

## General Terms and Conditions of Purchase of Goods and Services

### Article 1 Definitions

For the purposes of these General Terms and Conditions, the following phrases, capitalised, shall have the following meanings:

**"GTCs"** means these general terms and conditions for the purchase of goods and/or services, which set out the terms and conditions for the conclusion and performance of Agreements for the sale of Goods, as well as any preliminary agreements, relating to a concluded agreement or subsequent agreements.

The GTCs shall apply to and become an integral part of all Agreements concluded by the Buyer, particularly Agreements already concluded in the scope not individually governed by such Agreements.

Reference to the GTCs in any Agreements between the Parties is not required for their inclusion in the content of such Agreements.

The conclusion of the Agreement by the Parties shall constitute an acknowledgement and acceptance of these GTCs by the Seller and a simultaneous waiver of the Seller's terms and conditions of sale or provision of services. The regulation referred to in the preceding sentence shall also apply if the Buyer has not objected to these terms and conditions in a manner provided by the Seller.

These GTCs shall remain in force as long as the Buyer does not replace them with new ones.

The GTCs are available on the Buyer's website [www.ntindustry.com](http://www.ntindustry.com) and are available for downloading in a form that can be accessed by the Seller at any time and from any place.

**"Seller"** means a natural person, legal person, or unincorporated body with whom the Buyer concludes the Agreement or performs any other actions resulting in the purchase of Seller's Goods. Seller also means a supplier, distributor, manufacturer, etc. as well as a Vendor of works for example;

**"Buyer"** means 'NT Industry' Sp. z o. o. with a registered office in Orzesze, ul. Fabryczna 1, entered in the Register of Entrepreneurs kept by the District Court Katowice-Wschód in Katowice, 7<sup>th</sup> Commercial Division of the National Court Register under KRS number: 0000151864, Tax Identification Number NIP: 6351669795, REGON number: 278004809.

**"Article of Trade"** or **"Goods"** mean commercial products (materials, appliances, appliances' parts, furnishings, machinery, structures, parts of structures, etc.) manufactured and/or sold, and/or supplied (including works manufactured to the Buyer's custom order and according to an individually created design) by the Seller together with the Technical Documentation, and/or including services under the Agreement, as well as services provided to the Buyer.

**"Business Days"** means days from Monday to Friday from 8.00 a.m. to 3.00 p.m. excluding public holidays under the generally applicable provisions of Polish law.

**"Technical Documentation"** means complete technical documentation of the Goods by the manufacturer in Polish and English, including certificates of Goods, certificates of approval, instructions for use, calibration, maintenance, adjustment, list of spare parts and additional equipment, together with technical drawings and any other documents required by generally applicable provisions of Polish law, delivered by the Seller together with the Goods and attached to the Agreement and/or Goods. Any documentation provided by the Seller, which refers to quantities, technical specifications, or specific properties of the Goods, constitutes confirmation of the existence of these properties and declaration of compliance of the Goods with them.

“**Price**” means the price of the Goods, constituting the sole and exclusive obligation of the Buyer to the Seller under the Agreement. The price - if nothing else is expressly stated in the GTCs or the Agreement - shall be the price of all Goods covered by a given Agreement and not the unit price of a particular item/service covered by the Agreement.

## **Article 2 Offer**

2.1 The Buyer may apply to the Seller with an enquiry, based on which the Seller prepares an Offer. The Buyer may also use an offer from the Seller that was not prepared specifically for him.

2.2 If an order placement is preceded by the preparation of an Offer by the Seller (hereinafter: **Offer**), the Seller shall prepare and send the Offer free of charge. The Buyer shall not pay the Seller any expenses incurred in connection with the preparation of the Offer, including visits, costs of estimating the Offer, creation or planning of documents, postage or any others.

2.3 An Offer shall be valid for the period indicated therein, from the time of its actual receipt by the Buyer. Receiving the Offer on the Buyer's non-working day (i.e. on a day other than a Business Day), means that the period for which the Offer is binding starts to run from the nearest Buyer's Business Day. The sending of the Order by the Buyer (no later than the Offer's expiry day) shall be sufficient for the time limit indicated in the Offer to be observed. If the Offer does not indicate the expiration date, the Offer shall be deemed valid for no less than 180 days from the time the Buyer received it.

2.4 The information available on the Seller's website, catalogues, brochures, leaflets, advertisements, and other publications - shall constitute an Offer within the meaning of the Civil Code, particularly when accompanied by a price.

2.5 Each time the Offer should contain an indication of the country of origin of the Goods. In the absence of such a stipulation, it shall be presumed that the Goods originate from Poland.

## **Article 3 Conclusion of Agreement**

3.1 The Buyer sends an order (hereinafter: **Order**) to the Seller, based on the Offer received from the Seller, or without the Offer. The Order may differ from the Offer, in which case the parties shall be bound by the contents of the Order. The Order may be placed in writing, documental, or electronic form. The Buyer may also place an Order by sending an e-mail to the Seller's address.

3.2 The Agreement (hereinafter: the **Agreement**) is concluded as a result of the Seller's acceptance of the Order placed by the Buyer.

3.3 An Order shall be deemed to have been accepted by the Seller if:

3.3.a the Seller has expressly accepted the Order in written, electronic, or documental form, in which case the Agreement is concluded at the moment the Buyer receives the Seller's acceptance of the Order; the written acceptance of the Order shall be addressed and sent to the Buyer at the address indicated in the GPC without undue delay,

3.3.b the Seller does not reject the Order in writing or electronically within 24 hours from the receipt of the Order under pain of invalidity - then the Agreement shall be deemed concluded 24 hours from the moment the Buyer has submitted the Order (the time of sending the Order by e-mail is binding),

3.3.c the Seller commences the execution of the Order by any means – then the Agreement shall be deemed concluded when the Seller commences the execution of the Agreement,

3.3.d the Buyer accepts the Seller's Offer by sending an Order conforming to the Offer - then the Agreement is deemed concluded when the Seller sends the Order (the time of sending the Order by e-mail is binding).

- 3.4 If the Seller's acceptance of the Order contains any modification in relation to the content of the Buyer's Order, it shall be deemed to constitute a new Offer, and the Agreement shall be concluded only if expressly accepted by the Buyer in writing or electronically. If the Buyer does not accept the changes, the Agreement shall be deemed to have been concluded per the Buyer's Order, i.e. as unmodified by the Order confirmation.
- 3.5 The Buyer shall be entitled to withdraw from the Agreement (and, in the case of a Framework Agreement, also from each individual Agreement) within 14 days from the date of conclusion of the Agreement without stating any reason. In the case referred to in the preceding sentence, the Seller shall not be entitled to any remuneration or reimbursement of any costs, or any other civil claims from the Buyer, which the Seller hereby waives.
- 3.6 The technical specifications of the Goods and these GTCs shall form an integral part of each Agreement.
- 3.7 The provisions of the GTCs shall apply in a supplementary manner to any agreement individually negotiated by the Buyer and the Seller, including in a scope broader than that covered by the Offer or the Order.
- 3.8 Any changes to the Agreement must be made in writing on pain of invalidity.
- 3.9 The provisions of sections (1) to (8) of this article shall also apply to the conclusion of individual Agreements under the Framework Agreement - if such was concluded on the subject in question.

#### **Article 4** **Declarations of Parties**

- 4.1 The conclusion of the Agreement shall be tantamount to the following declarations by the Seller:
  - 4.1.a The Seller has read the GTCs beforehand and accepts them without any reservations,
  - 4.1.b The Seller has all the capabilities, skills, permits, authorisations, or means to properly perform the Agreement and declares that it has all the authorisations, approvals, permissions, training, and certificates provided by law, necessary to perform the subject matter of the Agreement,
  - 4.1.c On the date of acceptance of the Order, no petition for bankruptcy of the Seller has been filed, no bankruptcy proceedings are pending against it, no enforcement proceedings or proceedings to secure claims are in progress against it, and there are no prerequisites to declare its bankruptcy, the Seller is not in liquidation and is not in arrears with any public and legal dues (including social insurance contributions for employees), and with payment of remuneration to employees or entities cooperating with the Seller on any legal basis, and is in a financial condition ensuring due performance of the Agreement, as well as, there are no circumstances that could have a negative impact (threaten or prevent) on due performance of the Agreement by the Seller,
  - 4.1.d If the Seller is a natural person married with statutory or extended marital joint property, the Seller hereby declares that their spouse has been informed of the content of the Agreement and has consented to it; the provision of the preceding sentence shall apply accordingly to partners in partnerships who are liable for the obligations of the partnership,
  - 4.1.e The Seller has the knowledge and experience, economic and technical potential, and suitably qualified personnel necessary to properly perform the subject matter of the Agreement, and, in their opinion, there are no other impediments that could affect the proper performance of the Agreement,
  - 4.1.f The Seller declares that he has entered into an insurance contract with a reputable and solvent insurer, which covers the Seller's civil and commercial liability permanently and is sufficient to cover all risks related to the concluded Agreement, and furthermore the Seller undertakes to have such a contract in place for the entire period of cooperation with the Buyer, including the guarantee and warranty period for the Goods,
  - 4.1.g The Seller declares that the person submitting the Offer and/or accepting the Order has been authorised to dispose of rights and assume obligations on their behalf and to the

extent necessary to conclude and perform the Agreement (including claims under warranty and guarantee and for failure to perform or undue performance of the Agreement) and that their authorisation has not expired or has not been revoked; the person acting for the Seller, through the actions referred to in the preceding sentence, shall bear full liability to the Buyer for the truthfulness of this statement and the obligation incurred (jointly and severally with the Seller),

- 4.1.h The Seller has, during the last full calendar year preceding the conclusion of the Agreement, fulfilled all commissioned orders commissioned and performed them with due diligence,
  - 4.1.i No natural person acting for the Seller has been convicted by a final and binding judgment of an offence committed in connection with the procurement procedure, an offence of bribery, or any other offence committed for financial gain,
  - 4.1.j No member of the Seller's governing bodies has been convicted by a final and binding judgment of an offence committed in connection with a public procurement procedure, an offence of bribery, or any other offence committed for financial gain,
  - 4.1.k No financial penalty referred to in the regulations on combating unfair competition for an act of unfair competition consisting in bribery of a person holding a public office has been imposed on the Seller as a natural person or on members of the Seller's governing bodies or persons authorised to represent the Seller.
- 4.2 The Parties declare that they enter into the Agreement solely based on the Seller's declarations and warranties referred to in the preceding section. In addition, the Seller declares that they are aware of criminal liability for making false declarations referred to in the preceding section or failing to fulfil the obligation referred to in section 3 of this article, which may constitute grounds for instituting criminal proceedings against him in the case of leading the Buyer to an unfavourable disposal of property or otherwise, and furthermore results in full liability for damages of the Seller.
- 4.3 If, since the conclusion of the Agreement, any of the circumstances in respect of which the Seller has made a declaration as provided for in the GTCs changes, the Seller shall inform the Buyer immediately, no later than within 2 Business Days from the occurrence of the change, in writing, on pain of invalidity. If the Buyer is not informed of a change, all negative consequences shall be borne by the Seller.

## **Article 5**

### **Manner of Agreement Performance**

- 5.1 The Seller shall perform the Agreement concluded with them independently, unless otherwise agreed in the Agreement. Subcontracting in whole or in part of the subject of the Agreement by the Seller shall require the prior written consent of the Buyer under pain of invalidity.
- 5.2 The Seller shall be fully liable to the Buyer for the acts or omissions of the Seller's subcontractors or vendors, or entities performing any acts for or on behalf of the Seller, as if they were the Seller's acts or omissions, even if such entities are professionally involved in the performance of the commissioned acts or if the Seller is not at fault in their choice.
- 5.3 The Seller, as well as the Seller's employees and associates, regardless of the legal basis of their employment or cooperation, and the driver of the Seller's carrier, shall observe the internal regulations on the premises belonging to the Buyer when performing the service or delivering the Goods. The Seller shall be liable in full for any and all damage (including indirect damage, damage to third parties, potential damage, etc.) caused by the Seller's act or omission and that of other persons referred to in the preceding sentence.
- 5.4 The Seller shall oblige its employees or associates (irrespective of the factual or legal basis for the cooperation) to maintain confidentiality to a level no less than that resulting from this Agreement for the Seller.

- 5.5 The Seller shall perform the subject matter of the Agreement with the utmost care and skill, using the strictest industry standards generally applicable for the purpose, to the full satisfaction of the Buyer.
- 5.6 The Seller must not assign (particularly by assignment, sale, pledge, or any other act) its rights or obligations under the Agreement to any third party.
- 5.7 The Seller shall be fully liable for damages for non-delivery or delivery of Goods not in conformity with the Agreement.
- 5.8 **The Seller shall strictly adhere to the delivery dates and quality of the Goods under the Agreement, which is their primary obligation.** Any postponement of interim completion deadlines shall not affect the final date for the execution/delivery of the Goods unless the parties expressly agree otherwise in writing or electronically on pain of invalidity.
- 5.9 For each individual breach of any of the provisions of this article, the Buyer may charge the Seller liquidated damages equal to the gross price of the disputed batch of Goods under the Agreement.

#### **Article 5a**

##### **Work**

5a.1 If the subject of the Agreement is the production and delivery of the Goods understood as an individually created work, the Seller's obligations include (unless otherwise agreed by the Parties in writing under pain of invalidity):

5a.1.a preparation of a technical design of the Goods (and if a design other than a technical design is also needed to complete the work, then also this design),

5a.1.b manufacturing of the Goods in accordance with the approved design,

5a.1.c delivery of Goods at the Buyer's premises or any other place designated by the Buyer,

5a.1.d presentation of the Goods,

5a.1.e launch of the Goods at the Buyer's premises or any other place indicated by the Buyer,

5a.1.f obtaining, at its own expense, all necessary approvals, permissions, appropriate certifications and tests, etc., as provided for in Polish and European law,

5a.1.g training of Buyer's staff and persons designated by the Buyer,

5a.1.h providing appropriate technical support during the trial run at the Buyer's premises, or any other place designated by the Buyer.

5a.2 The Goods shall be manufactured based on the Agreement, particularly based on the Specification, as well as based on the Buyer's instructions and recommendations. The instructions and recommendations may be provided by the Buyer in writing, electronically, verbally, and by e-mail. The directions and recommendations shall form an integral part of the Agreement. On the Buyer's part, directions and recommendations may be given by the contact persons for the Agreement in question.

5a.2 Unless the Agreement stipulates otherwise, the Seller is obliged to make a presentation of the Goods to the contact persons for the given Agreement or other persons indicated by the Buyer, in order to obtain the Buyer's preliminary written acceptance of the accepted solution. Acceptance referred to in the preceding sentence does not release the Seller from liability for the proper functioning of the Goods and does not deprive the Buyer of any claims for defects of the Goods.

#### **Article 6**

##### **Quality of the Goods**

6.1 The Seller shall provide Goods of the highest quality, using in the production only materials and technology expressly specified in the Agreement and/or materials supplied by the Buyer. In the absence of specific arrangements, it is assumed that the materials should be of the highest grade and the technology should also be of the highest quality. The Seller agrees to manufacture the Goods from new materials, meeting the relevant standards, including those of occupational health and safety, and having the approvals required by generally applicable provisions of Polish and European (EU) law.

- 6.2 The Seller guarantees the highest quality of the Goods, particularly compliance with the Order and the Technical Specification attached to the Agreement.
- 6.3 The Seller guarantees the compliance of the Goods with all regulations, procedures, specifications, etc. applicable to the Goods under the Agreement.
- 6.4 The Seller guarantees that the Goods are free from physical and legal defects, and, at the Buyer's request, the Seller shall prove this by presenting, for example, records of relevant tests of the Goods or other evidence.
- 6.5 If the Seller identifies defective Goods or even suspects the existence of defects or faults among a batch of Goods delivered to the Buyer, the Seller shall immediately notify the Buyer thereof and take all appropriate measures.
- 6.6 The Seller guarantees that the Goods supplied by the Seller will not be older than 12 months from the date of manufacture.
- 6.7 The supply of a chemical substance is only deemed to be correct if there is full compliance of the material supplied with the Agreement, particularly regarding the manufacturer and trade name. It is not permissible to change the substance supplied for a substance from another manufacturer or with a different trade name, even if it exhibits identical performance or properties.
- 6.8 Any changes to the specifications of the Goods shall require the prior written consent of the Buyer, otherwise being null and void.
- 6.9 The Buyer, personally or through designated persons, shall have the right to inspect the performance of the Agreement (particularly regarding the base materials used and their quality documentation and compliance with the Agreement) at the place of performance or storage of the Goods by the Seller, at any time. The inspection may be announced or unannounced (during the Seller's business hours).
- 6.10 During an announced inspection, the Seller shall ensure that an English and/or German speaker is present to enable communication with the inspection team. If the seller does not fulfil the obligation referred to in the preceding sentence, the Buyer may charge the seller for the costs of hiring an interpreter.
- 6.11 If the announced inspection cannot be performed for reasons attributable to the Seller (delays in the production process, etc.), the travel costs for the next inspection scheduled on a different date will be paid by the Seller, according to the accounting documents submitted by the Buyer.
- 6.12 In the event of unfavourable inspection results, all costs of the inspection shall be borne by the Seller, notwithstanding the Buyer's right to take any other measures provided for by generally applicable law or the Agreement.
- 6.13 The Buyer shall be entitled to deduct any costs for the inspection and any possible contractual penalties from the Seller's remuneration, even if one or both mutual claims have not yet become due.
- 6.14 Notwithstanding any other rights of the Buyer, for each individual breach of any of the provisions of this article, the Buyer may charge the Seller liquidated damages in the amount of 20% of the gross price of the disputed batch of Goods under the Agreement.

## **Article 6a**

### **Acceptance of Goods or Services**

6a.1 The Seller shall, if the Agreement so requires, present the Goods to the Buyer for acceptance within the deadlines arising from the Agreement.

#### **Intermediate Acceptance**

6a.2 The Buyer shall make **intermediate acceptance** of the Goods (if agreed in the respective Agreement) by signing a no-claims certificate and sending it to the Seller electronically. The date on which the Buyer signs the no-claims certificate determines the date on which the intermediate acceptance is made, and thus the date on which the Seller meets the interim completion deadlines, if provided for in the Agreement.

6a.3 If, during intermediate acceptance, the Buyer has objections to a phase or non-material defects occur, the Buyer may:

6a.3.a perform acceptance of the phase with setting an appropriate time limit, not exceeding 2 days (if no other time limit is indicated in the certificate), for the Seller to remove the defects,

6a.3.b refuse acceptance, requiring rectification of defects and a new notification of acceptance within a specified period; in the absence of agreements to the contrary, this period shall not be longer than 2 days,

6a.3.c reduce the Seller's remuneration by the reduced use value of the Goods, such amount to be determined by the Buyer.

6a.4 The procedure described in section 3 of this article in points a and b may be repeated, at the Buyer's choice:

6a.4.a until it has been approved by the Buyer, or

6a.4.b the Buyer may carry out substitute performance of a given phase on its own at the Seller's expense and risk without prior court approval, as well as without setting an additional time limit for the Seller, and furthermore reduce the Seller's remuneration per the costs incurred at the rates applied by the Buyer to third parties, or

6a.4.c order substitute performance at the Seller's expense and risk, without the need to obtain the court's approval or set an additional time limit for the Seller, and furthermore reduce the Seller's remuneration in line with the costs incurred for the substitute performance.

6a.5 If the Buyer has refused to accept the Goods or a particular phase for the third time due to defects of the Goods or non-compliance of the Goods with the provisions of the Agreement, the Buyer may at their discretion:

6a.5.a withdraw from the Agreement in whole or in part, or

6a.5.b terminate the Agreement with immediate effect, or

6a.5.c even terminate the Framework Agreement (if applicable) with immediate effect in all cases through the fault of the Seller.

In any case, provided for in this section without the need to call upon the Seller in advance to perform the Goods within the prescribed time period.

6a.6 If, in the course of the acceptance procedure, material defects are found, the Buyer may at their discretion:

6a.6.a rescind the Agreement in whole or in part or terminate the Agreement and/or the Framework Agreement (if applicable) with immediate effect through the fault of the Seller, or

6a.6.b carry out themselves or have carried out substitute performance at the Seller's expense and risk, without having to be called upon the Seller to carry out the Goods within the prescribed time limit, and

in any case, additionally charge the Seller with liquidated damages for non-performance of the Agreement and with compensation exceeding the value of the reserved penalty if the Buyer's damage is greater.

6a.7 Substantial defects shall be deemed to be any defects which prevent or hinder the use of the Goods for their intended purpose, or which cause the Goods to lack or diminish their performance, or which constitute irremovable defects. Other defects shall constitute insubstantial defects.

6a.8 Failure to accept a particular stage or delay in acceptance shall not relieve the Seller of the obligation to meet further deadlines under the Agreement.

6a.9 Acceptance of individual stages by the Buyer shall not deprive the Buyer of any claims for defects in the Goods.

#### **Procedure before final acceptance**

6a.10 If delivery takes place before final acceptance, the Seller shall provide the Buyer, together with the delivered Goods, with information on how the Goods will be handled until final acceptance date, in writing or electronically. Negative consequences resulting from improper handling of Goods in the absence of information referred to in the preceding sentence shall be borne by the Seller.

6a.11 When the Seller needs to perform any activities concerning the Goods at the Buyer's premises or a place indicated by the Buyer, the Seller shall perform these activities during the working hours of the Buyer or of the entity where the respective activities are performed.

#### **Final acceptance**

6a.12 The provisions of the preceding section regarding intermediate acceptance shall also apply to final acceptance.

6a.13 The Buyer shall proceed to final acceptance within 21 working days from the date of the Goods final acceptance notification by the Seller, and in the event of failure to meet the aforementioned deadline, acceptance shall take place at the earliest possible date. Until the Goods are accepted by the Buyer with a written final acceptance protocol signed without reservations, the Goods shall be deemed to be unperformed.

6a.14 The Buyer shall make the final acceptance of the Goods by signing the final acceptance protocol presented by the Seller, without any reservations or remarks. Only the final acceptance protocol signed in this manner shall be the basis for payment of remuneration to the Seller. If the Buyer raises reservations, the provisions of section 3 et seq. of this clause shall apply.

### **Article 7**

#### **Transportation of Goods**

- 7.1 As a rule, the delivery of the Goods shall be carried out by transport provided by the Seller.
- 7.2 The cost (including all charges relating to packaging, insurance, loading, border crossing including customs duties, unloading, assembly, installation at the Place of Delivery, and others) and risk of delivery to the Place of Delivery shall be borne by the Seller.
- 7.3 The Buyer shall be informed of the transport of the Goods by a consignment note sent to him electronically on the date of dispatch of the Goods.
- 7.4 Goods must be packed in such a way that they can be transported safely.
- 7.5 The Seller is obliged to insure the Goods during transport. The Seller shall be responsible for any and all, including accidental damage and/or loss of the Goods until the Goods are accepted by the Buyer.
- 7.6 The Seller shall observe the generally applicable Polish and European Union laws regarding manufacturers, suppliers, sellers, and brokers. Particularly, the Seller shall comply with directives on packaging and electronic scrap as in force on the date of performance of the Agreement. Any costs of applying the above regulations shall be borne by the Seller.
- 7.7 The Seller hereby waives the right to charge the Buyer with any additional costs that may arise in connection with the performance of the provisions of this section.
- 7.8 If the Buyer collects the Goods with their transport from the Place of Delivery, which is e.g. the Seller's warehouse or other location resulting from the Agreement, the Seller shall ensure proper packaging, loading, insurance (if the obligation to insure results from the Agreement), etc., appropriate to the type of Goods and means of transport.

### **Article 8**

#### **Place and Time of Delivery**

- [8.1] The Seller shall deliver the Goods to the **Place of Delivery** specified in the Agreement. If the Place of Delivery is not indicated in the Agreement, the Goods are delivered to the Buyer's warehouse in Orzesze, Poland, ul. Fabryczna 1.-
- 8.1[8.2] The **Delivery Date** is specified in the Agreement. If the Delivery Date is not set on a specific date but in days/weeks/months, the date shall be calculated per the provisions of the Civil Code. The Delivery Date may only be changed with the consent of the Buyer expressed in writing or electronically under pain of invalidity.
- 8.2[8.3] In the event of delay in delivery of the Goods, the Buyer may charge the Seller with liquidated damages of 0.5% of the total gross price of the Goods resulting from the Agreement for each



commenced day of delay. However, in the event of partial delivery, the Buyer shall charge the liquidated damages at their discretion either on the price of the whole Agreement and not only on the given batch of Goods concerned by the delay in delivery, or on the price of the given invoice on which the undelivered Goods are included and not only on the given batch of Goods concerned by the delay in delivery.

8.3[8.4] In the event of a delay in delivery, if the delay exceeds 3 days, the Buyer shall be entitled to, at their discretion:

8.3.a[8.4.a] use substitute performance at the Seller's expense and risk; in this case, the Buyer is not obliged to obtain a court's approval of the substitute performance, nor is the Buyer obliged to request the Seller to perform the delivery or set an additional deadline,

8.3.b[8.4.b] rescind the Agreement in whole or in part.

8.4[8.5] In the case of early delivery, the Buyer shall not be obligated to accept the Goods before the Delivery Date or to pay in advance.

8.5[8.6] If the Agreement requires the Goods to be advised for delivery and the Seller fails to advise, the Buyer shall be entitled not to accept delivery of the Goods on the Delivery Date, nor to make payment, until the Goods have been properly advised and to charge the Seller liquidated damages for late delivery. The Seller must not claim reimbursement of any costs associated with the Buyer's failure to collect the Goods on the Delivery Date.

## Article 9

### Delivery Documentation

9.1 With each delivery of Goods, the Buyer shall receive at least the following documents, unless otherwise specified in the Agreement:

9.1.a consignment note,

9.1.b shipment specification/goods dispatched note (WZ document),

9.1.c invoice,

9.1.d technical documentation,

9.1.e certificates, declarations of conformity, and others required by generally applicable provisions of Polish law, if applicable, to a given type of Goods.

9.2 The goods dispatched note (WZ document), which shall be the original document without erasures, shall contain the following information:

9.2.a order number,

9.2.b name and address of the Seller,

9.2.c the Seller's identification number assigned by the Buyer,

9.2.d date and place of delivery,

9.2.e a clear description of the article, specifying units of measurement and packaging, per product's description,

9.2.f total number of items of the specified article,

9.2.g best-before dates, if necessary.

9.3 The order of articles on the goods dispatched note (WZ document) must follow the order of articles in the Agreement.

## Article 10

### Acceptance of Delivery

10.1 If the **Goods are delivered by the Seller** (by the Seller's transport or through a carrier):

10.1.a when the Goods are picked up by the Buyer, the carrier shall comply with the Buyer's internal procedures and legal provisions on unloading, control of the quantity and quality of the goods, and health and safety; the Seller is responsible for informing the carrier of the above obligation if the carrier is not the Seller himself,

10.1.b the unloading of the Goods shall be carried out by the Seller or the Buyer at the Seller's risk unless otherwise specified in the Agreement; the Buyer shall not provide supplies and tools

- for unloading; the Seller shall unload and/or install the Goods with the proper equipment and properly trained employees; the Seller shall be fully liable for any damage related to the unloading and/or installation of the Goods,
- 10.1.c the driver must be present during unloading and acceptance of the goods by the Buyer,
  - 10.1.d if unloading of the Buyer's Goods requires unloading/transshipment/loading of other goods located on the Seller's means of transport or its carrier, then the Buyer shall charge the Seller with additional costs of performing unloading/transshipment/loading at the rate of PLN 200.00 net per man-hour, and the Seller agrees to pay these costs; in the situation described in this section, the Buyer shall not bear any responsibility for damage/loss of other goods, and the above-described activities shall be performed under the sole and full responsibility of the Seller.
- 10.2 If the **Goods are collected by the Buyer** (by the Buyer's transport or via a carrier):
- 10.2.a the Goods should be prepared for collection in such a way that they can be loaded onto the means of transport used by the Buyer, particularly they should be appropriately packed and protected before transport,
  - 10.2.b the Seller shall provide qualified personnel and machinery/equipment to carry out the loading on the Buyer's means of transport; neither the Buyer's driver nor the Buyer's carrier shall take part in the loading,
  - 10.2.c if the loading of Goods requires participation of the Buyer or its carrier, then the Buyer shall charge the Seller with additional costs of performing unloading/transshipment/loading at the rate of PLN 200.00 net per man-hour, and the Seller agrees to pay these costs; in the situation described in this section, the Buyer shall not bear any responsibility for damage/loss of other goods, and the above-described activities shall be performed under the sole and full responsibility of the Seller.
- 10.3 If the Goods delivered require assembly or installation, the Seller shall ensure that the Goods are assembled and installed at the Place of Delivery and that all tests, launch, training of the Buyer's personnel are carried out.
- 10.4 If the person designated by the Buyer to receive the Goods **refuses to accept part or all of the Goods**, the Seller, or the Seller's carrier, shall take back the rejected Goods during the same Delivery. The refusal to accept all or part of the Goods may include but is not limited to the following circumstances:
- 10.4.a a goods dispatched note (WZ document) or other document required by the Agreement has not been delivered with the Goods,
  - 10.4.b the Buyer discovers deficiencies in the Goods, Technical Documentation, labelling, quantity, assortment, or quality or other parameters,
  - 10.4.c the goods are of unsatisfactory quality, particularly if they do not comply with the Agreement, they are not of the highest-grade quality, they are below the agreed or expected quality for goods of this type, they bear traces of use or negligence in manufacture or assembly,
  - 10.4.d the Goods have been delivered earlier; however, the Seller may offer the Buyer an earlier Delivery Date, which must be confirmed in writing by the Buyer, otherwise being null and void; notwithstanding the provisions of the preceding sentences, an earlier delivery shall not affect the date of payment,
  - 10.4.e the Seller shall deliver only part of the Goods covered by the Agreement or Goods conforming to the Agreement but in a smaller quantity,
  - 10.4.f if the Seller delivers Goods per the Agreement but in a larger quantity, the Buyer may refuse to accept the surplus Goods,
  - 10.4.g the Goods (to be transported by transport provided by the Buyer) are improperly prepared for loading for the Buyer, particularly if they are improperly packed or secured,
  - 10.4.h there are no qualified personnel or suitable equipment at the Place of Delivery to load the Goods onto the means of transport provided by the Buyer,
  - 10.4.i any other non-conformity of the Goods with the Agreement,

- 10.4.j Goods (requiring assembly/installation) have not been installed/assembled at the Place of Delivery, or tests, or launch have not been carried out or tests have shown discrepancies from the parameters assumed by the Buyer or training/instruction of the Buyer's employees has not been carried out or has not been carried out properly.
- 10.5 Rejected goods are specified on the appropriate document, the so-called **non-conformity document**, or directly on the goods dispatched note (WZ document).
- 10.6 If the Buyer refuses to accept the Goods, the Buyer may charge the Seller with any negative consequences (particularly liquidated damages, damages, additional costs incurred by the Buyer, e.g. for loading/unloading the Goods, etc.) resulting from the non-performance of the Agreement, and the Seller undertakes to unconditionally and irrevocably cover them at the Buyer's first request.
- 10.7 In the event of rejection of delivery or part thereof, the Buyer shall treat the rejected Goods as Goods in respect of which delivery has been delayed.
- 10.8 At the end of the delivery of the Goods, after they have been unloaded at the Place of Delivery and assembled/launched (if so stipulated in the Agreement), or after they have been loaded onto the means of transport provided by the Buyer, the driver of the Seller's carrier and an employee of the Buyer, or an employee of the Seller and the driver of the Buyer's carrier, shall sign the goods dispatched note (WZ document) and, if applicable, the non-conformity document.
- 10.9 At their discretion, the Buyer may accept delivery of the Goods despite the circumstances referred to in section 1 of this article. In this situation, the Buyer may charge the Seller with liquidated damages amounting to 20% of the gross price of the questioned Goods resulting from the Agreement.
- 10.10 **Acceptance of delivery (acceptance of Goods)** to be valid requires confirmation by the stamp and signature of an employee of the Buyer or the driver of the Buyer's carrier on the goods dispatched note (WZ document). Whenever the Agreement or the GTCs refer to acceptance of delivery or acceptance of Goods, it shall be understood as signing the goods dispatched note (WZ document) per this section.
- 10.11 The consignment note is not a document recognised by the Buyer as an acknowledgement of receipt of the Goods delivered by the Seller.

## **Article 11**

### **Warranty and guarantee**

- 11.1 The Buyer shall not be obligated to examine the Goods during or after delivery, and acceptance of delivery per the preceding article shall not deprive the Buyer of any claim under warranty or guarantee or non-compliance of the Goods with the Agreement.
- 11.2 Defects in the Goods, whether visible at first sight or not, may be claimed by the Buyer throughout the warranty and guarantee period. Defects in the Goods may include but are not limited to the same circumstances that justify the refusal of part or all the Delivery per clause 10(4) these of these GTCs. Only if a Delivery of Goods with detected defects is accepted per clause 10(9) of these GTCs, the Buyer may not invoke the same defect a second time under a new claim.
- 11.3 The Parties exclude the obligation of the Buyer to immediately notify the Seller of the discovery or detection of a defect. Irrespective of the time of notification, if the defect arose during the warranty or guarantee period, it shall be covered by the warranty or guarantee.
- 11.4 The conclusion of the Agreement implies the granting of a guarantee by the Seller for the Goods to an extent not less than that which is apparent from these GTCs.
- 11.5 If the Seller provides a separate guarantee, by concluding the Agreement, the Seller shall extend its boundaries by the content of these provisions.
- 11.6 The Seller guarantees that the Goods and components used for production of the Goods will be available in its offer or on the market for a period of 60 months counting from the date of faultless final acceptance of the Goods or the date of acceptance of delivery.

- 11.7 In the case of Goods for which the manufacturer's warranty is longer than the warranty provided by the Seller, the manufacturer's warranty shall apply to these Goods.
- 11.8 The Seller shall provide free servicing of the Goods during the guarantee period.
- 11.9 In the case of **defects in the Goods during the guarantee period**, the Seller undertakes to proceed to remove the defects within 48 hours on Business Days from the moment of reporting the defect by phone to the Seller's phone number or the Seller's e-mail address included in the Agreement. The commencement of the removal of the defect is understood as the commencement of the diagnosis of the defect, including a visual inspection or a telephone conversation with the Buyer.
- 11.10 The Seller shall immediately remove any defects of the Goods found during the guarantee period, within the time limit agreed between the Parties, not longer than 7 days from the date of notification of the defect by the Buyer. The existence of a defect and/or failure and its removal shall be established by signing a protocol without reservations, under pain of invalidity by the Buyer. The warranty and guarantee period shall be 36 months from the date of acceptance of delivery.
- 11.11 If a defect is established within the period of warranty or guarantee, it shall be presumed that the defect or its cause existed at the time when the burden transferred to the Buyer. The Seller shall bear the burden of proof to the contrary.
- 11.12 The Buyer is entitled, at their discretion, to choose between warranty or guarantee rights.
- 11.13 All costs connected with the removal of defects arising during the warranty or guarantee period shall be borne by the Seller, including the costs of delivery of the defective Goods to the place of repair or the costs of repair at the Buyer's premises, the costs of dismantling the device, the costs of a replacement device, the costs of re-assembling the device using the repaired or replaced Goods, as well as the costs of used materials and equipment which cannot be detached from the defective Goods due to excessive difficulty or costs (according to the costs incurred by the Buyer), and any other, including costs additionally, indirectly, possibly sustained.
- 11.14 The Buyer shall be entitled to choose the manner and time limit for **rectification of the defect under the warranty**, which shall be binding on the Seller (repair, replacement, price reduction, rescission of the Agreement, or any combination of the individual methods of defect rectification). The Seller shall remove the defect in the manner requested by the Buyer, even if this would require excessive costs.
- 11.15 If that the Buyer was obliged to provide the Seller with materials for the performance of the subject of the Agreement, the Seller shall - in the event of rescission of the Agreement by the Buyer - return all materials received (and if the Seller has used them, their equivalent according to the price established by the Buyer or the same materials in the same quality and quantity) at the Seller's expense.
- 11.16 If the Seller fails to comply with the time limit or the manner of dealing with a complaint or guarantee reported by the Buyer, the Buyer shall be entitled to:
- 11.16.a order substitute performance at the Seller's expense and risk, without the need to obtain prior court approval for the substitute performance or to request the Seller to perform obligations or to grant additional time, and/or
- 11.16.b at their discretion, charge interest - statutory or maximum - on the amount by which the Seller must reduce the price or must reimburse the Buyer,
- 11.16.c moreover, the Buyer shall be entitled to freely dispose of the Goods which have not been collected by the Seller on time, including liquidation, sale, and any other actions which shall be performed at the Seller's expense and risk.
- 11.17 In the case of substitute performance referred to in the preceding section, the Seller shall extend the warranty or guarantee rights, for the replaced or modified parts of the Goods, for the entire period referred to in section 10 of this article.
- 11.18 The Buyer reserves the right to claim further liability for damages from the Seller for the damage suffered.

- 11.19 If the Buyer exercises its rights under warranty or guarantee, the Seller shall deliver the Goods free from defects (if so, requested by the Buyer) to the place indicated by the Buyer, regardless of the Place of Delivery resulting from the Agreement.
- 11.20 The Buyer may charge liquidated damages for delay in performing its warranty or guarantee obligations, in connection to the deadline set by the Buyer, in the amount of 0.5% of the gross price of the Goods under the Agreement (i.e. the entire price of the invoice on which the Goods complained of are listed) for each day of delay.
- 11.21 In the event of improper performance of warranty or guarantee obligations by the Seller, the Buyer shall be entitled to deduct any costs incurred in connection with the warranty or on the occasion of the exercise of the warranty (including on account of self-performance, substitute performance, liquidation or disposal of unclaimed Goods, etc.), from any receivables of the Seller, including those arising from other legal relations and including amounts which have not yet become due.
- 11.22 During the warranty or guarantee period, the Seller shall notify the Buyer in writing of any change in the registered office or business premises of the Seller or of its transformation, liquidation, bankruptcy etc. within 7 days of the event.

## **Article 12**

### **Packaging**

- 12.1 The return of packaging, particularly EUR pallets, by the Buyer is only possible if it has been agreed in advance in the Agreement. The costs of returning the packages will be charged to the Seller.

## **Article 13**

### **Ownership of Goods and Transfer of Burden**

- 13.1 Ownership of the Goods shall pass to the Buyer upon acceptance of the Goods by the Buyer (as stipulated by Article 10(10) of these GTCs).
- 13.2 If the Buyer supplies the Seller with materials for the performance of the subject of the Agreement, the ownership of the Goods shall pass to the Buyer upon the commencement of production. The Seller shall perform the subject of the Agreement on behalf of the Buyer and otherwise act in charge without remuneration. The production equipment made available to the Seller by the Buyer shall remain the property of the Buyer. The production equipment manufactured on behalf of the Buyer shall become the property of the Buyer upon payment.
- 13.3 In the event of seizure of Goods being the property of the Buyer during enforcement proceedings directed to the Seller's assets, the Seller shall immediately inform the Buyer of this fact and cooperate in the implementation of the Buyer's rights against the entity seizing the Goods, within all available means. The Seller shall, at the request of the Buyer, provide the Buyer without delay with all information about where the Goods subject to reservation of the Buyer's ownership are stored and to enable their collection by the Buyer.
- 13.4 Transfer of burden for loss or damage to the Goods shall pass to the Buyer upon acceptance of the Goods (as stipulated in Article 10(10) of these GTCs) by the Buyer.

## **Article 14**

### **Rights of the Third Party**

- 14.1 The Seller warrants that it owns all intangible rights to the Goods to the extent necessary for the proper performance of the Agreement.
- 14.2 The Seller shall deliver the Goods to the Buyer free from any claims of third parties, particularly free from any claims on account of exclusive rights, such as e.g. patents, practical new-type patents or industrial design protection rights, trademarks, copyrights, etc.
- 14.3 Any licence fees shall be borne by the Seller.

- 14.4 Where the subject of the Agreement is the making and delivering of the Goods understood as an individual work, the Seller declares that this work shall be the result of the Seller's activities, and no third parties (including employees or associates of the Seller) shall have any rights or claims to or in connection with the Goods.
- 14.5 In no event shall the Buyer be liable for any remuneration of the Seller's employees or associates.
- 14.6 If any third party makes any claims against the Buyer in connection with infringement of property or personal rights caused by the Buyer's lawful use of the Goods or know-how, the Seller undertakes to immediately join settlement or court proceedings or any other proceedings pending against the Buyer, thereby indemnifying the Buyer against any and all liability and compensating the Buyer for any and all damages incurred on this account (including costs of litigation/proceedings, costs of legal representation/assistance which the Buyer has incurred or will be obliged to incur on this account).
- 14.7 If any claims are brought against the Seller under copyrights, industrial property rights or the Seller becomes aware of a loss of protective rights to the Goods, the Seller shall immediately notify the Buyer thereof in writing, under pain of invalidity, and the Seller shall take all necessary measures to ensure safety of use of the Goods to the Buyer, and in the event of an inability to retain the rights, the Seller shall cover the Buyer with the resulting damage in the full amount.
- 14.8 In the event of a breach of any of the obligations provided for in this article by the Seller, the Buyer shall be entitled to charge the Seller liquidated damages in the amount of PLN 50,000.00 for each case of breach.

#### **Article 15 Know-how**

##### **(if the Goods constitute the production and delivery of an individually created work)**

- 15.1 Upon the conclusion of the Agreement, the Seller transfers to the Buyer the rights to know-how, i.e. solutions and concepts, created during or in connection with the development of the Goods.
- 15.2 The Buyer shall be entitled to the full right to use the know-how without any additional payments to the Seller, exclusively within the Goods remuneration framework due to the Seller.

#### **Article 16 Intellectual Property**

##### **(if the Goods constitute the production and delivery of an individually created work)**

- 16.1 The Seller transfers onto the Buyer, (1) at the moment of issuing the Goods or (2) at the moment of signing the intermediate acceptance protocols (even if they contain reservations) - whichever is earlier - all copyrights to the Goods (also referred to in this article as a work or works - which means any manifestation of creative activity of an individual character, determined in any form, regardless of value, purpose and manner of expression) in all known fields of use, indicated in section 50 of Copyright and Related Rights Act of 4 February 1994 (i.e. Journal of Laws of 2006, no. 90 item 631, as amended), particularly within the scope of:
- a) use of the Goods in any manner determined by the Buyer, without the need to consult the Seller,
  - b) giving an individual name to the Goods or a product based on the Goods,
  - c) recording the work(s) without any quantitative limitations, using any technology, including printing, digital, computer, reprography, electronic, photographic, optical, laser, through magnetic recording, as well as any other technology of recording known at the time of concluding the Agreement, such as digital technology, on any medium, including electronic, optical, magnetic, floppy, CD-ROM, DVD, paper or any other medium known at the time of concluding the Agreement,

- d) reproduction of the works and produce copies of the works without any limitation in quantity, in any conceivable technology and medium, including those mentioned in point (c) above, as well as online,
- e) trading in the original or copies on which the work(s) is (are) recorded or in the product created according to the work(s) - marketing, sale, lease, tenancy, lending, or licensing,
- f) transmission of the work(s) by wire or wireless vision or sound by terrestrial stations, via satellite (encrypted and unencrypted signal) with the right of retransmission on digital platforms or cable networks,
- g) dissemination of the work(s) by means other than those specified above, i.e. by public performance, exhibition, display or reproduction, broadcasting, re-broadcasting, in any form whatsoever, particularly at conferences, symposia, shows, fairs, exhibitions, and open and closed events, ticketed and non-ticketed - regardless of the type and size of the audience,
- h) dissemination of the work(s) and their copies in a manner other than specified above - by making the work(s) available to the public in such a way that everyone can access them from a place and at a time of their choosing; in any media, including the Internet and other ICT, multimedia, and computer networks, using any technology,
- i) use of the work(s) in whole or in part, including in compilations or combinations with other works, artistic performances, phonograms, or videograms, supplemented by commercial, promotional, or advertising content, including for advertising and publicity purposes (without limitation as to form or manner of advertising),
- j) use of the work(s) in whole or in part using any new technology,
- k) use of the work(s) in whole or in any part as a trademark to identify the company, including but not limited to on letterheads, printed materials, labels, advertising material, prospectuses, posters and guides,
- l) uploading of the work(s) to computer memory and multimedia networks, including the Internet, and intranets, without any quantitative limitations, as well as the transmission of the work(s) within the networks as mentioned above, including online simultaneous integral broadcasting (re-broadcasting) by another radio or television organisation,
- m) use and dispose of derivative works and products based on the work(s) and/or derivative works,
- n) development and modification of the work(s), including the right to alterations, modifications to the entire work(s) and to products based on the work(s),
- o) use of the work(s) and a product based on the work(s) in the press, radio, television, intranet, websites, letterheads, e-mails, etc.,
- p) use the work(s) in any manner whatsoever in all actions and activities undertaken by the Buyer to carry out the business and otherwise, in advertising, marketing, and promotional activities consisting of placing the work(s) on the packaging of products sold by the Buyer and using the work(s) in advertisements for the Buyer's products.

16.2 A work shall also mean freely selected and/or modified elements of a work in any way determined by the Buyer without any consultation with the Seller in this respect.

16.3 The scope of transfer of copyrights to the work(s) is unlimited in time and territory and applies to the territory of Poland and all countries and territories beyond its borders.

16.4 The Seller declares that ownership of all media and documentation on which the work(s) has been recorded is transferred to the Buyer.

16.5 At their discretion, the Buyer may, without the Seller's consent, assign the rights acquired under the Agreement to any third parties.

16.6 The Buyer shall have the full and exclusive right to decide the extent and manner of use of the work(s), and the extent and manner of dissemination of the work(s).

- 16.7 The Seller agrees not to exercise any personal copyrights concerning the work(s) and authorises the Buyer to exercise any personal copyrights concerning the work(s) without any right to additional remuneration on this account from the Seller.
- 16.8 The Seller authorises the Buyer to exercise, exclusively, without limitation in terms of time, territory, and subject matter, the dependent copyright of the work(s) transferred to the Buyer, including granting further authorisation.

## **Article 17**

### **Industrial Design Protection Rights**

#### **(if the Goods constitute the production and delivery of an individually created work)**

- 17.1 The Seller declares that all rights to the inventive design created under or in connection with the performance of the Agreement are owned by the Buyer. In particular, the Buyer shall be entitled to:
- 17.1.a the rights to obtain patents for inventions (i.e. the right referred to in Section 8(1)(1) of the Industrial Property Right Act) created during or in connection with the performance of this Agreement,
  - 17.1.b other rights, i.e. those referred to in Section 8(1)(1) of the Industrial Property Right Act of 29<sup>th</sup> November 2013 (Journal of Laws of 2013, no. 1410, unitary text, as amended) created during or in connection to the performance of this agreement,
  - 17.1.c already obtained rights to invention projects and goods,
  - 17.1.d rights to the remuneration referred to in Section 8(1)(1) of the Industrial Property Right Act of 29<sup>th</sup> November 2013 (Journal of Laws of 2013, no. 1410, unitary text, as amended).
- 17.2 The Buyer shall have the unrestricted and royalty-free right to publicise the acquired patent rights during marketing activities, particularly for presentations, the website, offers, brochures, participation in exhibitions, conferences, competitions, shows, or other such events.
- 17.3 The seller agrees to:
- 17.3.a participate in the application procedure, particularly by taking part in hearings before the adjudicating bodies at the various patent offices in matters relating to patent rights,
  - 17.3.b provide the Buyer with all information and materials relating to obtaining patent protection for analogous or derivative solutions in selected countries,
  - 17.3.c file appropriate applications to the patent office or other competent authority responsible for patent protection outside Poland within the statutory time limit, retaining the right of priority, in the name and on behalf of the Buyer, for the Buyer to obtain an exclusive right in the specified territory.

## **Article 18**

### **Clearing and payment**

- 18.1 In consideration of the due performance of the Agreement, the Seller shall receive the Price agreed upon in the Agreement (hereinafter also: the Remuneration), which exhausts all other claims of the Seller against the Buyer, particularly for the materials used and other costs related to the performance of the subject of the Agreement.
- 18.2 If the price of the Goods has not been specified in the Agreement in any way, the Agreement cannot come into effect until the Parties have agreed on the price in writing under pain of invalidity (it is permissible to send a written confirmation in electronic form). In particular, delivery and acceptance of the Goods by the Buyer must not constitute grounds for demanding a price not individually agreed in the manner described in the preceding sentence.
- 18.3 The Seller must not issue an invoice before the Delivery Date unless the parties agree on payment based on advance payments and/or partial invoices.
- 18.4 The Seller shall state on the VAT invoice:
- 18.4.a the Agreement number,
  - 18.4.b the goods dispatched note (WZ document) number,



- 18.4.c the non-conformity document number (if it was drawn up for a given delivery),
- 18.4.d the value of taxes added to the price, including VAT, should be indicated separately on the invoice.
- 18.5 The Seller shall attach the following documents to the invoice:
- 18.5.a a copy of goods dispatched note (WZ document) with the signature of the Buyer's representative or confirmation of shipment (if delivery is made by courier),
- 18.5.b a copy of the CMR waybill with the signature and stamp of the Buyer's representative,
- 18.5.c in the case of services, a confirmation of service provision signed without reservation by the Buyer.
- 18.6 Payment of the Price shall be based on a correctly issued VAT invoice, i.e. per generally applicable legal regulations and the Agreement. If the statutory or contractual prerequisites are not fulfilled, the Buyer shall be entitled to send back the invoice without posting, and the payment period shall not start until a correctly issued invoice is received.
- 18.7 The payment term of the invoice should not be shorter than 30 days from the date of acceptance of the Goods.
- 18.8 The day on which the amount due is debited from the Buyer's bank account shall be deemed to be the day of payment. A copy of the SWIFT confirmation from the Buyer's account, sent at the Seller's request, shall constitute confirmation of payment.
- 18.9 The Buyer shall be entitled to set off any monetary liabilities to the Seller against the Buyer's receivables from the Seller, even if one or both mutual receivables have not yet become due and even if the individual receivables originate from different legal relations.
- 18.10 The Seller is excluded from the right to make any deductions of receivables from the Buyer with receivables of the Buyer from the Seller.
- 18.11 The Seller assures that he guarantees the Buyer the most favourable price for the Goods as well as that no other customer in a similar economic situation at the time of the conclusion of the Agreement has been guaranteed a more favourable price for the same Goods, under pain of reducing the price to that offered to the other customer. Under the provisions of this section, the Seller shall immediately inform the Buyer of the price reduction.

#### **Article 19** **Liquidated Damages**

- 19.1 All liquidated damages in favour of the Buyer referred to in the Agreement or the GTCs shall be payable irrespective of the fact that any damage has been incurred and the amount thereof and shall not be limited in any way.
- 19.2 The liquidated damages are cumulative.
- 19.3 The parties shall allow a combined penalty for breach of the provisions of these GTCs and/or the Agreement, a penalty for termination or withdrawal of the Agreement, as well as a penalty for delay if all of these occur.
- 19.4 The liquidated damages for delay in the performance of contractual obligations shall be calculated from the deadline provided for in the Agreement for the performance of the contractual obligation in question.
- 19.5 In the event of withdrawal of the Agreement by the Buyer, the liquidated damages for delay shall be calculated up to the date of the declaration of withdrawal or up to the date of notification to the Seller of the substitute performance.
- 19.6 In the event of withdrawal from the Agreement by the Seller, the liquidated damages for delay shall be calculated up to the date of receipt of the declaration of intent to withdraw by the Buyer.
- 19.7 The accrual of the liquidated damages for the Seller's delay prior to the date of submission of the notice of withdrawal shall be without prejudice to the accrual of the liquidated damages for withdrawal. Liquidated damages for inadequate performance (e.g. delay) and for non-performance (e.g. withdrawal) shall be cumulated.

- 19.8 The Buyer reserves the right to claim from the Seller compensation for damage exceeding the value of the reserved liquidated damages, on any legal basis.
- 19.9 Payment of the liquidated damages by the Seller shall not release the Seller from the obligation to perform the Agreement.

## **Article 20**

### **Liability of the Seller**

- 20.1 In any case, the Seller shall bear full liability for damages to the Buyer for non-performance or undue performance of obligations under this Agreement and the Agreements, including for delivery of defective Goods/work/service including the Buyer's claims for payment or arising from the Buyer's obligation to pay liquidated damages and other claims to third parties as a result of non-performance or undue performance of the Agreement by the Seller, including for delivery of defective Goods.
- 20.2 In any case, the Seller shall be fully liable to the Buyer or the Buyer's Principal for any and all equipment, modules, and machines and devices parts, components, production materials, samples, testers, etc., belonging to the Buyer or the Buyer's Principal and entrusted to the Seller for the duration of the Agreement, for presenting examples or for the purpose of necessary analysis for the preparation of a offer, quotation, or for the preparation or performance of implementation, modifications, etc.
- 20.3 Notwithstanding any other rights provided for in the Agreement, in any case of withdrawal from or termination of the Agreement with immediate effect for reasons which are not attributable to the Buyer, the Buyer shall be entitled to make use of substitute performance at the Seller's expense and risk, without the need to obtain the court's approval and without the prior setting of an additional time limit for the Seller.
- 20.4 In any case of non-performance or undue performance of the Agreement by the Seller, if the amount of damages suffered by the Buyer exceeds the amount of liquidated damages reserved, the Buyer shall be entitled to claim from the Seller full compensation exceeding the amount of liquidated damages reserved herein.
- 20.5 In any case, the Seller shall bear full liability for damages to the Buyer for non-performance or undue performance of its obligations under the Agreement, including for delivery of defective Goods, as well as the Buyer's claims for payment or arising from the Buyer's obligation to pay liquidated damages and other claims to third parties as a result of the Seller's non-performance or undue performance of this Agreement, including for delivery of defective Goods.

## **Article 21**

### **Confidentiality**

- 21.1 During the term of the Agreement as well as after its termination or expiry, the Parties mutually agree not to disclose any proprietary information of the other Party. A proprietary information shall be deemed to be any information concerning a Party not disclosed to the public, the disclosure of which could potentially cause damage to the Party to which such information pertains. Proprietary information includes but is not limited to all programme, technical, technological, commercial, and organisational information of each Party, as well as the content of the provisions of the Agreement, Purchase Order and/or enquiry.
- 21.2 Any communication, disclosure, use of information constituting proprietary information shall be permissible only with the prior written consent of the Party to which such information relates under the pain of invalidity, and with the exception of disclosure to the Party's legal, financial, and accounting advisors, provided that such persons are obliged under generally applicable laws to maintain professional confidentiality or are obliged under a separate agreement to maintain the confidentiality of information constituting proprietary information to a degree no less than that arising from the GTCs.

- 21.3 No additional remuneration or reimbursement of any costs shall be due to either Party for compliance with the obligation referred to in section 1 and 2 of this article.
- 21.4 For breach of the obligations referred to in section 1 or 2 of this article, the Seller shall pay the Buyer liquidated damages of PLN 100,000.00 for each case of breach.

## **Article 22**

### **Force Majeure**

- 22.1 Neither Party shall be liable for the non-performance or undue performance of its obligations under the Agreement if caused by a so-called Force Majeure. Force Majeure shall be deemed to be any extraordinary events and circumstances, unforeseeable, independent of the will and intentions of any of the Parties or any person for whom the Parties bear responsibility. Events of Force Majeure are considered by the Parties to be natural disasters, air accidents, acts of official authorities, border blockades, states of war, states of emergency, etc.
- 22.2 In the event of Force Majeure circumstances as referred to in the preceding section of this article, the contractual obligations fulfilment deadline shall be postponed in proportion to the time during which the Force Majeure circumstances occur.
- 22.3 The Party for which it has become impossible to fulfil its obligations under the Agreement or the GTCs shall inform the other Party in writing or in a documental form of the commencement and termination of the circumstances mentioned above no later than within 5 calendar days of their commencement and within 5 calendar days of their termination, respectively, under pain of losing its rights under the Force Majeure clause.
- 22.4 If the inability to fulfil the contractual obligations of the other party, resulting from Force Majeure, lasts for more than 30 days, either Party shall be entitled to withdraw from the Agreement with immediate effect, without any negative statutory or contractual consequences for the withdrawing party.

## **Article 23**

### **Termination of Agreement or Withdrawal from Agreement**

- 23.1 The Buyer's discretion, the Buyer shall have the right to either withdraw from the Agreement or to terminate the Agreement with immediate effect (without any additional call to the Seller to cease violations and/or to duly perform its contractual obligations), in addition to the cases expressly indicated in the provisions of the GTCs, also in situations where the Seller violates the material provisions of the Agreement, in particular:
- a. if any of the declarations made by the Seller in the GTCs or the Agreement are not true,
  - b. the Seller breaches any of its obligations under the provisions of these GTCs concerning:
    - 1.b.1. The manner of performance of the Agreement,
    - 1.b.2. The Seller's obligations, if the subject of the Agreement is an individually agreed work,
    - 1.b.3. Quality of the Goods,
    - 1.b.4. Acceptance of the Goods constituting the work,
    - 1.b.5. Transport of the Goods,
    - 1.b.6. Delivery of the Goods.
  - c. the Seller delays the delivery of the Goods or there are circumstances justifying a refusal to accept the delivery in whole or in part (Article (10)(4) of the GTCs),
  - d. the Seller fails to fulfil obligations under warranty for defects, quality guarantee, rights of third parties,
  - e. The Seller violates any of the confidentiality provisions provided for in the GTCs or the Agreement.
- 23.2 The Buyer may also terminate the Agreement with immediate effect if the Seller, despite a written request to cease violations and/or properly perform the Agreement, continues to fail to perform the obligations under the Agreement properly or performs them improperly.

- 23.3 In the cases referred to in sections 1 and 2 of this article, the Seller shall not be entitled to remuneration or any other civil law claim, which the Seller hereby waives.
- 23.4 If the Buyer withdraws from the Agreement or terminates the Agreement with immediate effect for reasons attributable to the Seller, the Buyer shall be entitled to charge the Seller liquidated damages for withdrawal/termination amounting to 50% of the gross price of the Goods under the Agreement.
- 23.5 In the case of withdrawal from the Agreement, the Buyer shall be free to determine the point in time from which the withdrawal shall be effective, including whether the Buyer withdraws from the Agreement in whole or in part and, if in part, whether only in respect of the part not yet performed or otherwise. The Buyer may exercise the right of withdrawal no later than 24 months from the date on which the cause for withdrawal arose.
- 23.6 The Buyer may also terminate the Agreement with immediate effect if, for reasons beyond the control of the Buyer, demand for the Goods has ceased.
- 23.7 The Buyer's rights referred to in this article are without prejudice to the Buyer's other rights, particularly to the calculation of liquidated damages.
- 23.8 The Seller's right of withdrawal under the Civil Code is excluded.
- 23.9 In the case of withdrawal from the Agreement, the provisions on liquidated damages, and on guarantee and warranty as well as on acquired intangible rights shall remain in force.

#### **Article 24** **Conclusions**

- 24.1 In the case of any dispute or misunderstanding between the Parties relating to the provisions and terms of the GTCs or the Agreement which cannot be resolved through negotiations, the Parties shall settle the matter before the District Court of Katowice-Wschód in Katowice or the Regional Court of Katowice - depending on the value of the subject matter of the dispute.
- 24.2 The Agreement and the legal relationship arising from it shall be governed entirely by Polish substantive and procedural law. In cases not regulated by these GTCs, the Polish Civil Code shall apply.
- 24.3 These GTCs supplement any previous agreements between the Parties to the extent that such agreements, in writing, did not regulate the circumstances in question.
- 24.4 Should individual provisions of the GTCs prove to be invalid or ineffective, this shall not affect the validity and effectiveness of the remaining provisions of the GTCs.
- 24.5 The Buyer's failure to exercise or delay in exercising on one or more occasions any rights under the GTCs and the Agreements, or exercising them in a manner contrary to the provisions of the Agreements (for the benefit of the Seller), or assuming on one or more occasions any obligation not arising from the Agreement or the GTCs, shall not cause the Buyer to relinquish such rights or to assume any obligations not arising from the GTCs.
- 24.6 Where written form is referred to in the GTCs, this shall mean a document signed by a person authorised to represent the Buyer/Seller for the performance of a specific type of action or action in question.
- 24.7 Where the electronic form is referred to in the GTCs, this shall mean sending a scan of the document referred to in the preceding section by e-mail to the Seller's address or the Buyer's address as given on the Buyer's website ([www.ntindustry.com](http://www.ntindustry.com)).
- 24.8 Any correspondence with the Buyer, regardless of its form, should include the Seller's number in the Buyer's system and the Buyer's Order number.
- 24.9 The GTCs have been drawn up in the Polish and English language versions. In the event of doubts or discrepancies, the Polish language version of the GTCs shall prevail.