

## GENERAL TERMS AND CONDITIONS FOR TECHNICAL PURCHASES

These General Terms and Conditions of Purchase, together with the AGREEMENT and the Annexes to the AGREEMENT, constitute a uniform agreement between the PARTIES.

Any changes to these Terms and Conditions are binding upon the PARTIES only in the case of express reservations of changes to the GTC expressed in the AGREEMENT and must be in writing in order to be valid.

In the case of any discrepancies between the provisions of the GENERAL TERMS AND CONDITIONS and the provisions of the AGREEMENT, the provisions of the AGREEMENT shall prevail.

The application of any SELLER's sample agreements or general terms and conditions is excluded.

### TABLE OF CONTENTS:

- § 1. DEFINITIONS
- § 2. SCOPE OF THE GENERAL TERMS AND CONDITIONS
- § 3. CONCLUSION OF THE AGREEMENT:
- § 4. TERMS OF THE PERFORMANCE OF THE AGREEMENT
- § 5. PRICE AND TERMS OF PAYMENT
- § 6. SERVICES
- § 7. RECEIPT
- § 8. GUARANTEES
- § 9. CONTRACTUAL PENALTIES
- § 10. WITHDRAWAL FROM THE AGREEMENT
- § 11. CONFIDENTIALITY
- § 12. INTELLECTUAL PROPERTY
- § 13. FORCE MAJEURE
- § 14. GOVERNING LAW AND DISPUTE RESOLUTION
- § 15. FINAL PROVISIONS
- § 16. ANNEXES

### § 1 DEFINITIONS

- |                      |   |
|----------------------|---|
| "BUYER"              | means a company within the CIECH S.A. Group which is a party to the ORDER or AGREEMENT; |
| "SELLER"             | means any domestic or foreign entity selling commercial goods or services to the BUYER; |
| "PARTIES" or "PARTY" | means the BUYER and SELLER together or each of them individually;                       |

"ORDER"	means an offer to buy GOODS submitted to the SELLER by the BUYER;
"AGREEMENT"	means an ORDER accepted by the SELLER or a separate agreement between the BUYER and the SELLER, the subject of which is the sale of GOODS to the BUYER;
"GTC"	means the General Terms and Conditions of Technical Purchases;
"GOODS"	means movable assets, which the SELLER is obliged to sell and deliver to the BUYER under the provisions stipulated in the AGREEMENT

## § 2 SCOPE OF THE GENERAL TERMS AND CONDITIONS

1. GTC apply to the agreements concluded by the BUYER, the subject of which is the purchase of GOODS
2. GTC form an integral part of the AGREEMENT.
3. Any changes to GTC require the approval of both PARTIES in writing under pain of nullity.

## § 3 ENTERING INTO AN AGREEMENT

1. The BUYER submits an ORDER to the SELLER which specifies the following:
  - a) GOODS;
  - b) the period during which the BUYER is bound by the ORDER;
  - c) price;
  - d) unit of measure and amount
  - e) deadline for completion of the ORDER.
2. The AGREEMENT is concluded by:
  - a) the written and unreserved acceptance of the ORDER by the SELLER and the placement of the signed ORDER within the period specified by the BUYER in the ORDER;
  - b) the written acceptance by the BUYER of the SELLER's statement on acceptance of the ORDER with changes introduced by the SELLER in writing within the period of the validity of the ORDER;
  - c) the negotiations on the subject matter of the ORDER, where the PARTIES have jointly expressed their willingness to negotiate and they have reached agreement on all the provisions of the AGREEMENT.
3. Tacit acceptance of the offer is excluded.
4. Any correspondence concerning the conclusion of the AGREEMENT, or negotiations regarding its provisions, can be carried out *via* electronic mail (e-mail); however for verification that the AGREEMENT has been concluded, it is crucial to deliver to the other

PARTY, a relevant ORDER or AGREEMENT signed by the duly authorised representatives of both PARTIES within the specified period of time.

5. The SELLER hereby confirms that the persons making any statements on behalf of the SELLER, within the framework of the AGREEMENT, are duly authorised to act on their behalf.
6. Any change or supplement to the ORDER shall be deemed as a new offer. The PARTIES exclude application of the modifying acceptance of the AGREEMENT, that is, the application of Article 68<sup>1</sup> of the Civil Code and Art. 68<sup>2</sup> of the Civil Code.
7. Upon commencement of the implementation of the ORDER by the SELLER, it shall be taken as tantamount to the full acceptance both of the specific conditions of the AGREEMENT and of the GTC.

#### **§ 4 TERMS AND CONDITIONS OF THE AGREEMENT**

1. The SELLER shall provide the BUYER with the GOODS in accordance with the conditions indicated in the AGREEMENT, i.e. specifying in detail, the quantity, price, date and place of delivery. The conditions abovementioned are binding upon the SELLER.
2. The SELLER shall deliver the GOODS to the BUYER on the DDP INCOTERMS 2010 basis, to the delivery place indicated in the AGREEMENT, unless the AGREEMENT provides otherwise.
3. The INCOTERMS specified in the AGREEMENT always refer to INCOTERMS 2010.
4. The GOODS will be delivered during the BUYER'S working hours, i.e. between 7:00 and 15:00, unless the BUYER indicates other hours in the AGREEMENT.
5. The SELLER is obliged to inform the BUYER of any events that may affect the timely delivery of the GOODS. However, such notification does not release the SELLER from the obligations specified in the AGREEMENT. Any changes to the delivery date agreed in the AGREEMENT, require the written consent of BUYER.
6. The BUYER has the right to carry out inspections, at its own expense, at the SELLER's premises in order to check the progress of the performance of the AGREEMENT, but should inform the SELLER, five days in advance, before the date of any inspection.
7. At least 7 days before the date of shipment, the SELLER shall send to the BUYER a shipping advice with the following information: the number of the AGREEMENT, the method and expected date of dispatch, delivery note with the number, weight, dimensions and contents of the packages and any instructions necessary for the proper transport, unloading and storing of the GOODS.
8. The SELLER should attach to the GOODS, and in the case of the partial delivery of any of the GOODS to each part of the GOODS, transport documentation and, in particular, should state the reference number of the agreement in order to facilitate precise identification of the GOODS being the subject of the AGREEMENT, along with the control number of such GOODS and, if necessary, any data as to the safety thereof. Moreover, all the documents necessary for the proper receipt and use of the GOODS should be provided together with them, in particular:

- a) a copy of the invoice;
  - b) a shipment specification with the number, weight, dimensions and contents of the packages
  - c) complete technical documentation prepared in Polish, which is essential for the proper installation at the place of use and the correct start-up, operation, maintenance, construction and assembly details and drawings together with the necessary details of mechanical and electrical specifications.
  - d) material certificates, certificates of analysis, testing and approval;
  - e) instructions for proper storage of the GOODS.
9. These documents should include the number and date of the AGREEMENT along with the quantity and range of the GOODS.
  10. The AGREEMENT shall be regarded as completed on the day when the GOODS, meeting the contractual requirements in respect of the type, quality and quantity, are delivered to the BUYER pursuant to the provisions of the AGREEMENT.
  11. Partial deliveries, unless otherwise stated in the AGREEMENT, require the written consent of the BUYER. In the case of partial deliveries, unless otherwise stated in the AGREEMENT, the AGREEMENT shall be regarded as completed on the day when the last partial delivery is completed.
  12. The BUYER may refuse to accept the GOODS if, due to incomplete documentation as required by the AGREEMENT or incomplete bill of lading, it is impossible to make an assignment of the delivery to a specific AGREEMENT or it requires excessive expense, or does not correspond to the specifications of the AGREEMENT or when the delivered GOODS are damaged.
  13. If the GOODS are imported from outside the European Union and where a different formula than DDP has been applied, the SELLER is responsible for market authorisation in the Customs territory of the European Union in accordance with the applicable EU regulations. In the case of imported deliveries, the GOODS must be accompanied by an invoice, in duplicate, due to Customs regulations. In the above case, simplifications are permissible only after prior, written confirmation by the BUYER.
  14. If import documents are required in order to determine the purpose of a shipment, the SELLER, at its own expense, is obliged to organise and deliver them to the BUYER. If there is an obligation to carry out Customs procedures, the SELLER is obliged to provide a certificate of origin. This certificate is required for each shipment. Unless otherwise agreed, Customs clearance is carried out by the SELLER.
  15. The SELLER undertakes to deliver the GOODS in packaging adapted to their type, mode of transport and storage, in order to deliver them intact. Each packaging unit should contain readable information on the outside in accordance with the requirements of transport, as well as any instructions for special storage conditions. This information should include the AGREEMENT number, the lot number, exact name of the BUYER, the quantity delivered and gross and net weights.
  16. The return of the packaging requires a separate agreement. The BUYER sends any returnable packaging at the SELLER'S risk and expense. If the packaging cannot be recycled, the BUYER retains the right to request its removal or disposal at the expense and risk of the SELLER. The previous sentence does not apply in the case of intra-Community acquisitions.

17. In no circumstance does the checking, acceptance and receipt of the GOODS release the SELLER from responsibility for their defects or other faults regarding compliance with the provisions of the AGREEMENT.
18. The SELLER guarantees delivery of the GOODS, as well as of those spare parts and components used for their repair, maintenance or extension, throughout the term of the AGREEMENT, including the warranty period and ensures that their production or distribution will not be halted. If the SELLER decides to finish production of all the GOODS or part thereof, after completion of this AGREEMENT, he shall inform the BUYER one year in advance, so that the BUYER may be able to enter into AGREEMENTS elsewhere

## **§ 5 PRICE AND PAYMENT TERMS**

1. The price specified in the AGREEMENT is fixed and unchangeable. Unless otherwise agreed, the price includes packaging costs, taxes, duties, insurance, all delivery costs, and so forth, until delivery of the ordered GOODS, the address indicated by the BUYER in the AGREEMENT, has been effected.
2. Where the AGREEMENT additionally includes provision of services related to the GOODS, the price also embraces these services.
3. The SELLER may not, without the express written consent of the BUYER, assign receivables arising from this AGREEMENT.
4. If there is an advance payment provision in the AGREEMENT, its payment depends on delivery by the SELLER of the unconditional, irrevocable, payable on the first demand, valid until the date of payment of the full price of the GOODS, drawn up in Polish, issued by a Polish bank approved by the BUYER and issued in compliance with Polish Banking laws Advanced Payment Guarantee, according to the template included in Appendix 1 to these GTC.
5. If the time for the completion of the AGREEMENT is extended, the SELLER is obliged, at its own expense and at least 14 days before the expiry date of the existing original Advance Payment Guarantee, to provide the BUYER with the bank Advanced Payment Guarantee with the expiry date adjusted the changes to the terms of the AGREEMENT. Failure to comply with this obligation authorises the BUYER to draw on the existing Advance Payment Guarantee.
6. The basis for the payment of the GOODS delivered is a properly issued invoice.
7. The invoice shall be issued in accordance with the applicable provisions of law, and shall also contain:
  - a) the number and the date of the AGREEMENT;
  - b) the quantity and unit prices of the GOODS;
  - c) the conditions and date of payment in accordance with the AGREEMENT;
  - d) detailed specification of any advance payments paid by the BUYER;
  - e) information about the contractual prohibition on the assignment of the SELLER'S claims arising from the AGREEMENT.
8. Any payments due will be paid *via* bank transfer to the SELLER'S account as specified in the AGREEMENT within 60 days from the date of the delivery of the GOODS and

invoices meeting the requirements specified in this paragraph, unless otherwise agreed in the AGREEMENT.

9. If the GOODS do not meet the requirements specified in the AGREEMENT, or are not provided in accordance with the AGREEMENT, the BUYER shall be entitled to withhold payment until the SELLER fulfils its obligations in accordance with this AGREEMENT. The above does not restrict the BUYER'S right to charge penalties or to claim damages, on the terms laid down in the AGREEMENT.
10. In the case the invoice delivered to the BUYER does not meet the requirements, as set out in section 7 of this paragraph, the BUYER shall have the right to withhold its payment. The deadline for the payment of receivables resulting from such an invoice delivered by the SELLER shall be counted from the date of the correction of such deficiencies by the SELLER. Such withheld payments will be interest-free and shall not be due for the time of their retention; the SELLER shall make no claim respecting them and shall treat them as payments in abeyance.
11. The date of payment shall be the date that the BUYER's account is debited.

## **§ 6 SERVICES**

1. If the scope of the AGREEMENT embraces also the services related to the GOODS, in particular where these services are to be rendered at the BUYER'S premises and where the AGREEMENT does not provide otherwise, it will be assumed that:
  - a) the value of such services is included in the price of the AGREEMENT.
  - b) all additional costs associated with the services provided by the SELLER, including but not limited to accommodation, travel, insurance, personnel costs, and so forth, shall be borne by the SELLER.
2. The protocol, signed by the BUYER, is confirmation of the performance of services by the SELLER.
3. The SELLER is obliged to provide personnel with the skills required for the proper and prompt performance of the service.
4. Where implementation of the service requires co-operation between the SELLER'S and the BUYER'S personnel, the SELLER is responsible for the accuracy of the guidelines and instructions issued by its personnel.
5. The SELLER bears full responsibility for damage and loss caused by the activities of its personnel in the provision of services as well as for the improper instruction and guidance provided by its personnel.
6. The SELLER affirms and warrants that its services are carried out properly and in accordance with the AGREEMENT. If, during a period of 24 months from completion of the service, defects are found, the SELLER is obliged to immediately remove them at its own expense. The SELLER is also liable under the warranty for any defects in services.
7. The SELLER is obliged to maintain fully comprehensive insurance for its employees during the time of the service at the premises of the BUYER. The SELLER shall also assume responsibility for and bear any possible consequences and claims arising in connection with the performance of services.

8. The SELLER's personnel are obliged to comply with the regulations and instructions in force at the BUYER'S plant and to obtain any necessary permits to carry out the work.

## § 7 RECEIPT

1. The GOODS should be checked by the BUYER immediately upon receipt. However, if it is not possible at that time and the GOODS are either needed immediately for use or need to be stored in their packaging, an inspection can be made at a later date as is specified in the AGREEMENT.
2. A protocol shall be drawn up on receipt of the GOODS. The SELLER has the right to participate in such receipt at its own expense after informing the BUYER of its intention no later than on the day preceding the day of delivery of the GOODS.
3. The SELLER is responsible for the completeness of the GOODS in accordance with the specifications attached thereto and in accordance with the AGREEMENT.
4. The BUYER is only liable for checking the quantity of the GOODS on the basis of the bill of lading concerning their damage during transport. The BUYER shall notify the SELLER, within 5 working days, of any deficiencies and any possible damage identified during transport.
5. If any defects, shortages or damage are discovered upon receipt of the GOODS, the BUYER shall be entitled to act in the following manner and at its own discretion:
  - a) to refuse receipt thereof and request immediate delivery of GOODS undamaged and free from any defect, as provided for in the AGREEMENT,
  - b) conditionally accept the GOODS and request immediate removal of any defects or damage and/or delivery of lacking items,
  - c) conditionally accept the GOODS and demand a price reduction,
  - d) conditionally accept the GOODS and remove the defects and/or the damage and/or make up the shortfall in the GOODS at the expense and risk of the SELLER,
  - e) withdraw from the AGREEMENT.
6. In the cases referred to in § 5 items a) - d) the BUYER is entitled to withhold payment of the price and to charge penalties for delay as referred to in § 9 section 1 item b). In such cases, the payment period specified in § 5 of the GTC or in the AGREEMENT, starts respectively on the day of: the delivery of GOODS free from defects; delivery of GOODS having had all defects and damage removed; delivery of the quantity of GOODS in line with the AGREEMENT; setting by the PARTIES of a new, lower price for the GOODS or a refund vis-à-vis the removal of defects by the BUYER.
7. If special deadlines are required for the particular activities to be carried out within the acceptance of the GOODS, these will be specified in the AGREEMENT.
8. Signing of the acceptance protocol by the BUYER with no reservation will indicate the receipt of the subject of the AGREEMENT or a certain stage of its performance which authorises the SELLER to issue the corresponding invoice.
9. The signing of the acceptance protocol by the BUYER does not deprive it of the right to claim for defects which may come to light after acceptance.

10. The signing of the acceptance protocol does not relieve the SELLER from its obligations under the guarantees provided.

## § 8 GUARANTEES

1. The SELLER provides the BUYER with a 24-month guarantee for the GOODS starting from the date of their receipt by the BUYER. In the event of the GOODS having been supplied in parts, the guarantee commences on the date of receipt of the final batch.
2. The SELLER guarantees that the GOODS supplied under this AGREEMENT shall be in accordance with the specifications, drawings and any other requirements, as set out in the AGREEMENT and that they will be new and unused, will be of good quality and free from faults and defects. Furthermore, the SELLER guarantees that the GOODS will be carefully made from appropriately tested materials and will meet all the technological requirements necessary for their proper use, in accordance with the AGREEMENT. The GOODS, will also be made in full compliance with the regulations applicable and in accordance with the standards and requirements of the Technical Inspection Authority/Transport Technical Supervision.
3. Regardless of the guarantee, the BUYER may exercise all rights under the statutory warranty together with the provisions of these GTC.
4. Where defects in the GOODS come to light within the period specified in section 1 of this paragraph, the BUYER shall be entitled to the following, at its own discretion:
  - a) demand of the immediate removal of identified defects,
  - b) demand of delivery of GOODS free from defects,
  - c) demand of a reduction in the price of the GOODS,
  - d) withdraw from the AGREEMENT.
5. The SELLER is obliged to repair the GOODS or replace defective GOODS with GOODS free from defect within 14 days of the receipt of such a complaint or on other date mutually agreed by the PARTIES depending on the nature of the repair or replacement needed. The complaint made by the BUYER shall entitle it to withhold payment for the GOODS. The payment period specified in the GTC or in the AGREEMENT shall not commence until the complaint has been settled in full.
6. The BUYER, having notified the SELLER, has the right to carry out repairs, at the expense and risk of the SELLER, or replace parts, if these are minor or where they are necessary in order to prevent further damage or where they must be carried out immediately. Any costs incurred by the BUYER for this purpose, will be reimbursed by the SELLER.
7. In the event of the cancellation of the AGREEMENT by the BUYER, the SELLER shall refund the price paid and the BUYER will return the defective GOODS on an ExWorks INCOTERMS 2010 basis.

The BUYER shall indicate the following in the statement of withdrawal:

- a) bank account number to which the SELLER shall reimburse the price paid for the GOODS,
- b) deadline for the reimbursement of the price paid for the GOODS,
- c) date and place of the return of the GOODS



8. The guarantee shall be extended by the repair period; in the case of the replacement of parts, this period shall be extended for a further 24 months from the date of any such exchange.

## **§ 9 CONTRACTUAL PENALTIES**

1. The SELLER shall pay the BUYER contractual penalties for the non-performance or for the improper performance of the AGREEMENT in the following cases and in the amounts indicated below:
  - a) for the non-performance of the AGREEMENT in the event of its cancellation by the BUYER in whole or in part, where withdrawal was for reasons attributable to the SELLER - a contractual penalty amounting to 10% of the gross price, as specified in the AGREEMENT;
  - b) for a delay in performance of the AGREEMENT - a contractual penalty of 0.2% of the gross price specified in the AGREEMENT for each day of such a delay, up to a maximum of 10% of the gross price specified in the AGREEMENT;
  - c) for a delay in the removal of defects found upon receipt or within the guarantee or warranty period(s) - a contractual penalty of 0.3% of the gross price as specified in the AGREEMENT for each day of such a delay in relation to the deadline for the removal of defects;
  - d) for violation of safety regulations during the provision of services by the SELLER or its employees, subcontractors and/or persons providing work or services on its behalf or on the basis of other legal relationships - a contractual penalty amounting to 1,000.00 PLN for each violation found;
  - e) in the case of a violation of the confidentiality clause - a contractual penalty amounting to 50.000,00 PLN for each violation, will be payable.
2. Each of the above stipulated contractual penalties is independent; the BUYER has the right to pursue each of them independently of one another, as well as impose a cumulative charge for all such penalties, the calculation of which is justifiable and is as stipulated in the AGREEMENT.
3. Accrued contractual penalties can be deducted from the price specified in the AGREEMENT. The SELLER agrees to deduct the penalties referred to in section 1 of this paragraph from the price payable to the SELLER without a separate BUYER'S statement regarding any such deduction.
4. The BUYER reserves the right to supplementary compensation, covering the actual damage suffered by the BUYER and not covered by the contractual penalties reserved.

## **§ 10 WITHDRAWAL FROM THE AGREEMENT**

1. Regardless of statutory law, the BUYER, shall be entitled to withdraw from the AGREEMENT in whole or in its uncompleted part until expiry of the warranty period in the following cases:
  - a) a significant breach of the provisions of the AGREEMENT by the SELLER, in particular the discovery of defects in the GOODS or services rendered; however the BUYER cannot withdraw from the AGREEMENT if, upon

- submission of a withdrawal statement, the breach has ceased to exist and its effects have been removed by the SELLER;
- b) uninterruptedly continuous Force Majeure event prevents for at least 6 months the performance of the AGREEMENT;
  - c) a material change in circumstances occurs such that the performance of the AGREEMENT is not in the interests of the BUYER and where it could not have been foreseen at the time of the conclusion of the AGREEMENT. In the above case, the BUYER may withdraw from the AGREEMENT within 7 days of becoming aware of such circumstances but no later than on the day preceding the day of delivery specified in the AGREEMENT and the SELLER may request reimbursement, solely, of those reasonable costs in connection with the AGREEMENT, which he borne up to the date of the written notice of withdrawal received by the SELLER;
  - d) an application for bankruptcy has been filed by the SELLER or where the SELLER has filed for restructuring or has adopted a resolution to liquidate, or where procedures similar to the above have been initiated in the country of the SELLER;
  - e) where the risk of the insolvency of the SELLER is apparent within the meaning of the Act of 15<sup>th</sup>. May 2015 - Restructuring Law (Legal Journal of 2015, item 978, as amended);
  - f) the total delay in the SELLER'S accomplishment of the subject matter of the AGREEMENT, is in excess of 30 days;
  - g) the SELLER has not provided the securities, as specified, in the GTC and AGREEMENT, in particular, where he has not supplied the BUYER with bank guarantees.
2. A significant failure of the SELLER, justifying withdrawal from the AGREEMENT as set out in section 1 of this paragraph shall be in particular:
- a) a violation of a significant provision of this AGREEMENT essential for its proper execution;
  - b) failure to fulfil the obligations arising out of the liability for defective GOODS;
  - c) violation of the laws or appropriate administrative decisions;
  - d) entrusting a third party, in breach of the provisions of the AGREEMENT, with the performance of all or part of the AGREEMENT, in particular employment of the subcontractor without prior written consent of the BUYER;
  - e) the improper performance of the AGREEMENT by the SELLER despite a written request from the BUYER to cease such violations and also despite the imposition of an additional deadline for the rectification of their consequences;
  - f) suspension by the SELLER, without valid reason, of the AGREEMENT performance;
  - g) the persistent failure or denial of the SELLER to perform its obligations under this AGREEMENT;
  - h) loss of ability to perform the SUBJECT of the AGREEMENT by the SELLER;
  - i) an unjustified delay in the performance of the AGREEMENT caused by the SELLER.

3. In the event of cancellation of the AGREEMENT by the BUYER, the SELLER shall refund the price paid and the BUYER shall return the GOODS on the basis of ExWorks INCOTERMS, 2010. The BUYER shall indicate the following in the statement of withdrawal:
  - a) bank account number to which the SELLER shall return the price of the GOODS,
  - b) deadline for the return of the price of the GOODS covered by the waiver,
  - c) date and place for the return of the GOODS covered by the waiver
4. In the case of a withdrawal from the AGREEMENT, either wholly or in part, by the BUYER in virtue of the pre-conditions set forth in section 2 of this paragraph, the SELLER shall be obliged to pay a contractual penalty on account of withdrawing from the AGREEMENT for reasons attributable to it as indicated in § 9 section 1.
5. In the case of a partial withdrawal from the AGREEMENT for reasons other than a Force Majeure event, the BUYER will pay the SELLER the actual value of the work duly completed and received up to the day of the withdrawal and also for work in progress, if it has been duly executed and will prove useful for the completion of the SUBJECT of the AGREEMENT by another contractor.
6. In the case of a withdrawal from the AGREEMENT, either wholly or in part, by the BUYER for reasons attributable to the SELLER, the BUYER may entrust the completion of the AGREEMENT to another contractor, without prior application to the courts. If execution of the SUBJECT of the AGREEMENT by another contractor will increase the costs of the AGREEMENT, the SELLER will be obliged to pay the BUYER an amount corresponding to that increase in costs within 30 days from receipt the BUYER'S request for payment, together with an invoice confirming the increase in costs.
7. In the case of a withdrawal from the AGREEMENT, either wholly or in part by either PARTY due to an event of Force Majeure lasting longer than 6 months, settlement of the AGREEMENT will be in accordance with the agreement between the PARTIES based on the accepted by both PARTIES protocol of the state of progress of the performance of the AGREEMENT as of the day of withdrawal.

## **§ 11 CONFIDENTIALITY**

1. "Confidential information" within the meaning of the GTC, refers to any information held by the BUYER, of a technical, technological or organisational nature which have been made available to the SELLER in any form, regardless of whether such information was marked "Confidential" or not and in particular, with reference to ideas, techniques, technologies, diagrams, drawings, subjects of copyrights, models, inventions, know-how, equipment, software and security systems, information on tests and their results, experiments, projects and specifications, financial information, commercial and manufacturing requirements, lists of partners, investors and employees and their contact details, business relationships and contractual, business forecasts, marketing plans, the confidential information of third parties, where permitted, or other such information of commercial value, the use, transfer or disclosure of which to an unauthorised person may affect the interests of the BUYER.

2. The SELLER agrees to maintain in strict confidence, all confidential information received as well as the contents of this AGREEMENT and not to disclose it to third parties; the SELLER also undertakes not to use such confidential information for any purpose other than the performance of this AGREEMENT.
3. The SELLER may disclose confidential information to its subcontractors or sub-suppliers only to the extent that such information is required for the implementation of the AGREEMENT and on the condition that they are bound by the obligations of confidentiality which correspond to the terms of the AGREEMENT and GTC.
4. The obligation of confidentiality binds the SELLER for 10 years, commencing with the date that such confidential information was received.
5. The obligations of confidentiality set out in this paragraph shall not apply to the following information:
  - a) information that is widely known or is held in the public domain;
  - b) in cases where the BUYER has given its written consent to such disclosure(s);
  - c) information in relation to which there is an obligation to disclose to the public authorities according to the applicable laws or in the instance of a binding decision of the court.
6. At the BUYER's request, in the case of a withdrawal from the AGREEMENT and immediately upon of the declaration of withdrawal from the AGREEMENT, the SELLER shall return to the BUYER all documents, materials and other information carriers containing confidential information.
7. If the SELLER discloses confidential information to third parties, he will bear full responsibility for the actions and omissions of those third parties as if they were its own actions and omissions.
8. The BUYER's consent is not required for disclosure of confidential information to companies belonging to the same capital group as the BUYER.

## **§ 12 INTELLECTUAL PROPERTY**

1. The SELLER guarantees that there are no existing patents, trademarks, industrial designs, copyrights, proprietary rights, or *know-how* of the third parties that could be affected by the BUYER using the GOODS.
2. Within the price indicated in the AGREEMENT, the SELLER hereby grants to the BUYER an unlimited, irrevocable, transferable, non-exclusive, licence to use the intellectual property rights associated with the GOODS, without restriction with regards to territory, in particular to use the works, within the meaning of the rules governing copyright and hereinafter referred to as: "Works ", as well as the computer software supplied with the GOODS under the AGREEMENT. Should he not be so entitled to such rights, he undertakes to obtain them. The licence covers the following fields of use:
  - a) in the field of the preservation and reproduction of the Works - producing copies of the Works using all techniques known on the date of the AGREEMENT, including but not limited to: printing, reprographics, magnetic recording and digital technology;

- b) in terms of trade in the original or in the copies on which the Works have been recorded - in particular, marketing, loaning or leasing the original or copies Works;
  - c) dissemination of Works in a manner other than as specified in item b) above, in particular by public performance, display, broadcasting and re-broadcasting, as well as giving public access to the work in such a way that anyone can access it at a place and time individually chosen, in particular through the introduction of digital versions to computer memory and their use and publication on the Internet.
  - d) permanent or temporary reproduction of the computer software, in whole or in part, by any means and in any form;
  - e) translation, adaptation, re-arrangement or any other changes in the computer software observing the rights of the person making such alterations;
  - f) dissemination, including loaning or leasing a computer software or a copy thereof.
3. The SELLER shall indemnify the BUYER against any third-party liability claims by such persons, for the infringement of intellectual property rights resulting from the use of the GOODS
  4. The SELLER will pay all costs and damages awarded against the BUYER in connection with the an infringement of the patent, trademark, industrial design, know-how, copyright and other intellectual property rights of a third party caused by use of the GOODS delivered by the SELLER.
  5. If the GOODS become the subject of claims of infringement of intellectual property rights reported by a third party, the SELLER can either obtain such right to use the GOODS for the BUYER in the shortest possible time or modify or replace the GOODS, so that the infringement ceases. Any modification or replacement of the GOODS must not result in a reduction of functionality or fitness of the GOODS in accordance with the AGREEMENT.
  6. If the SELLER fails to carry out the obligations specified in section 5 of this paragraph, the BUYER shall be entitled, at the expense and risk of the SELLER, to take such actions as he deems necessary in order to obtain the right to use the GOODS. If obtainment of the right to use the GOODS without violating the intellectual property rights of third parties is not possible, then the BUYER shall be entitled to make necessary modification or replacement of the defective GOODS for GOODS that will not be in violation of the intellectual property rights of third parties. The SELLER shall bear the total cost of such actions and shall repair the damage suffered by the BUYER.

### **§ 13 FORCE MAJEURE**

1. The PARTIES to the AGREEMENT shall not be liable for non-compliance with the contractual agreement which is caused by an event of Force Majeure.
2. An event of Force Majeure shall mean any external and sudden event, which could not have been foreseen at the time of the conclusion of the AGREEMENT and which cannot be resisted and whose consequences could not have been prevented, including, but not limited to:

- a) war, whether declared or not, and other military operations, invasions, acts of terrorism, mobilisation, or embargo;
  - b) radiation or contamination by radio-activity from nuclear fuel or nuclear waste from the combustion of nuclear fuel, radio-active, toxic, explosive or other hazardous properties of any explosive nuclear assemblies of components,
  - c) terrorism, military coup or civil war;
  - d) natural disasters such as earthquakes, explosion or flood;
  - e) the following geological conditions related to the substrate: archaeological relics, hazardous materials such as unexploded bombs, undischarged weapons or missiles or toxic materials, such as petroleum;
  - f) shock waves caused by a flying object travelling either subsonically or supersonically.
3. The PARTY for which the execution of this AGREEMENT has become impossible due to the event of Force Majeure, shall notify the other PARTY in writing of the occurrence thereof immediately, 14 days of its occurrence at the latest. When the Force Majeure ceases, that also should be reported forthwith to the other PARTY along with a simultaneous proposal to resume obligations.

#### **§ 14 THE GOVERNING LAW AND DISPUTE RESOLUTION**

1. This agreement shall be governed and interpreted in accordance with Polish law. For any cases not covered by the GTC within this AGREEMENT, the provisions of Polish law in force, in particular the provisions of the Polish Civil Code, shall apply.
2. Any disputes connected with the interpretation and implementation of this AGREEMENT, shall be resolved by the PARTIES through negotiation, and if they are unable to reach agreement within 30 calendar days of the date they receive written information of the other PARTY describing the controversial issues, the dispute shall be resolved by the common court of law, competent for the seat of the BUYER.

#### **§ 15 FINAL PROVISIONS**

1. Should any provision of this GTC or the AGREEMENT be found invalid due to its non-compliance with the law, ineffectiveness or unenforceability, or if there is a loophole in the GTC or the AGREEMENT, the validity of the remaining provisions of the AGREEMENT shall not be affected by that, and the AGREEMENT shall continue to be implemented without referring to the provision in question, unless the invalidity affects any material terms of the AGREEMENT, or the AGREEMENT stipulates that without the invalid provisions the AGREEMENT would not have been concluded. In such a case the PARTIES undertake to replace such a provision with another important and effective provision, which in terms of the economic and financial impact and the intentions of the PARTIES would be as close as possible to the affected, invalid provision.
2. All changes to this Agreement must be in writing in order to be valid.

**§ 16 ATTACHMENTS**

The following annexes form an integral part of the GTC:

Annexe 1 - Bank Advance Payment Guarantee Template