

# GENERAL CONDITIONS OF SUPPLIES (GCS)

2020

The following definitions shall apply to these General Conditions of Supplies and all contract documents based thereon:

<b>Supply Contract:</b>	agreement concluded between the Employer and the Supplier on the delivery (of goods) for the Construction Project; these GCS along with other contract documents referred to in art. 1 of GCS shall form an integral part of the Supply Contract.
<b>Employer or EM:</b>	the legal person who as Contractor, based on the Main Agreement, commissions the Supplier with the performance of supplies for the Construction Project on the basis of the concluded Supply Contract.
<b>Supplier or SP:</b>	the legal person, legal person without corporate status or natural person, who on the basis of the concluded Supply Contract accepts the performance of the services commissioned by the Employer.
<b>Construction Project:</b>	the construction project indicated in the Contract, for which the Supplier shall perform the services.
<b>Site:</b>	place where the Construction Project is to be performed.
<b>days:</b>	calendar days according to the Gregorian calendar.
<b>Investor or IN:</b>	the entity, who, acting as the employer, entered into the Main Agreement for the performance of the Construction Project with the Employer, who acts as the contractor.
<b>Main Agreement:</b>	the agreement concluded between the Investor and the Employer for the performance of the Construction Project.
<b>contract documents:</b>	documents forming the Supply Contract specified in art. 1 of GCS.

## 1. Contract documents

- 1.1. The documents indicated in the Supply Contract Agreement or the Protocol of Negotiations with the Supplier are documents forming the Supply Contract. The construction documents are complementary and in case of any discrepancies between particular construction documents, the document listed first shall prevail over the document listed subsequently. Even when the Supplier's general commercial conditions appear in the documents confirming the acceptance of the order, delivery notes, invoices or other letters and it is not be questioned by the Employer, they shall not apply to the legal relationship of the Employer and the Supplier.
- 1.2. The Supplier confirms that he is familiar with all accompanying circumstances and conditions of the performance of the supplies (including the conditions on the Site). The subject of the supply shall be performed in accordance with the conditions of the Supply Contract and also with the applicable standards, technical knowledge, the applicable laws, including occupational health and safety, fire safety, environmental protection, waste and construction law regulations.

## 2. Provision of services

- 2.1. The Supplier is obligated to perform the supplies within the time and at the place indicated in the Supply Contract. The Employer is entitled to reject the supply before the agreed supply date. The

Employer is entitled to change the supply date, provided that such a change is delivered to the Supplier in due time in advance, i.e. minimum two working days before the supply date.

- 2.2. The supply of goods shall be performed at the cost and risk of the Supplier, unless otherwise specified in the Supply Contract or the Protocol of Negotiations with the Supplier. At the place of performance of the supply (including unloading and reloading), the Supplier is obligated to comply with the Employer's recommendations. The supplies performed by the Supplier have to be packed and marked in accordance with the Polish and international laws. The Supplier shall observe any laws applicable in Poland and also, in case of foreign supplies, international laws.
- 2.3. The Supplier is liable for damages and pollutions caused by him and he releases the Employer from results of any damage and actions in this regard.
- 2.4. The Supplier warrants that his goods have the characteristics specified in the Supply Contract and their application is verifiably permitted by relevant authorities at their place of destination. If, due to the requirements under the Supply Contract, the goods need to be approved by the Investor, upon request of the Employer, the Supplier will provide the Employer the documents or material samples necessary for proper approval, and deliveries will be made after obtaining appropriate approval.
- 2.5. The Employer is not obligated to verify and possibly question the quality and quantity of the subject of the supply on the date of its receipt, therefore any defects or deficiencies may be reported within the whole guarantee and warranty period. In each case, the Supplier grants to the Employer the warranty and guarantee on the subject of the supply for at least such a period of time and on such conditions, on which the Employer is obligated to perform the warranty and guarantee for the Investor, but in every case for a period not shorter than 5 years counting from the Investor's final acceptance of the Construction Project. The above-mentioned condition also applies, if the Supplier delivers movable goods, which are to be converted or embedded. The Supplier shall also bear liability for unduly performed consultancy services. If the supply is found to be incomplete, the Supplier is obligated to deliver the lacking part of goods without delay, at no charge and regardless of the time between the supply and the notification of missing parts. In each case of replacing a defective supply, the warranty and guarantee period shall start anew.
- 2.6. If defects or faults occur in the subject of the supply within the warranty and guarantee period, the Employer shall notify the Supplier about the noticed defects/faults, who shall fully and effectively remedy them, regardless of the related costs and shall rectify any damages caused by the defectiveness of the subject of the supply. At the request of the Employer, the Supplier shall participate in the guarantee inspections.
- 2.7. If the Employer reports justified objections about the quality and quantity of the subject of the supply, the Employer may suspend the payment intended for the Supplier until the supply is rectified, supplemented or replaced with goods free of defects.
- 2.8. If providing the warranty service is required due to the type of goods, the Supplier warrants the availability of service during the guarantee and post-guarantee period within the scope of remedying defects and failures and he warrants the supply of original spare parts or other which are at least technically equivalent (performed on the basis of separate orders) during the performance of the Supply Contract and the warranty and guarantee period.
- 2.9. The Supplier warrants that the subject of the supply is free of legal defects and that he is entitled to dispose of it without limitation. In particular, the Supplier warrants that there are no title retention clauses or third party rights in relation to the subject of the supply or any of its parts and that the Supplier's disposal of it does not infringe any rights of third parties.
- 2.10. In relation to the solutions and materials used during the performance of the subject of the Supply Contract, as long as they are protected by the Act of 4<sup>th</sup> February 1994 on Copyrights and Related Rights, the Supplier warrants that he holds all copyrights or licenses necessary for their proper and lawful usage during an unspecified period of time and also that, under the remuneration specified in the Supply Contract, he transfers those rights to the Employer in all fields specified in the above-mentioned act upon delivery of the supplied object. To substantiate this, at the request of the Employer, the Supplier shall provide him with the whole documentation. If it appears that the accepted solutions, materials and others have legal defects, the Supplier shall take all possible third

parties' claims that are relevant thereto and shall indemnify the Employer for breaching the copyrights in relation to the performance of the Supply Contract or the further Employer's or Investor's exploitation of the solutions, materials and others used by him under the Supply Contract and shall cover all related costs.

- 2.11. The Supplier shall comply with the regulations on placing dangerous materials and waste on the market. During the receipt of goods, safety documents, certificates and control certificates for dangerous materials for usage have to be delivered. The Supplier shall take the whole package and properly dispose of it at his own cost, unless otherwise specified in the Deed of Supply Contract or the Protocol of Negotiations with the Supplier.
- 2.12. If for the performance of the supply, it is necessary to provide the Supplier with the technical documentation or any other documentation, he shall request its delivery from the Employer in due time, immediately after its receipt he shall control its completeness and accuracy and notify the Employer about all inaccuracies and missing items. If the above-mentioned obligations are not properly fulfilled, the Supplier shall cover all losses arising from that negligence which are suffered by him or the Employer and therefore, he shall not pursue any claims.
- 2.13. If the Supplier does not remedy the defects in the subject of the supply within the deadline specified by the Employer, he shall pay the Employer the contractual penalty for each day of delay in the amount of 0.5% of the gross<sup>1</sup> total price / remuneration for all the supplies resulting from the Supply Contract, unless otherwise specified in the Deed of Supply Contract or the Protocol of Negotiations with the Supplier.
- 2.14. If the Supplier fails to provide the documents which are required by the Supply Contract, he shall pay the Employer a contractual penalty for each case in the amount of 10% of the gross<sup>2</sup> total price / remuneration for all supplies resulting from the Supply Contract, unless otherwise specified in the Deed of Supply Contract or the Protocol of Negotiations with the Supplier.
- 2.15. The supply shall be confirmed on the basis of the goods dispatched note. The confirmation of the supply which is signed by the Employer shall only certify that the supply has been made; it shall not certify the quantity or quality of the subject of the supply. The supply shall also cover an immediate reloading of goods in the place of performing the supply by the Supplier, unless the Parties have agreed otherwise in the Deed of Supply Contract or the Protocol of Negotiations with the Supplier.
- 2.16. Only the quantities with confirmed delivery notes are subject to remuneration, provided that if there is a difference between the quantities in the confirmed delivery notes and the quantities actually delivered, only the actual ones will be subject to remuneration. The Supplier shall receive at his own cost the surpluses of the supply. A temporary storage of goods shall be made at the cost and risk of the Supplier, the packages are not subject to separate remuneration. If the quality of the subject of the supply differs from the ordered one or the Supplier has failed to deliver the contractually required documentation allowing the subject of the supply to be used, the Employer may also, at his choice, reject such subject of the supply after a reception or may request its replacement, free removal of defects or relevant reduction of its price. In such a case the Supplier shall be liable for any damages caused by such actions (including the Employer's contractual penalty in relation to the Investor). If the Supplier fails to comply with the Employer's request defined in this Article within the time specified by him, the Employer shall be entitled to a substitute purchase or substitute removal of defects at the cost and risk of the Supplier without the obligation to collect the competitive offers and the necessity to obtain court's authorisation in this scope. The Supplier shall release the Employer from all related consequences and claims. Insofar as the subject matter of the delivery consists of items marked with a type, the Supplier agrees to change the quantity of the delivery materials and the Supplier shall have no claim thereon.

### 3. Invoicing and payments

---

<sup>1</sup> including the tax on goods and services

<sup>2</sup> including the tax on goods and services

- 3.1. Invoices shall be sent to the address specified in the Supply Contract. The invoices issued by the Supplier (i) shall be verifiable (the documents constituting the basis for issuing the invoice shall be attached), (ii) shall be issued in a form and amount compliant with the requirements of the Employer's site manager, (iii) shall contain the designation of the Supply Contract and a short description of the performed supplies, (iv) shall contain, in the content of the invoice or in the appendix to the invoice, the PKWiU code proper for the performed services in accordance with the Polish Classification of Goods and Services applicable for VAT tax purposes at the time of performing the supplies. Unless otherwise specified in the Deed of Supply Contract or the Protocol of Negotiations with the Supplier, the deadline for payment shall be 30 days. The Employer shall not invoice his supplies more than once per month (at the end of each calendar month), unless otherwise specified in the Deed of Supply Contract or the Protocol of Negotiations with the Supplier. The payment period shall commence when the Employer receives a properly issued invoice. Payment will be deemed to have been made on the day on which the funds are debited from the Employer's bank account. The Supplier acknowledges that the Employer shall make payments only to bank accounts indicated in the list of VAT taxpayer information maintained by the Head of the National Tax Administration in accordance with Article 96b of the Law on Tax on Goods and Services (the so-called white list) and therefore the Supplier undertakes to hold such a bank account during the term of the Supply Contract in order to enable the Employer to make payments. In the absence of a bank account registered on the so-called white list, the Employer shall not be obliged to make payment to the Supplier and the payment due to the Supplier shall be deemed not due until the Supplier has fulfilled the obligation referred to in the first sentence and informed the Employer thereof in writing.
- 3.2. The Employer shall pay the amounts presented on the VAT invoices, which have been correctly issued by the Supplier, by means of the split payment mechanism, obligatorily in each case provided for by the Law. In addition, the Employer shall be entitled to pay the amounts presented by the Supplier on VAT invoices by means of the split payment mechanism in any other case it deems appropriate.
- 3.3. The Employer is entitled to unilaterally set off any payment claims of the Supplier against counterclaims, which the Employer has against the Supplier, even if neither the Employer's nor the Supplier's claims are due at the moment of deduction (contractual deductions).
- 3.4. The Supplier shall not assign or pledge its rights (including receivables) under the Supply Contract unless the Employer has given its consent in writing on pain of nullity. The Supplier shall be obliged to obtain the said consent before entering into a transfer agreement with a third party or an agreement resulting in the creation of an encumbrance. The consent of the Employer shall only be deemed to have been effectively given if the terms and conditions contained in the Employer's statement of consent are accepted in writing by the buyer of the claim or the person to whom the claim is encumbered. If the Supplier, upon consent of the Employer, assigns claims or establishes a pledge thereon, the amount of 0,5% of the assigned or pledged claim increased by the tax on goods and services, but at least PLN 500, will be deducted as the remuneration for the assignment handling costs.
- 3.5. Each invoice issued by the Supplier shall be endorsed with: 'No right of assignment of receivables' unless the Employer gives its prior written consent (on pain of invalidity) to the assignment or pledge of receivables in accordance with the Supply Contract. The absence of the above annotation or the existence of any annotation of assignment of the receivables entitles the Employer to refuse to accept the invoice and renders the receivables covered by the invoice not due (condition precedent).
- 3.6. The enforceability of each Employer's payment to the Supplier depends on:

- a) the Supplier providing proof that he has met his payment obligations towards his subcontractors. In case of not settling accounts by the Supplier with regard to his subcontractors, the Employer is entitled to settle them and make deductions from the Supplier's payment amounts. Furthermore, the Supplier shall indemnify and hold the Employer harmless from and against any damages, lawsuits and its effects which are related to subcontracting the services specified in the Supply Contract and the missing or late payment of the remuneration.
- b) the Supplier providing the Employer, on each of his request and at the time and in the form indicated by the Employer, with a statement on the Employer's settlement of the Supplier's due remuneration in accordance with the Supply Contract.

As security, in guarantee of the Supplier's obligations specified in this Article, the Employer may use any financial securities established on the basis of the Supply Contract.

#### 4. Prices, Remuneration

- 4.1. The prices/ remuneration agreed in the Supply Contract shall be fixed until the end of the performance of all supplies in accordance with the provisions of the Supply Contract and shall not be a subject of fluctuation whatsoever.
- 4.2. If the Supplier infringes a relevant provision of the Supply Contract, in particular in the case of late supply or defects in the subject of the supply or occurrence of justified reasons to open the liquidation, restructuring, insolvency or enforcement proceedings against the Supplier, attachment of his property which might have an influence on the performance of the Supply Contract, the Employer shall have the right to waive from particular or not yet performed parts of supplies with immediate effect and without any liabilities and necessity to set an additional deadline. In that case, the Supplier shall remedy all damages thus incurred by the Employer.
- 4.3. If the contractual relationship between the Employer and the Investor terminates (including the termination of the contract), the Supplier or his goods are not accepted or for any reason, there is no need for the ordered subject of the supply, the Employer shall have the right to terminate the whole Supply Contract or its part or in the scope of not performed parts of the supplies without any liabilities and claims as to the Supplier, except for the payment for the performed supplies.

#### 5. Contractual penalties, securities

- 5.1. The Supplier shall be entitled to terminate the Supply Contract within 6 months as of acquiring the knowledge on circumstances constituting the basis for the termination.
- 5.2. If the Supply Contract is terminated by the Employer for reasons for which the Supplier is responsible or by the Supplier for reasons for which the Employer is not responsible, the Employer shall have the right to charge a contractual penalty in the amount of 10% of the gross<sup>3</sup> total price for all the supplies resulting from the Supply Contract, unless otherwise stated in the Deed of Supply Contract or the Protocol of Negotiations with the Supplier.
- 5.3. In the event of failure to meet any of the agreed delivery dates the Supplier shall pay ZD a contractual penalty for each day of delay in the amount of 0.5% of the total price/remuneration for the total deliveries under the gross Supply Contract unless otherwise agreed in the Deed of Supply Contract or the Protocol of Negotiations with the Supplier.
- 5.4. Unless otherwise agreed in the Deed of Supply Contract or the Protocol of Negotiations with the Supplier, to provide security for his contractual obligations arising from the Supply Contract, the Supplier shall deliver to the Employer, within 7 days as of concluding thereof, a bank or insurance guarantee issued by an entity to be approved beforehand by the Employer which is to be unconditional, irrevocable and payable upon first demand of the Employer, without examination of the legal grounds underlying a claim. The amount of the bank guarantee shall be specified in the

---

<sup>3</sup> including the tax on goods and services

Deed of Supply Contract or the Protocol of Negotiations with the Supplier. The performance security for secure of the Supply Contract shall be granted with a period of validity of 60 days counted from the stipulated receipt of all supplies to be made by the Employer, and in case of postponing the deadlines, such period should be properly extended.

- 5.5. If the Supplier is in delay with delivering a bank or insurance guarantee, the Employer shall be entitled to make deductions from the payment for the Supplier in relation to the performance security for the Supply Contract, until the deducted amounts reach the amount of the performance security for the Supply Contract. The performance security for the Supply Contract shall become due upon a delay in delivering a bank guarantee. The amounts of deductions to be made shall remain with the Employer and shall be interest-free within the same period in which a bank guarantee is to be valid. The reimbursement of the security shall be made only if there are no circumstances which entitle the Employer to exercise such security and the Supplier, by written notice, requests the payment. Without prejudice to the validity of the above provisions, if the Supplier delays in providing the bank or insurance guarantee, the Employer shall be entitled, after giving an additional 14-day period, to withdraw from the Supply Contract.
- 5.6. Unless otherwise agreed in the Deed of Supply Contract or the Protocol of Negotiation, to provide security for the Supplier's contractual obligations, including the period of warranty and guarantee, the Employer shall also be entitled to deduct the guarantee deposit which shall become due upon concluding the Supply Contract. The payment of the security deposit shall be performed by deducting the security deposit amount from each invoice in the amount specified in the Deed of Supply Contract or the Protocol of Negotiations with the Supplier. In case no circumstances entitle the Employer to take advantage of the guarantee deposit and the Supplier has removed all defects, the deposit shall be returned within 60 days as of the expiry of the longest warranty and guarantee period, upon written request of the Supplier. The guarantee deposit may also be returned before the expiry of the longest warranty and guarantee period, upon written request of the Supplier, after the Supplier submits the bank or insurance guarantee issued by an entity, which is to be approved beforehand by the Employer and which secures the performance of liabilities arising from the Supply Contract. The bank or insurance guarantee shall be unconditional, irrevocable and payable upon first demand of the Employer, without examination of the legal grounds underlying the claim, and it shall be valid for a period ending 60 days after the warranty and guarantee period specified in the Supply Contract.
- 5.7. The Employer is entitled to draw on any security received from the Supplier in every event when the Supplier fails to meet any contractual obligations or performs them improperly and to cover from the established securities any claims, including contractual penalties and damages of the Employer.

## 6. Sub-deliveries

- 6.1. The Supplier shall generally perform the services covered by the Supply Contract personally and may not subcontract the whole of the services to third parties. If the Supplier intends to have part of the services performed by third parties (subcontractors), the Supplier shall request the Employer's written consent in due time in advance by submitting to the Employer a complete draft of a contract with a subcontractor containing the contract conditions analogous to the conditions of the Supply Contract along with indicating its detailed scope. The Employer is entitled to grant consent, deny consent or raise objections to subcontracting the services within 30 days as of providing him with a draft of the contract by the Supplier. Lack of the Employer's consent shall constitute a risk of the Supplier, who has no right to delay the supplies in relation thereof. The Supplier shall deliver to the Employer within 3 days after entering into it a copy of the contract concluded with the subcontractor. The above-mentioned provisions shall accordingly apply to the change of the contract concluded between the Supplier and the third parties. In the event that the Supplier fails to comply with the above obligations, the Employer shall be entitled to charge a contractual penalty of 3% of the total price/remuneration for all deliveries under the gross Supply Contract unless otherwise stated in the Deed of Supply Contract or the Protocol of Negotiations with the Supplier.

6.2. If the Supplier fails to pay the remuneration to the subcontractors or the payment is late, he shall pay the Employer a contractual penalty in the amount of 3% of the gross<sup>4</sup> total price/remuneration for all the supplies arising from the Supply Contract per each case, unless otherwise specified in the Deed of Supply Contract or the Protocol of Negotiations with the Supplier.

## 7. Miscellaneous

- 7.1. The drafts and drawings delivered by the Employer in order to perform the supply shall remain the Employer's property and shall be returned upon accepting the subject of the supply. Neither the Supplier may use them for his own use nor make them available to third parties. The Supplier may take photos of the site only upon a written consent of the Employer; any publications are forbidden.
- 7.2. Unless the Employer does not collect the goods directly from the Supplier, the Supplier is obliged to insure, at his own cost, all risks related to delivering the subject of the supply at the place of destination, including its transportation, unloading and reloading. The Supplier shall present to the Employer a copy of the insurance policy before starting the supplies.
- 7.3. The Supplier is not entitled to mention the Employer's or the Investor's name in his advertisements or in any other information or documents related to public relations or, to publish the logos of the Employer and the Investor without the Employer and Investor's consent in writing otherwise null and void, unless otherwise specified in the Partnership Agreement between the Employer and the Investor and unless the Main Agreement does not contain any restrictions in this regard. The Supplier shall be liable, under general rules, for any damage resulting from the infringement of the above-mentioned prohibition.
- 7.4. If any obligation of the Parties is not exercised or is unduly exercised because of obstacles which are beyond control of a party and could not have been avoided, overcome and predicted upon concluding the Supply Contract and which prevents objectively the performance of the Supply Contract (in particular: war, internal disturbances, natural disasters, strikes officially announced by trade unions, except for strikes of the Supplier's personnel), the Parties shall not be liable therefor. Indemnification due to force majeure shall apply only for the duration of the obstacle and only in case the other party confirms such circumstances. A party being unable to exercise its liability as a result of force majeure, shall notify a second party within 5 days as of acquiring knowledge about the obstacle or as of the moment when the party ought to have known about the obstacle. Otherwise, a party referring to force majeure shall not be released from liability. If force majeure prevents one of the parties from exercising obligations during the period of at least 6 months, the other party may terminate the Supply Contract.
- 7.5. The Employer has the right to claim a contractual penalty, regardless of the incurred damage or the Supplier's fault. The Employer is entitled to seek compensation for the damage in excess of the amount of the contractual penalties up to the amount of the actual damage. Notwithstanding the Employer's right to charge a contractual penalty, if the Supplier is in delay with performing the supplies, the Employer shall be entitled, at the cost and risk of the Supplier, to a substitute purchase of goods being the subject of the supplies, without the obligation to collect competitive offers and the necessity to obtain a court's authorisation on that account.
- 7.6. The Supplier undertakes to maintain the secrecy of the contents of the binding Supply Contract and also, all the information regarding the Employer and the Investor, which has been obtained during the execution of the contract or in connection with its execution and shall not submit them to third parties without the prior written consent of the Employer, under pain of the obligation to remedy the damage caused by violating this obligation. The information contained in the Supply Contract may be disclosed by the Parties to the authorities which are authorised to obtain such information under the applicable laws.
- 7.7. The Parties undertake to notify each other about each change of address and telephone and fax numbers specified in the Supply Contract. In the event of non-compliance, a letter sent to the

---

<sup>4</sup> including the tax on goods and services



indicated address and returned with a note on the inability to deliver, shall remain in the documents as effectively delivered.

- 7.8. All correspondence to be exchanged between the Parties and the documentation to be drawn up and delivered shall be in the language specified in the Deed of Supply Contract and the Protocol of Negotiations with the Supplier.
- 7.9. The Supplier acknowledges, that the Employer possesses a Code of Conduct, by which it operates its business. The Supplier has become familiar with the Employer's Code of Conduct published on [www.porr-group.com](http://www.porr-group.com) and [www.porr.pl](http://www.porr.pl) and shall comply with the principles specified therein.
- 7.10. Pursuant to Article 4c of the Act on Counteracting Excessive Delays in Commercial Transactions of 8 March 2013 (i.e. 21.01.2019 OJ 2019 item 118), the Employer declares that it has the status of a large entrepreneur within the meaning of the provisions of the aforementioned Act.
- 7.11. The Supplier shall process the personal data provided to it by the Employer in the performance of the Supply Contract in accordance with the provisions of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons in relation to the processing of personal data and on the free movement of such data and repealing Directive 95/46/EC (hereinafter "RODO"). The Supplier undertakes to inform all individuals connected with the performance of the Contract (including sole traders) whose personal data in any form will be shared with the Employer of the fact that their personal data has been transferred to the Employer and of the Employer's processing of that personal data. This obligation will be fulfilled for the benefit of the Employer by the Supplier providing the persons whose data will be processed by the Employer with the contents of the Information Sheet annexed to the Supply Contract and carrying out any other actions necessary to comply with the information obligation set out in the RODO towards such persons on behalf of the Employer. The Supplier shall be fully liable to the Employer for failure to perform or improper performance of the obligations set out above.
- 7.12. This Contract shall be governed by Polish law.
- 7.13. Disputes arising from the Supply Contract shall be settled exclusively by the ordinary court having jurisdiction over the location of the registered office of the Employer.