

**ARTICLE 1 SCOPE OF APPLICATION OF GPTC - ORDER**

1. These *General Purchase Terms and Conditions (GPTC)* constitute an agreement template. They set forth the principles for fulfilling the Orders (hereinafter referred to as the "ORDERS") placed with an entity hereinafter referred to as the "SELLER" (seller, supplier of goods, or service provider) upon which they were served till the moment of conclusion of a sale, supply or service providing agreement by Veolia Water Technologies Spółka z o.o., hereinafter referred to as the "BUYER".
2. The GPTC constitute an integral part of the ORDER; in case of doubts it is deemed that the SELLER acknowledged the GPTC without reservations. The acceptance of the ORDER means that the SELLER waives his own general terms and conditions of sale, supply or service providing, even though they may be included or referred to in the confirmation of receipt, or in any other document.

**ARTICLE 2 ORDER ACCEPTANCE - AGREEMENT CONCLUSION**

1. The conclusion of an agreement within the scope of the ORDER takes place upon:-
  - a) The acceptance of the ORDER by the BUYER and the SELLER, effected by their signing of the ORDER, or
  - b) The unconditional acceptance by the SELLER of the ORDER placed by the BUYER.
2. The express acceptance of the ORDER takes place in the event of the SELLER's confirmation of the ORDER without reservations within three (3) calendar days after the placement of the ORDER; if the SELLER does not express reservations within this period, the ORDER shall be implicitly regarded as fully accepted.
3. By accepting the ORDER the SELLER declares that he possesses the necessary competences and is capable of performing the subject of the ORDER in accordance with the contents of the ORDER, and of allocating all the necessary means for that purpose.
4. If the SELLER expresses reservations, or includes reservations in the forwarded confirmation of ORDER acceptance, the BUYER has the right to cancel the ORDER without any compensation obligation towards the SELLER.

**ARTICLE 3 OBJECT OF ORDER - CHANGE OF ORDER**

1. The OBJECT OF THE ORDER (in particular the object of the sale agreement, scope of deliveries and/or services) (hereinafter the "OBJECT OF THE ORDER") as defined in these GPTC shall each time be indicated in the main part of the ORDER, and in the documents appended thereto.
2. In the event of any discrepancies between the contents of the main ORDER and these GPTC, the provisions of the main ORDER document shall prevail.
3. The BUYER may introduce changes to the scope of the ORDER by notifying the SELLER to this effect. If

within 3 days the SELLER does not refuse to accept the change to the scope of the ORDER introduced by the BUYER, the change shall be deemed accepted by the SELLER. Should there be no agreement as to the impact of the change on the price, schedule and/or guarantees, the impact in question shall be the subject of a separate agreement concluded between the BUYER and the SELLER; the SELLER may not introduce any changes to the scope of the ORDER without obtaining the BUYER'S prior consent, which under pain of nullity has to be issued in writing.

4. The amendments to the ORDER demanded by the BUYER from the SELLER, and intended for adjustment of the selection of particular elements of the OBJECT OF THE ORDER to the BUYER'S requirements shall in no case be considered as changes to the ORDER.

**ARTICLE 4 ORDER PERFORMANCE CONDITIONS**

1. In all cases, and until the date of the ORDER performance, the SELLER has unlimited liability for the due performance of the OBJECT OF THE ORDER in accordance with the terms and condition of the ORDER, the regulations in force, standards, norms, and the current state of knowledge in a given field.
2. The SELLER may deliver the OBJECT OF THE ORDER or respected parts thereof in advance of the delivery dates specified in the ORDER only with the prior written approval of the BUYER, if the ORDER unless the order provides otherwise.
3. The BUYER may postpone the start of the fabrication of any equipment under the ORDER or the shipment thereof by no longer than 90 (ninety) days prior receiving the written release from the BUYER. In such cases, the SELLER shall store the OBJECT OF THE ORDER and shall be responsible for the conditions of storage so that the OBJECT OF THE ORDER or any part thereof remains conveniently protected and packaged.
4. In the event referred to in the section 3 hereinabove, any storage and insurance costs during the first sixty (60) days of postponement period shall be borne by the SELLER. After lapse of that period, the warehousing terms shall be agreed between the SELLER and the BUYER, with the reservation that the risks inherent to the warehousing shall remain with the SELLER.
5. Notwithstanding the provision of the section 3 hereinabove, the SELLER shall not deliver/ship any good, prior receiving the written release from the BUYER. In case the SELLER delivers without release, the SELLER shall face all risks and bear all expenses that may arise, including the possible return of the OBJECT OF THE ORDER or parts thereof. The issuance of the release for transport is subject to the receipt by the BUYER of an inspection certificate issued by the BUYER'S representative certifying the full compliance in quality and quantity of the shipped

goods with the requirements defined herein and in the ORDER.

6. The SELLER shall immediately inform the BUYER about all and any circumstances or events which may affect the ORDER performance (including, in particular, the delays, supply difficulties, employees' disputes, and any other circumstances which may affect the SELLER or his capacity to perform the ORDER). He shall also inform the BUYER about all and any implemented remedies, and shall propose the manner of solving the problem, taking into account any measures proposed by the BUYER. Providing this information does not release the SELLER from the obligation to perform the OBJECT OF THE ORDER in accordance with the ORDER. This also does not mean that the BUYER acknowledges the consequences of such events. The suggestions, information, comments and/or consents provided by the BUYER in the course of the ORDER performance, as well as their lack, do not release the SELLER from any liability.
7. If for any reason which does not entitle the SELLER to an extension of time under the ORDER the rate of progress of any part of the ORDER performance is at any time in the reasonable opinion of the BUYER too slow to ensure that the OBJECT OF THE ORDER will be completed on or before the dates given in the ORDER, or in the schedule appended to the ORDER (hereinafter: the "SCHEDULE"), the BUYER may so notify the SELLER in writing. The SELLER shall then respond within five (5) days with its plan to achieve the affected milestones, in a timeline that will permit the OBJECT OF THE ORDER to be completed by no later than the applicable dates given in the SCHEDULE (which plan shall include to the extent necessary, re-planning task sequences, increasing labour or other resources of the SELLER or of any Sub-Seller, the addition of Sub-Sellers or other acceleration of the progress of the ORDER performance).
8. The SELLER shall not be entitled to any additional payment for taking steps referred to in the section 7 hereinabove.
9. If the SELLER's plan referred to in the section 7 hereinabove causes the BUYER to incur additional costs, the SELLER shall pay these costs to the BUYER, in addition to penalties (if any) under the Article 9 herein and/or under the ORDER.
10. Pursuant to the authorization provided for in Article 3 section 1 point 32 of the Waste Act, the SELLER is the producer of the waste generated in connection with the performance of the OBJECT OF THE ORDER by the SELLER, as defined in the provision mentioned hereinabove. In connection with the foregoing the SELLER shall release the BUYER from the performance of all obligations of a producer of waste under the said Act.

#### **ARTICLE 5 DESIGN; MATERIALS**

1. The OBJECT OF THE ORDER shall be performed according to the SELLER's design drafted on the basis of the specifications and/or the BUYER's Drawings. Therefore the SELLER assumes full responsibility for meeting the requirements (concerning the quality, actions etc.) indicated in the ORDER. In the event of submission of the design of the OBJECT OF THE ORDER by the BUYER, the SELLER shall be responsible for its verification, and, if necessary, for supplementing it.
2. If the BUYER indicates the selection of materials in the ORDER, the SELLER's obligations include the assessment of adequacy of the above-mentioned choice as compared to the current state of knowledge in a given field, as well as informing the BUYER about the results of the said assessment.
3. If the selection of materials is not indicated by the BUYER, the SELLER, in accordance with the current state of knowledge, shall select the above-mentioned materials and assume the liability for meeting the requirements (concerning quality, actions, resistance to corrosion etc.) indicated in the ORDER.

#### **ARTICLE 6 COMPATIBILITY WITH THE ORDER. TESTING AND INSPECTION**

1. Notwithstanding the provisions of Article 5 herein the OBJECT OF THE ORDER has to correspond strictly to the drawings, specifications, instrumentation, and the type and model indicated in the ORDER and/or provided by the BUYER; any, even the slightest, technical changes have to be expressly approved by the BUYER. This does not release the SELLER from the obligation to perform the OBJECT OF THE ORDER in accordance with the standard procedures, which does in no respect exclude the compatibility with the specifications and the descriptions contained in the ORDER.
2. The SELLER shall file a Certificate of Conformity with a company indicated by the BUYER at least 48 hours prior to making the OBJECT OF THE ORDER available, or prior to forwarding it, if the Polish or EU regulations so require in respect of a given OBJECT OF THE ORDER.
3. The BUYER shall be entitled to inspect and test the OBJECT OF THE ORDER (either by itself or by others on its behalf) at any time during working hours at any location where the OBJECT OF THE ORDER may from time to time be situated, including the SELLER's factory and that of any Sub-SELLER.
4. The SELLER shall in addition conduct, at its responsibility and expense, all tests and inspections as required by the Technical Specification or by applicable laws, norms or technical standards.
5. The SELLER at its own account, shall promptly rectify any defects in the OBJECT OF THE ORDER discovered during testing and/or inspection and comply with all

requests of BUYER (or BUYER's representatives) in relation thereto.

6. Testing and/or inspection by or on behalf of BUYER shall not relieve the SELLER of any of its responsibilities or liabilities under the ORDER, nor constitute the BUYER's acceptance of the OBJECT OF THE ORDER.
7. Notwithstanding the provision of the section 3 hereinabove, the SELLER shall notify the BUYER in advance of the date and place of any tests and inspections to be performed on the OBJECT OF THE ORDER or any part thereof. The date and place of the test or inspection shall be confirmed in writing (including documentary form) at least five (5) calendar days in advance by the SELLER. If for reasons not attributable to the BUYER, the OBJECT OF THE ORDER, or any part thereof as may be notified, is not ready for such tests and inspections on the date specified, or if the documentation required for such test and inspection is not available, the BUYER shall be entitled to charge to the SELLER all costs incurred by the BUYER and/or the BUYER's client (hereinafter referred to as the "Client") in connection with the above deficiencies. Records and/or certificates of each test and/or inspection shall be submitted by the SELLER to the BUYER regardless of whether the BUYER, the Client or their designated inspection party attend or do not attend such test and/or inspection.
8. Unless otherwise directed by the BUYER in writing, the SELLER shall not delay the fabrication or manufacturing of the OBJECT OF THE ORDER due to test or inspection.
9. No express or implied acceptance of the OBJECT OF THE ORDER by the BUYER, or the putting to use of the OBJECT OF THE ORDER or re-sale of the OBJECT OF THE ORDER by the BUYER to the Client or any third party shall restrict the SELLER's obligations or prejudice the BUYER's remedies hereunder.

#### **ARTICLE 7 COMPLIANCE WITH REGULATIONS**

The deliveries of the OBJECT OF THE ORDER have to take place in compliance with the legal regulations and with the standards in force in the country to which they are to be made, of which the SELLER is aware while accepting the ORDER. In particular, the machinery intended for European Union countries has to conform to the provisions of the directives of the European Communities and/or European Union concerning machinery. All documents and certificates shall be forwarded to the company indicated by the BUYER.

#### **ARTICLE 8 PAYMENT**

1. Unless otherwise stipulated in the Order, payment of the remuneration due to the SELLER (hereinafter referred to as the "Price") shall be subject to the following conditions:
  - a) eighty percent (80%) of the Price shall be paid to SELLER, at the successful completion of the

delivery of the OBJECT OF THE ORDER, confirmed by signing the delivery acceptance protocol by the Parties, subject to the receipt by the BUYER of:

- (i) The Performance Guarantee as defined herein or in the ORDER, for an amount of ten percent (10%) of the PRICE;
  - (ii) one copy of the certificate of inspection stamped and signed by the BUYER's representative without any reservation, prior transport, certifying the full compliance of the goods in quality and quantity with the requirements defined herein and in the ORDER;
  - (iii) one copy of the release for transport issued by the BUYER's representative,
  - (iv) the Inspection and Test Plans, signed by the SELLER, with tests results and material certificates showing the compliance of the OBJECT OF THE ORDER with the requirements of the ORDER,
  - (v) a copy of the custom release for export, if applicable, and
  - (vi) one proof of approval by the BUYER of the final issues of the following documents:
    - the shipping documents,
    - the handling, transport, storage, erection, tests, start-up, commissioning procedures,
    - the issues of the final approved O&M MANUALS, and
    - the technical documentation along with the as-built documents, if applicable
- b) Ten percent (10%) of the Price, minus any deduction for penalties or any other amount contractually owed by the SELLER to the BUYER, will be paid to the SELLER, at the start of the warranty period, as defined herein or in the ORDER, without any punch-list items or once all punch-list items have been cleared, subject to the receipt by the BUYER of:
    - (i) a waiver of liens and claims signed by the SELLER in favour of the BUYER;
    - (ii) one proof of approval by the BUYER of the final correct issues of the construction files and of the as-built documents - if any modification of the OBJECT OF THE ORDER has occurred after delivery.
  - c) Ten percent (10%) of the Price, minus any agreed deduction for penalties or any other amount contractually owed by the SELLER to the BUYER, will be paid to the SELLER, at the completion of the warranty period, as defined herein or in the ORDER, without any punch-list items or once all punch-list items have been cleared.

#### **ARTICLE 9 CONTRACTUAL PENALTIES**

1. In the event of a delay in the performance of the OBJECT OF THE ORDER or of any part thereof (if the

- performance of the OBJECT OF THE ORDER in stages was provided for) in respect of the deadlines indicated in the ORDER, or in the SCHEDULE, the SELLER shall be obliged to pay to the BUYER a contractual penalty in the amount of [0.5%] of the gross value of the ORDER for each day of delay. The date of its acceptance of a given stage or of the whole OBJECT OF THE ORDER by the BUYER shall be considered as the date of its completion.
2. In the event of delays in the course of removal of defects during the guarantee and statutory warranty period in respect to the deadline indicated for their removal, the SELLER shall be obliged to pay to the BUYER a contractual penalty in the amount of [0.5%] of the gross value of the ORDER for each day of delay calculated since the day following the deadline indicated by the BUYER for the final removal of defects.
  3. Should the SELLER fail to submit by the agreed deadline the required documentation, the SELLER shall be obliged to pay a contractual penalty in the amount of [0.5%] % of the gross value of the ORDER for each day of delay.
  4. Should the BUYER exercise the right of withdrawal from the agreement (ORDER), including, in particular, under Art. 13 herein, the SELLER shall be obliged to pay to the BUYER a contractual penalty in the amount of [20%] of the gross value of the ORDER. The above provision does not apply to the situation when the BUYER withdraws from the agreement as a result of the termination or limitation of the material scope of the agreement which is binding upon the BUYER and his customer.
  5. The aggregate liability of the SELLER for contractual penalties under the ORDER shall not exceed an amount equal to 100% of the Price. If the value of the damage suffered by the BUYER exceeds the value of the reserved contractual penalties, the BUYER has the right to seek supplementary compensation from the SELLER, on general principles, as provided for in the legal regulations in force.
  6. The claims for contractual penalties shall first be paid from the remuneration due to the SELLER (the price), and then from the ORDER performance guarantee. The SELLER authorizes the BUYER to deduct the amounts of the due contractual penalties from the remuneration due to the SELLER and from the ORDER performance guarantee.
  7. The contractual penalties shall be calculated without any prior formal notification about non-observance; they shall be automatically deducted from the amounts payable to the SELLER by the BUYER; if the value of such a penalty exceeds the value of the amounts payable, the SELLER shall pay it on first demand of the BUYER.
  8. The SELLER shall not be responsible only for those delays which are attributable to the BUYER's exclusive fault, or which result from a Force Majeure event (provided that the Force Majeure occurrence is reported within the period indicated in Art. 19 of the GPTC).
  9. If delivery of the OBJECT OF THE ORDER is delayed for reasons other than Force Majeure stipulated in Article 17 herein or without prior written consent of the BUYER, in respect of which the BUYER has become entitled to the maximum amount of the contractual penalties referred to in Article 9 section 5 hereinabove, or in the ORDER, or the amount of such contractual penalties calculated by the BUYER has exceeded the amount of the Price net, the BUYER may, without prejudice to his other rights, either refuse to accept the OBJECT OF THE ORDER and withdraw from the ORDER entirely or partly, pursuant to the Article 13 herein, or instruct the SELLER to deliver the OBJECT OF THE ORDER by the most expeditious means of transportation including air-freight without any additional cost to the BUYER.

#### **ARTICLE 10 IMPROPER ORDER PERFORMANCE**

1. It shall be considered that the SELLER has not fulfilled the obligation or performed it improperly in particular when:
  - a) A defect is discovered which may affect the quality or compliance of the OBJECT OF THE ORDER with the ORDER,
  - b) A delay in the ORDER performance takes place, which results in the postponement of the execution of the SCHEDULE, and/or of the trial runs, and/or of the obligations of the SELLER related thereto,
  - c) The whole ORDER or a part thereof is not performed,
  - d) A serious and/or prolonged inability of the SELLER to meet the obligations occurs.
2. If after the receipt of an official notification from the BUYER the SELLER does not remedy the failures, the BUYER may, after the expiry of the period indicated in the notification, without excluding the possibility of withdrawal from the agreement (ORDER), resort to the following:
  - a) Offering technical assistance to the SELLER, without releasing the SELLER from his obligations and liability,
  - b) Performing the whole OBJECT OF THE AGREEMENT or a part thereof at the SELLER's cost and risk, without the expiry of the ORDER. In order to complete the said OBJECT OF THE ORDER the BUYER may use his own resources and/or take advantage of a subcontractor's assistance (substitute performance).
  - c) withdrawal from the agreement (ORDER) in its entirety or partly, pursuant to Article 13 herein.
3. All and any costs incurred by the BUYER as a result of the SELLER's failure shall be charged to the SELLER. They shall be deducted from the amounts payable to the SELLER by the BUYER in respect of that part of the OBJECT OF THE ORDER which has already been performed in compliance with the ORDER.

**ARTICLE 11 INDEMNITY AND LIABILITY**

1. The SELLER shall indemnify and hold the BUYER and/or the Client harmless from and against all claims, losses, damages or expense caused by the OBJECT OF THE ORDER supplied by the SELLER or caused in connection with the work or performance of the ORDER by the SELLER or by any failure of the SELLER to meet its obligations hereunder.
2. The SELLER shall indemnify and hold the BUYER and/or the Client harmless from and against any and all losses, damages or expenses in account of any and all claims, suits or judgements arising out of the use or sale of the OBJECT OF THE ORDER or part thereof supplied by the SELLER in infringement or alleged infringement of rights under any rights of industrial and/or intellectual property including any rights under patents, industrial designs, trademarks, trade names, brands, copyrights or applications therefore.
3. The SELLER shall indemnify and hold harmless the BUYER from any and all claims, suits and demands of any nature whatsoever for injury to any person, including death resulting therefrom, and damage to property caused by or in connection with the performance of the ORDER by the SELLER. The SELLER shall in addition hold the BUYER harmless in respect of any injury sustained by any employee or servant of the SELLER howsoever arising, and all loss or destruction of or damage to all tools, equipment and other property of the SELLER, any Sub-Seller or any of their employees or agents.
4. Provisions of the sections 1-3 hereinabove shall not apply to the injury to any person nor to the damage to property caused by the BUYER due to intentional fault.

**ARTICLE 12 SUSPENSION OF ORDER PERFORMANCE**

The BUYER has the right, at his own discretion, at any time to suspend the performance of the whole OBJECT OF THE ORDER or a part thereof. If this is the case, the SELLER shall temporarily withhold the performance of the whole OBJECT OF THE ORDER or that part thereof to which the suspension applies. In the event of suspension of the ORDER performance which exceeds 90 days, or does not result from Force Majeure, or is attributable to the BUYER's exclusive fault, the BUYER shall compensate to the SELLER the costs indicated by the SELLER and incurred by him directly as a result of the suspension, i.e. the costs of demobilization and remobilization resulting from the suspension, and the justified fees resulting from the suspension, provided that the SELLER is obliged to pay them to his own subcontractors and/or sellers.

**ARTICLE 13 WITHDRAWAL FROM AGREEMENT (ORDER)**

1. The BUYER may entirely or partly withdraw from the agreement (ORDER) with an immediate effect,

without indicating an additional period, if at least one of the following circumstances occurs:

- a) The BUYER's customer terminates the agreement with him or limits its material scope,
  - b) A receiver or an administrator is appointed for the SELLER under a court order, or the assets of the SELLER are subject to judicial or administrative enforcement,
  - c) The SELLER becomes insolvent as defined in the bankruptcy law,
  - d) The SELLER refrains from the ORDER performance, without the BUYER's consent, for at least 14 consecutive days,
  - e) The SELLER performs the OBJECT OF THE ORDER in a manner which does not comply with the ORDER, especially contrary to the provisions of the Technical Specification and to the design documentation, and despite the BUYER's summons does not commence to perform the ORDER in accordance with its provisions,
  - f) It becomes obvious that the ORDER shall not be performed by the agreed deadline;
  - g) either (i) the SELLER fails to deliver a Bank Performance Guarantee to be delivered hereunder or pursuant to the respective provisions of the ORDER, and the SELLER fails to do so within ten (10) days after the BUYER's written notice demanding same, or (ii) such security is terminated, repudiated, or otherwise ceases to be in full force and effect and such termination, repudiation or cessation is not due to the SELLER but the SELLER fails to replace such security within ten (10) days after such termination or/and repudiation, or (iii) circumstances referred to in the point (ii) hereinabove are due to the SELLER;
  - h) The SELLER breaches its obligation under the Article 18 section 1 herein, i.e. assigns or transfers any of its claims, rights or obligations hereunder without prior written consent (unless null and void) of the BUYER.
2. The deadline by which the BUYER may exercise his right to withdraw from the agreement (ORDER) mentioned in section 1 hereinabove shall each time be indicated in the main ORDER document.
  3. In the event of withdrawal from the Agreement (ORDER) for any of the reasons named in points a-h) hereinabove, the SELLER shall not have the right to put forward any claims, except for the payment of the part of the remuneration (price) provided for in the ORDER for the deliveries/services performed by the SELLER before the withdrawal, and accepted by the BUYER and the BUYER's customer.
  4. In the event of withdrawal from the Agreement (ORDER) for any of the reasons named in points a-h) hereinabove, the BUYER may also, at his own discretion, withdraw from only a part of the

Agreement (ORDER), i.e. withdraw from the agreement in respect of selected deliveries/services provided for in the OBJECT OF THE AGREEMENT, and indicated by the BUYER in the withdrawal statement. In the event of a partial withdrawal of the Agreement (ORDER) the Agreement (ORDER) remains in force in respect of the part not withdrawn from by the BUYER.

#### **ARTICLE 14 SPARE PARTS - APPROPRIATE CONSUMABLES**

5. The SELLER shall provide to the BUYER, before the delivery of the OBJECT OF THE ORDER, a detailed list of the materials, along with their prices, necessary spare parts, and the appropriate consumables, and to specify their delivery terms. The failure to fulfil this condition shall be treated as improper ORDER performance.
6. The SELLER undertakes to supply these spare parts and the appropriate consumables according to the relevant schedule, as well as all documentation connected with the start-up and service of the OBJECT OF THE ORDER, or the services, in accordance with the requirements contained in the ORDER.
7. The spare parts shall meet the same technical requirements which apply to the OBJECT OF THE AGREEMENT. The SELLER guarantees the availability of spare parts or parts of equivalent functionality for a period of ten years after the completion of the OBJECT OF THE ORDER.

#### **ARTICLE 15 OWNERSHIP, TITLE AND RISK, USE OF RESOURCES, SUBCONTRACTING**

1. Unless the ORDER provides otherwise, the SELLER shall transfer onto the BUYER the ownership title to the drawings and other documents generated for the purpose of the ORDER performance; and also – when the proper ORDER performance so requires – the SELLER undertakes to transfer onto the BUYER all copyright and other intellectual property rights necessary for the performance of the Agreement (ORDER). This shall be done under a separate agreement indicating the fields of use, and within the remuneration set forth in the ORDER.
2. Title to the Equipment shall pass to the BUYER upon any payment made under the ORDER or on delivery of the OBJECT OF THE ORDER to the place of destination, whichever occurs earlier. Risk of loss or damage to the OBJECT OF THE ORDER shall remain with the SELLER until delivery, or until completion of the hot commissioning of the installation or works, of which a part is the OBJECT OF THE ORDER or if such shall be necessary to confirm proper functioning of the OBJECT OF THE ORDER.
3. If the BUYER supplies materials or parts for incorporation in the OBJECT OF THE ORDER to the SELLER in accordance with the ORDER, the title to

the materials or parts shall remain with the BUYER, but the risk of loss or damage to such materials or parts shall be borne by the SELLER according to the provision of section 2 hereinabove.

4. The SELLER shall perform the whole OBJECT OF THE ORDER on his own, using his own equipment, unless the BUYER issues a written consent to the engagement of further subcontractors by the SELLER, and approves the contents of the agreement concluded with them.
5. If in the course of performance of the Agreement (ORDER) the SELLER infringes upon the rights of any third parties in respect of the copyright and the related rights, or industrial property rights, he shall be fully liable towards these persons for the infringement upon these rights, and he undertakes to pay to the BUYER the amount equivalent to the value of the damage or liabilities arising for the BUYER as a result of this situation.

#### **ARTICLE 16 QUALITY GUARANTEE AND STATUTORY WARRANTY**

1. The SELLER grants to the BUYER a quality guarantee, as defined in the Civil Code, for the OBJECT OF THE ORDER. Thereby the SELLER guarantees that the OBJECT OF THE ORDER shall function in accordance with the description contained in the ORDER.
2. In the event of improper performance of the whole OBJECT OF THE AGREEMENT, or of a part thereof, or in case of any other defects, the SELLER shall immediately make all replacements, repairs, modifications, and amendments necessary to meet the requirements contained in the ORDER. The replacement of a part may consist in supplying a new, complete part of the OBJECT OF THE ORDER in accordance with the ORDER.
3. The manner of removal by the SELLER of the discovered defect shall be defined together with the BUYER. The SELLER shall bear all and any costs related to such activities, including the costs of transport between his workshops and the place of destination of the OBJECT OF THE ORDER, as well as the costs of dismantling and reassembly of the OBJECT OF THE ORDER.
4. Unless the ORDER provides otherwise, the guarantee and the statutory warranty period for the OBJECT OF THE ORDER amounts to thirty-six (36) months after the date of fulfilment of the following conditions:
  - a. The properly functioning OBJECT OF THE ORDER was handed over to the BUYER,
  - b. The SELLER fulfilled his obligations till the moment of handover of the OBJECT OF THE ORDER to the BUYER, in particular with respect to submitting the documents specified in the Article 8 section 1 points a) i b) herein,
  - c. The temporary takeover of the OBJECT OF THE ORDER in accordance with the Agreement was approved by the BUYER's Customer.

5. The SELLER shall grant additional twelve (12) month of the quality guarantee and of the statutory warranty for each repair or replacement of the whole or of a part performed during the guarantee period, beginning from the day of restoration of the working order at a satisfactory level. If a repair or replacement during the guarantee period concerns an element of essential significance, the new guarantee period shall apply to the whole OBJECT OF THE ORDER.
6. The BUYER may pursue any claims in respect of the foregoing guarantees also after the expiry of the guarantee period if he reported the defect before the expiry of that period. The reporting of a defect shall be made by the BUYER in writing, or by email.

#### **ARTICLE 17 INSURANCE - PERFORMANCE GUARANTEE**

1. The SELLER is exclusively liable for any damage which may arise in the course of manufacturing, delivery, and assembly of the delivered OBJECT OF THE ORDER, as well as in the course of performance of the services defined in the ORDER. The SELLER is also liable for the direct, indirect, and consequential damage resulting from delays, hidden defects, breakdowns, non-performance or incomplete performance of deliveries, or errors made in the course of performance of services in accordance with these general terms and conditions, the ORDER, and the relevant legal regulations in force.
2. It is deemed that the SELLER bought one or more insurance policies in order to provide for the results of the above-described liability, and he is capable of proving the existence of the policy or policies in question at the moment of acceptance of the ORDER. In the event of failure to perform these actions, considering the risk related thereto, the BUYER reserves the right to buy the said policies on behalf of the SELLER, and to deduct the related costs from any amounts due to the SELLER.
3. The SELLER shall reimburse the Client and/or the BUYER any amounts of money which the Client and/or the BUYER is not able to recover (including the cost of any increased premiums and excesses), under any insurances which it is required to take out and maintain as a result of the SELLER's misrepresentation, non-disclosure, want of due diligence or breach of declaration, condition or warranty contained in the relevant insurance policy.
4. In order to secure the proper performance of the OBJECT OF THE ORDER, including the claims under the quality guarantee and the statutory warranty for defects, the payment of contractual penalties, and the costs of substitute performance, the SELLER shall within 14 days after the day of conclusion hereof submit to the BUYER an unconditional, irrevocable bank guarantee payable on first demand without any preceding legal actions, in the amount of 10% of the gross Price value (Performance Guarantee). Until the

Performance Guarantee is submitted the BUYER shall be entitled to withhold, notwithstanding the Withheld Amounts, an equivalent of another 10% of the gross Price in order to cover the Performance Guarantee. The Performance Guarantee shall be valid from the date of its service upon the BUYER to the date falling 30 days after the expiry of the quality guarantee period and of the statutory warranty applicable to the OBJECT OF THE ORDER. The BUYER shall return the Performance Guarantee to the SELLER after the expiry of the guarantee period and of the statutory warranty, and after the removal by the SELLER of all defects. The SELLER's failure to extend the Performance Guarantee at least 14 days prior to the expiry of the former guarantee constitutes a breach of this Agreement (ORDER), which entitles the BUYER to draw on the bank guarantee and to keep the so obtained amount as a security for the claims resulting from this Agreement till the moment when the SELLER submits the Performance Guarantee in accordance with the Agreement.

5. Should the SELLER fail to submit the Performance Guarantee in order to secure the performance of the SELLER's obligations hereunder, including the claims under the quality guarantee and the statutory warranty for defects, the payment of contractual penalties, and the costs of substitute performance, 10% of the gross amount shall be deducted from each amount payable to the SELLER until the amount constituting an equivalent of 10% of the gross Price ("Withheld Amount") is reached. The Withheld Amount shall be reimbursed to the SELLER immediately after the submission of the correctly issued Performance Guarantee, or after the expiry of the quality guarantee period and the statutory guarantee, and after the removal of all defects identified by the BUYER or his customer. The reimbursement shall be made in the nominal amount (without interest).

#### **ARTICLE 18 OCCUPATIONAL SAFETY**

1. The SELLER shall observe all and any generally applicable regulations concerning the occupational health and safety at the workplace, as well as those applying specifically to the construction site. In the latter case it is deemed that the SELLER has received all the necessary information concerning this issue, and is fully aware of all regulations in force. In the event of the SELLER'S failure to observe these regulations, he may not hold the BUYER liable for any resulting consequences.
2. The SELLER is responsible for his employees and is fully liable for them towards any authorities, and towards the BUYER. The BUYER reserves the right to submit to the SELLER at any time all the received notifications concerning the occupational health and safety at the workplace.

**ARTICLE 19 FORCE MAJEURE**

1. Neither of the Parties shall be liable for non-performance or delayed performance of its obligations due to force majeure.
2. Force majeure is defined as an extraordinary situation or an event independent from the will of the Parties, which prevents either of the Parties from performing its obligations under the agreement concluded by the Parties. Force Majeure is not a consequence of either Party's error or neglect (or that of its sub-suppliers, sub-contractors, employees, or collaborating persons), and it is an event which despite all the best endeavours taken, it is not possible to overcome. The Party to the agreement affected by force majeure shall immediately (however not later than within 5 days after the occurrence of an event constituting force majeure) notify the other Party about the existing situation, about the nature of the problem, its predicted duration, and consequences thereof, and it shall also take actions aimed at mitigating any anticipated damage.
3. Strikes or social unrest involving the SELLER's employees (including the sub-contracted ones), nor financial difficulties, including the loss of financial liquidity of either of the Parties, shall not be considered as force majeure events.

**ARTICLE 20 ASSIGNMENTS**

1. Without the BUYER's consent, which under pain of nullity has to be issued in writing, The SELLER may not, assign the claims, rights and obligations hereunder (of the SELLER) to any third parties, neither with or without consideration.
2. The BUYER has the right to assign to third parties the rights and obligations hereunder. This applies in particular to the possibility of assigning the BUYER's claims towards the SELLER onto the SELLER's customer.

**ARTICLE 21 CONFIDENTIALITY**

The SELLER undertakes to treat as confidential all and any information obtained by him in connection with the conclusion and performance of this Agreement (ORDER), and not to disclose it to any third parties without the BUYER'S consent, which under pain of nullity has to be issued in writing, and not to use it for any purposes other than the performance of this Agreement (ORDER), also within a period of 10 years after the termination or expiry of this Agreement (ORDER).

**ARTICLE 22 SETTLEMENT OF DISPUTES**

1. Unless the ORDER provides otherwise, the legal relationship resulting from the conclusion of this Agreement or from placing the ORDER shall be governed the laws of Poland.
2. Any disputes resulting from the above-mentioned legal relationships shall be settled by the common courts in Warsaw.