in the **purchase contract**, or, when this purpose is not stated in the **purchase contract**, for purpose this commodity is usually used for.
  2. If the **seller** violates obligation stated in the article VI, point 1 of this contract, such delivered commodity has a defect.
  3. **The seller** is liable for defects which has the commodity in the moment of attachment of risk to the **purchaser**, even if the defect becomes evident after this attachment. The **seller** is also liable for any defect, which will occur after attachment of risk to the **purchaser**, if this defect is caused by violation of the **seller's** obligations.
  4. **The contracting parties** have agreed that the purchaser is obliged to check delivered commodity within 60 days from its delivery. The purchaser is obliged to draw his claims to commodity defects, which he could discover during ordinary inspection in accordance to the previous sentence, within 60 days from the commodity delivery date.
  5. **The seller** guarantee that the commodity, delivered on the basis of the **purchase contract**, will be suitable for using for agreed or usual purpose, or, that it will keep its agreed or usual characteristics for a period of 24 months after the day of introducing the commodity, as a part of the final product, into the operation, but, at most, for 27 months from the commodity delivery date. Guaranty period shall not run during period when the **purchaser** cannot use the commodity because of defects for which is liable the **seller**.
  6. Commodity has a legal defect, if sold commodity is burdened by the right of the third party, unless the **purchaser** agreed with this restriction.
  7. If the right of the third party, by which the commodity is burdened, results from industrial or other intellectual property, then, the commodity has legal defects if,
    - a) this right uses legal protection according to the legal order of the country, in which the **seller** has its seat, place of business or permanent residence; or

- b) the **seller** knew, in the time of contract conclusion, or had to know that this right uses legal protection according to the legal order of the country, in which the **seller** has its seat or place of business, or according to the legal order of the country to which the commodity was to be sold or in which it was to be used, and the **purchaser** was familiar, in time of **purchase contract** conclusion, with this sale or place of usage.
8. If the **purchase contract** is considerably violated by delivery of commodity with defects, the **purchaser** can:
- a) request removal of the defects by exchanging the faulty commodity for new one, delivery of missing commodity and can request removal of the legal defects;
  - b) request removal of the defects by their repair, if they can be repaired;
  - c) request adequate discount from the purchase price; or
  - d) withdraw from the contract

The choice between mentioned claims i sup to the **purchaser** and the **purchaser** shall mention his choice in the PSM report according to the point 10 of this article. The **purchaser** shall deliver this report to the **seller**. If the **seller** does not remove defects of the commodity in adequate additional time period, or if he announce before the end of this period that he will not remove these defects, the **purchaser** can withdraw from the contract or can request an adequate discount from the purchase price.

9. If the **purchase contract** is only marginally violated by delivery of commodity with defects, the **purchaser** can request:
- a) delivery of missing commodity and removal of other commodity defects, or
  - b) discount from the purchase price

The choice between mentioned claims i sup to the **purchaser** and the **purchaser** shall mention his choice in the PSM report according to the point 10 of this article. The **purchaser** shall deliver this report to the **seller**. If the **seller** does not remove defects of the commodity in adequate additional time period, or if he announce before the end of this period that he will not remove these defects, the **purchaser** can withdraw from the contract or can request an adequate discount from the purchase price. In the case of useless expiration of the time period dedicated to the removal of the defects, the **purchaser** is entitled to withdraw from the contract without prior notification about this right to the **seller**.

10. In the case that there are discovered defects on the commodity delivered on the basis of the purchase contract, the employee of the quality control department of the purchaser shall issue a PSM Report (a sheet for PSM Report is published on the purchaser's web page [www.tatravagonka.sk](http://www.tatravagonka.sk)), which shall be delivered to the seller by the employee of the sale department of the purchaser. PSM Report contains mainly delivery identification (name of the commodity, identification of the purchase contract, delivery note ...) and defect description, whereby, an annex can consist of photo-documentation or test results.
11. **The seller** is obliged to submit to the **purchaser** his statement to the filed claims related to the commodity defects within 5 days from the date of PSM Report delivery according to the point 10 of this article. When the **seller** does not deliver his written statement to the **purchaser** regarding the claims within mentioned time period, such act is considered to be manifestation of his will, by which he accepts his responsibility for the defects stated in the corresponding complaint.
12. In the case that the **seller**:
- a. refuses to remove defects of the commodity claimed by the PSM Report;



Email:

Email:

For the **seller**:

Name and surname:

Name and surname:

Telephone:

Telephone:

Mobile:

Mobile:

Fax:

Fax:

Email:

Email:

7. Each **contracting party** is obliged to inform other **party** in writing about change of contact person to the address mentioned on the first page of this contract. Until delivery of written notification about change of the contact person of the contracting party, all documents sent to e-mail address or fax number of the original contact person of the **contracting party** are considered to be properly delivered. „

**h.** Into the wording of the article XI, the following points are inserted: „

7. **The contracting parties** have agreed that the **seller** shall submit to the **purchaser**, on the basis of his written request, his statement of finances verified by auditor, profit and loss statement in the full extent and a balance sheet in the full extent (hereinafter referred to as „**financial statements**“) for previous financial year.

8. **The seller** obliges himself to submit to the **purchaser**, on the basis of his written request, monthly profit and loss statement and a balance sheet (hereinafter referred to as „**monthly financial statements**“) for previous calendar month.

9. Each set of **financial statements** and **monthly financial statements**, which is submitted by the **seller** on the basis of this article, shall be signed by persons authorised to elaborate **seller's financial statements** and **monthly financial statements** that truly displays his financial situation and economic actual for a corresponding time period.“

**i.** Text of point 2 of the article XII is replaced with the following text: „Following Annexes present an integral part of this contract.

Annex No. 1 – Purchase contract example

Annex No. 2 – Informative price list of commodities

Annex No. 3 – Measurement protocol

Annex No. 4 – Specification of agreed method of packing and securing for transportation

Annex No. 5 – Specification of marking the commodities with the bar code“

Following Annexes are attached to the **contract**: Annex No. 3 – Measurement protocol, Annex No. 4 – Specification of agreed method of packing and securing for transportation, Annex No. 5 – Specification of marking the commodities with the bar code, which are simultaneously also annexes of this amendment.

3. Other provisions of the contract remain unchanged.

## **II.**

### **Final provisions**

1. This Amendment no. 1 is valid and effective from the day of its signing by both **contracting parties**.
2. This Amendment is elaborated in two equal copies, one for each **contracting party**.
3. **Contracting parties** declare that they understand provisions of this Amendment, that this contract was concluded seriously and clearly, on the basis of their right and free will, not

under pressure and under noticeably disadvantageous conditions and to prove this they are signing this contract.

In Poprad, date .....

In....., date.....

**Purchaser:**

**Seller:**

TATRAVAGÓNKA a.s.

TATRAVAGÓNKA a.s.