

## **GENERAL CONTRACTING TERMS AND CONDITIONS** **edition 08/2022**

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### **§ 1 [General Provisions]**

1. These General Contracting Terms and Conditions shall be an integral part of the Purchase Order
2. Any additional or different provisions to the General Contracting Terms and Conditions must be confirmed in writing by the Parties.
3. Whenever the General Contracting Terms and Conditions refer to the following:
  - 3.1. GCTC - shall mean these General Contracting Terms and Conditions;
  - 3.2. The Employer - it shall mean Zakłady Remontowe Energetyki Katowice SA (*Katowice Power Sector Repair Works S.A.*);
  - 3.3. Contractor - it shall be understood as the contractor indicated in the Purchase Order;
  - 3.4. Purchase Order - it shall be understood as an contract awarded by the Employer in writing to the Contractor, under which the subject matter includes works and/or supplies specified therein.
  - 3.5. Subcontractor - means an entity to which the Contractor entrusts the performance of a part of the subject matter of the Purchase Order. Whenever Subcontractor is referred to in these GCTCs, it shall also be understood as a subsubcontractor;
  - 3.6. Investor - shall be understood as any entity with which the Employer has a master contract under which it subcontracts the Purchase Order;
  - 3.7. Documentation - shall mean, in particular, all complete technical documentation related to the subject matter of the Purchase Order, approvals, certificates, documents confirming successful completion of tests and receipt of required approvals, declarations of conformity, instructions for operation or use, warranty cards, quality certificates, declarations of conformity, inspection certificates and Operation and Maintenance Manual (OMM);
  - 3.8. Additional Works - it shall be understood as works, services or supplies that are not included in the scope of the Purchase Order, and the performance of which the Contractor could not have foreseen earlier even when acting with special diligence, but which are necessary for the execution of the Purchase Order.

### **§ 2 [Terms and Conditions of Purchase Order execution]**

1. The Contractor shall perform the Purchase Order in person and may use Subcontractors only with prior written consent of the Employer. The Employer's consent to the use of Subcontractors shall in no way represent grounds for waiving the Contractor's responsibility vis-à-vis the Employer for the proper execution of the Purchase Order.
2. The Contractor shall provide along with the delivery and/or after the performance of the service all documents required by the Purchase Order (material certificates, declarations of conformity, technical documentation, acceptance reports, delivery reports, etc.), In the absence of the required documents, acceptance of the goods/services will be withheld until they are provided or the delivery will be sent back at the expense and risk of the Contractor.
3. The Contractor shall be fully responsible for the acts and omissions of Subcontractors and third parties used in the Purchase Order execution.

4. Unless the content of the Purchase Order indicates otherwise, the Contractor shall implement the subject matter of the Purchase Order using its own materials, tools and equipment.
5. If the content of the Purchase Order does not include further requirements, the subject matter of the Purchase Order must comply with the technical conditions of execution and acceptance and be in accordance with applicable laws, Polish and European Standards.
6. Without prejudice to other Employer's rights, it may return defective goods to the Contractor at its expense and risk, and the Contractor shall be obliged to refund any amounts received therefrom immediately, but not later than within 7 days from the date of receipt of the Employer's call.
7. Unless it was stipulated in the Purchase Order otherwise, the date of execution of the Purchase Order shall be the date of certificate acceptance of the complete subject matter of the Purchase Order or acceptance of the last element covered by the Purchase Order together with the necessary Documentation.
8. The Contractor shall provide the Employer all Documentation in Polish or along with a translation into Polish in the case of foreign language documentation.
9. The Employer shall be obliged to perform partial acceptances and their settlement only if the Purchase Order stipulates so. However, this does not apply to work that is being covered up, the acceptance of which each time requires notification of the Employer at least 14 days in advance and acceptance by virtue of certificate. Unless otherwise stipulated in the Purchase Order, the acceptance of works subject to cover-up shall not entitle to their settlement before the completion of the entire subject matter of the Purchase Order. If the work is covered up without notification to the Employer, the Employer shall be entitled to order the Contractor to uncover the work at the Contractor's expense and risk. The Contractor shall bear the costs of repeated tests, inspections and tests in full.
10. Bearing in mind the due performance of the Purchase Order, including in particular the quality of the work performed, work safety and environmental protection, the Employer as well as the Employer's End Customer shall be entitled to inspect the due performance of the subject matter of the Purchase Order and/or conduct an audit at any stage of its execution and to indicate to the Contractor the correct manner of performance of the subject matter of the Purchase Order. In relations to that the Contractor shall guarantee the Employer, its Customers and other interested parties access to the facilities used in the execution of the order and to the applicable documented information related to the execution of the subject of the order necessary to verify the quality and progress of the commissioned works.
11. Until such time as the Employer signs a final acceptance certificate (without any defects) of the subject matter of the Purchase Order, confirming the completion of all work, deliveries covered by the Purchase Order and the handing over of all Documentation, the Contractor shall be fully responsible for the proper protection against theft, destruction, damage, loss of all or part of the subject matter of the Purchase Order and all materials and tools delivered and handed over to the Contractor for the execution of the subject matter of the Purchase Order.
12. The Contractor shall promptly notify the Employer in writing of all circumstances that may affect the proper performance of the Purchase Order, which shall not relieve the Contractor from liability for non-performance or improper performance of the Purchase Order.
13. If the Contractor performs the Purchase Order on the premises of the Employer or a third party, in particular the Employer's Client and/or the Investor, the Contractor shall be obliged to comply with all regulations in force there, in particular with regard to the rules of occupational health and safety, fire and safety. and environmental protection. Unless otherwise stipulated in the Purchase Order, the Contractor shall bear the costs of obtaining access to such site and use of its infrastructure, in particular the costs of obtaining passes, use of locker rooms, bathrooms and welfare facilities. At the same time, the Employer declares that it has familiarized itself with the conditions of such a site, including the fact that it will carry out the work under the presence of other entities at that time, and has taken this into account in its price.



14. The Contractor shall, within the scope of the remuneration, perform all activities necessary for the proper execution of the subject matter of the Purchase Order, even if they are not expressly indicated in the body of the Purchase Order. In the event that Additional Work is necessary, the Contractor shall notify the Employer in writing, together with a detailed scope and cost estimate of such work. The Employer shall order such work in writing, but the Employer shall not be obligated to order the Contractor to perform such work. In the event that the Contractor performs Additional Work without a written order from the Employer, it shall do so at its own expense and risk and shall not be entitled to demand additional compensation or an extension of the completion date. In the event that a dispute arises between the Parties as to the qualification of the work in question as Additional Work, the Contractor may not withhold such work until the dispute is resolved, without the written consent of the Employer.
15. If the Contractor violates the provisions of the Purchase Order, the provisions of law or violates the rules of occupational health and safety (OH&S), fire safety or environmental protection, the Employer shall be entitled to perform substitute performance of part or total Purchase Order at the expense and risk of the Contractor without the need to obtain court approval. The Employer may exercise its right to substitute performance after first calling on the Contractor in writing to properly perform the Purchase Order and setting an additional deadline of not less than 7 days. If the Employer exercises its right of substitute performance, it shall not forfeit its right to claim damages for non-performance or improper performance of the Purchase Order, accrue contractual penalties and withdraw from the Purchase Order.
16. The Contractor shall be liable on a strict liability basis for damages caused by non-performance or improper performance of the Purchase Order that it causes to the Employer, including damages, contractual penalties and claims of third parties, reported to the Employer to this extent.
17. The Contractor acknowledges that the Employer has implemented the Code of Ethics, the Sustainable Procurement Policy, the Vendor Code of Conduct. The Contractor has familiarized itself with their contents and undertakes to comply with the principles contained therein. Any observed violation of these principles shall constitute reasonable grounds for withdrawal from the Purchase Order due to the fault of the Contractor.
18. The Contractor shall comply during the execution of the Purchase Order with the restrictions and prohibitions arising from sanctions imposed on persons and entities under national laws as well as European Union regulations. The Contractor declares that, as of the date of signing of the Purchase Order, its signing and execution will not constitute a violation of the above-mentioned regulations. The Contractor undertakes to inform the Employer in writing of any changes in this regard

### § 3 [Terms of Payment]

1. The Contractor shall be entitled to issue partial invoices only if expressly indicated in the body of the Purchase Order. Otherwise, the Remuneration shall be payable on the basis of a final invoice issued upon completion of the entire subject matter of the Purchase Order.
2. The Employer requires invoices in paper form. The Employer allows invoices in electronic form only if the Parties conclude a separate agreement. The invoice must contain the number of the order on the basis of which it was issued.
3. The basis for the issuance of an invoice shall be:
  - the certificate of the final acceptance (without any defects) signed by both parties,
  - other documents required by the Purchase Order,
  - in the case of an invoice for services, a document confirming acceptance of the certificate of acceptance of works signed by the Employer, drawn up on the Employer's template.
4. The Contractor shall deliver the invoice with all attachments referred to in paragraph 3 at the address of the Employer's registered office (at 13 Jankego Street, 40-615 Katowice).
5. The Employer may send the invoice back to the Contractor:



- containing errors,
- delivered to an incorrect address,
- delivered without all required attachments,
- not containing all formal requirements (including the Purchase Order number)

and the Contractor shall not be entitled to any claims against the Employer on this account.

6. Payment shall be made to the bank account indicated on the invoice within 60 days from the date of receipt of a properly issued invoice, to the registered office of the Employer, unless a different date is indicated in the Purchase Order. The date of payment shall be the date on which the Employer's bank account is debited. Payment shall be made only to the bank account included on the list of entities registered as VAT taxpayers maintained by the Head of the National Tax Administration (the so-called white list of VAT taxpayers). In the event that the account indicated by the Contractor on the invoice is not included on the list, the Purchaser shall be entitled to withhold payment until the Contractor sends a corrective invoice with regard to the correct bank account. The payment period shall run anew from the date of delivery of the corrective invoice.
7. If the Purchase Order provides for prepayment (advance payment) to the Contractor, it shall be made upon delivery to the Employer of the original unconditional, payable on first demand, irrevocable bank or insurance guarantee, the content of which has been approved in advance by the Employer, securing the reimbursement of the prepayment. The bank or insurance company issuing the guarantee must have its registered office or branch office in Poland. The Contractor shall issue an invoice to the Employer for the prepayment amount with a date consistent with the date of receipt of the prepayment crediting its account.
8. If the Contractor has not fulfilled its obligation to submit a performance bond, the Employer shall be entitled to set it off unilaterally from any payment due to the Contractor until the entire amount equivalent to the amount of the required bond has been satisfied under the terms of § 6 below
9. In the event that the Employer exercises its rights of substitute performance or rights to accrue contractual penalties, the Employer, at its discretion, may by unilateral statement (1) reduce the Contractor's contractual fee by amounts equivalent to the costs of substitute performance and/or accrued contractual penalties, or (2) set off such amounts against any receivables of the Contractor, to which the Contractor agrees.
10. The Employer reserves the right to withhold all or part of any payment to the Contractor that, in at the Employer's discretion, is necessary to protect the Contractor from loss due to any claims arising from the Contractor's fault or the Contractor's failure to make due payments to its subcontractors or employees and other costs (e.g., unpaid taxes, social security contributions, etc.).
11. If claims are made against the Employer for payment of remuneration due to Subcontractors, justified and documented by work acceptance protocols, the Employer shall be entitled to make such payments directly to the Subcontractors, up to the amount of the Contractor's remuneration at the Contractor's risk, without the Contractor's right to recover such amounts from the Employer, to which the Contractor irrevocably agrees. The Employer shall have the right to reduce the Contractor's remuneration by the amounts paid to Subcontractors in this manner, to which the Contractor irrevocably agrees.
12. The Contractor shall not assign any claims under the Purchase Order without the prior written consent of the Employer under pain of nullity. The Contractor irrevocably agrees that the Bank financing the Employer's activities may step in the place of a creditor pursuant to Article 518 § 1 item 3 of the Civil Code, with the Employer being solely entitled to select the claims for which the Bank will step in the place of a creditor under this procedure.
13. In the event that the Contractor has issued an invoice in a manner that does not comply with the formal rules set forth in the Value Added Tax Act and the secondary legislation issued on its basis, if due to this reason the Employer suffers the consequences of limiting the right to set off VAT amount against the disputed invoice, the Contractor shall be obliged to pay compensation in the amount compensating for the above damages excluding foregone profits.



14. The conditions resulting in a reduction of the tax base within the meaning of the Law on Value Added Tax for goods supplied or services rendered shall be deemed to have been agreed upon by the Parties no earlier than at the time of issuance of a corrective invoice by the supplier of goods or services.
15. The Employer shall pay the remuneration under the Purchase Order following the split payment mechanism referred to in Chapter 1a of Section XI of the Law of 11 March 2004 on Value Added Tax (i.e. Journal of Laws of 2021, item 685, as amended).
16. The Contractor declares that it is the actual owner of the remuneration earned under the Purchase Order within the meaning of Article 4a item 29 of the Corporate Income Tax Act of 15 February 1992 (i.e. Journal of Laws of 2021, item 1800, as amended). The Contractor shall be obliged to advise the Employer of any change in the status of the beneficial owner and, in particular, to advise that the beneficial owner under consideration is an entity that has its domicile, registered office or management in a territory or country applying harmful tax competition.

### § 4 [Warranty and implied warranty]

1. Unless a different term is stipulated in the body of the Purchase Order, the Contractor shall provide a quality warranty on the subject matter of the Purchase Order for a period of 36 months, starting from the date of signing by the Employer of a certificate of final acceptance (without any defects).
2. If the Contractor has been advised that the Employer transfers the subject matter of the Purchase Order, as part of the subject of its Agreement, to a third party, in particular the Employer's and/or Investor's Customer, the warranty period of the subject matter of the Purchase Order shall commence from the moment when the warranty period of the subject matter of the Purchase Order is a part of, runs.
3. During the warranty period, the Contractor shall rectify, at its own expense and risk, any physical defects in the subject matter of the Purchase Order or its parts by repairing or delivering a defect-free item upon the Employer's discretion within the timeframe indicated by the Employer.
4. Upon removal of a defect, the warranty period shall start anew with respect to the repaired or replaced part of the subject matter of the Purchase Order. If the Contractor has removed a material defect, the warranty period shall start running anew with respect to the entire subject matter of the Purchase Order.
5. The warranty provisions shall not exclude the Employer's rights under the warranty, which the Employer may exercise independently of the rights under the warranty provided by the Contractor.
6. In the event that the Contractor fails to perform its obligations under the warranty or implied warranty within the timeframe set forth by the Employer, the Employer shall be entitled to have the defect removed at the expense and risk of the Contractor without court approval. Independently of the right referred to in the first sentence, the Contractor shall be liable to the Employer for payment of contractual penalties for delay in removal of defects and for repairing the damage that the Employer has suffered due to delay in removal of defects, in particular in the form of contractual penalties it has paid to third parties.

### § 5 [Contractual penalties]

1. The Contractor shall pay the Employer a contractual penalty for each day of delay in the execution of the subject matter of the Purchase Order or in the removal of defects in the amount of 0.5% of the total gross remuneration specified in the Purchase Order.
2. In the event of withdrawal from the Purchase Order for reasons attributable to the Contractor, the Employer shall be entitled to claim from the Contractor a contractual penalty in the amount of 15% of the total gross remuneration specified in the Purchase Order.

The total value of contractual penalties that the Employer is entitled to charge accounts for 35% of the total gross remuneration specified in the Purchase Order.

3. The contractual penalties shall be payable on the basis of a debit note issued by the Employer, payable within 7 days from the date of delivery of the debit note to the Contractor's registered office. In the case of return of correspondence with the note, it is understood that the deadline for payment shall run from the date of delivery of the returned correspondence to the Employer.
4. The Employer shall be entitled to claim additional compensation in excess of the value of the contractual penalties following general principles.

### § 6 [Purchase Order performance bond]

1. If under the Purchase Order the Contractor is required to provide a performance bond, the Contractor shall provide the Employer with a performance bond accounting for 10% of the total gross Purchase Order value in cash or in the form of a bank or insurance guarantee. In such case, the lodging, maintenance and return of the security shall be in accordance with the terms of this paragraph.
2. The Contractor shall deposit the security within 14 days from the date of signing of the Purchase Order.
3. The security in non-cash form shall be submitted by the Contractor in the form of an unconditional, payable on first demand, irrevocable bank or insurance guarantee, the content of which has been approved in advance by the Employer. The bank or insurance company issuing the guarantee must have its registered office or branch in Poland.
4. The performance bond shall serve to cover the Employer's claims for non-performance or improper performance of the Purchase Order, including in particular the Employer's claims under the guarantee, warranty, payment of contractual penalties and costs related to substitute performance.
5. The Contractor shall maintain 100 % of the value of the security until 30 days after the date of the Employer's certificate of final acceptance (without any defects) of the entire subject matter of the Purchase Order. The remaining 30% of the value of the security shall be maintained until 30 days after the expiration of the warranty period. The security shall be returned upon written request of the Contractor delivered to the address of the Employer's registered office.
6. The Contractor shall keep the security for the entire effective term of the Purchase Order.
7. In the event of an increase in the value of the Purchase Order, the Contractor shall increase the amount of the security accordingly within 14 days from the date of execution of an addendum to the Purchase Order.
8. In case of extension of the term of the Purchase Order, the Contractor shall be obliged to extend the security accordingly not later than 30 days before the expiry of the effective term of the existing security.
9. The Employer shall allow the security to be provided in one or more documents.
10. If the Contractor has failed to lodge the security within the required timeframe and amount, the Employer shall be entitled to set off the appropriate amount against the first VAT invoice issued by the Contractor. In the event that the amount of the first VAT invoice issued is less than the required security, the remaining part of the security shall be set off by the Employer against subsequent VAT invoices issued by the Contractor, but in such a manner that the security in the full amount is set off as soon as possible.
11. Upon the Contractor's request, it is possible to change the security from the amount set off pursuant to Section 10 to a bank or insurance guarantee. The content of the guarantee requires the prior approval of the Employer. The amount deducted will be returned by the Employer to the Contractor within 7 days counting from the date of receipt of the original guarantee.

## **§ 7 [Insurance]**

Throughout the effective term of the Purchase Order, the Contractor shall keep a valid insurance policy, covering the Employer and the Employer's and/or Investor's Customer, if any, as co-insured parties, a copy of which the Contractor has submitted to the Employer for approval prior to the Purchase Order acceptance.

## **§ 8 [Suspension of the Purchase Order performance]**

1. The Employer shall be entitled to suspend the Purchase Order execution for such period as it deems necessary.
2. During the period of suspension, the Contractor shall safeguard and take custody of all works, supplies and entrusted materials, equipment and tools regardless of where these are located.
3. In the event of suspension, the completion dates and the material and financial schedule, if any, shall be extended accordingly for a period equal to the period of suspension.

## **§ 9 [Withdrawal]**

1. The Employer shall be entitled to withdraw from all or part of the Purchase Order in the event that:
  - 1.1. The Contractor has failed to commence or has ceased execution of the Purchase Order for a period longer than 7 days;
  - 1.2. The Contractor has delayed the execution of Purchase Order or a part thereof by more than 14 days, or it is evident from the circumstances that the Contractor will not be able to complete the subject matter of the Purchase Order on time;
  - 1.3. The Contractor has failed to submit a performance bond for the execution or renewal of Purchase Order, or has failed to renew the insurance policy it was required to maintain;
  - 1.4. The Contractor performs the subject matter of the Purchase Order in a defective manner, despite the Employer's request handed over to the Contractor to perform it correctly;
  - 1.5. The Contractor has violated the applicable rules or regulations of Occupational Health and Safety and/or Fire Safety, or in executing the Purchase Order has violated the intellectual property rights of third parties, or has violated the rules adopted by the Employer in the Code of Ethics, Sustainable Procurement Policy or Supplier Code of Conduct;
  - 1.6. The Investor has withdrawn from the execution of the Purchase Order with the Employer
2. The Employer shall be entitled to withdraw from the Purchase Order within 120 days of becoming aware of the occurrence of the reason for withdrawal.
3. The foregoing shall not preclude the Employer's right to withdraw from the Purchase Order under the terms of the law in whole or in part.

## **§ 10 [Intellectual Property Rights]**

1. The Contractor shall ensure that the Purchase Order completion does not infringe any rights vested in the Contractor or third parties, in particular, it shall not infringe any rights representing works within the meaning of copyright and related rights, rights representing inventive designs within the meaning of industrial property rights, as well as trademarks, service marks, know-how and other intangible assets protected by relevant laws.
2. As part of the remuneration, the Contractor shall transfer to the Employer all economic copyrights to the works created in connection with the Purchase Order execution unlimited in time and territory, in the following fields of exploitation:
  - 2.1. recording, fixation and reproduction of works by any technique, including printing, photocopying, photography with all reprographic techniques, magnetic recording, digital technique, scanning;

- 2.2. introduction into the memory of computers, transmission using the internal network and the Internet;
  - 2.3. introduction into circulation of the original or further copies, their sale, lease and making available;
  - 2.4. public exhibition, performance, display, reproduction, as well as broadcasting and re-broadcasting of the work or parts thereof, in a manner allowing anyone to access it at any place and time
3. The Contractor grants permission to the Employer to exercise derivative rights with respect to the works created in connection with the Purchase Order execution and transfers to the Employer the ownership of the data carriers on which the works were recorded.
4. The Parties agree that in the event that a reasonable suspicion arises that the exercise of copyright, industrial property rights, or intellectual property rights may infringe the rights of third parties, the Contractor shall, at its own expense, provide the Employer with an opportunity to exercise such rights.

### **§ 11 [Anti-corruption Clause]**

The Contractor declares that he has not offered or given any financial or personal benefit in order to influence the Employer's decision on the selection of his bid. He has not influenced the Employer's selection in a manner contrary to law or good practice, and has not been involved in any agreements or arrangements with other third parties to influence the Employer's selection. The Contractor declares that no part of the remuneration for the execution of the Purchase Order will be used to cover the costs of granting the aforementioned financial and/or personal benefits by any Party.

### **§ 12 [Final Provisions]**

1. Any amendments to this Purchase Order shall be in writing otherwise being null and void.
2. The Purchase Order shall be governed by Polish law. The provisions of the United Nations Convention on Contracts for the International Sale of Goods drawn up in Vienna on 11 April 1980 shall be excluded.
3. Any disputes arising under or in connection with this Purchase Order shall be submitted by the Parties for settlement by a common court having jurisdiction over the registered office of the Employer.
4. Personal data obtained by either Party in connection with the performance of the Order shall be processed in accordance with the provisions of law in force to this extent.
5. Each Party agrees that it shall not:
  - 5.1. Process personal data for purposes other than those related to the Purchase Order execution;
  - 5.2. Share with any third parties any personal data received from the other Party or collected on behalf of the other Party;
  - 5.3. Process personal data in IT systems that do not ensure an adequate level of protection of such data;
  - 5.4. Create a personal dataset on the grounds of personal data received.
6. The Contractor shall be obliged to keep confidential all information, data and documents, regardless of the form of their transmission and the data carrier on which they were recorded, which were disclosed to it by the Employer in connection with the Purchase Order execution. The Contractor may disclose the information obtained from the Employer and the documentation received to its Subcontractors only to the extent that it is necessary for the execution of the Purchase Order and with the obligation to enter into non-disclosure agreement with them. In case of violation of the above provisions, the Employer may seek damages from the Contractor. The



obligation of confidentiality shall continue despite the termination or expiration of the contract, regardless of the underlying reason.

7. The Employer declares that it is a large enterprise within the meaning of Annex I to Commission Regulation (EU) No. 651/2014 of 17 June 2014.
8. Whenever this document refers to the signing of the Purchase Order, it shall also be understood as the Contractor proceeding to execute the Purchase Order without signing it, provided that the Employer's signed Purchase Order and GCTC have been previously delivered to the Contractor.