

## GENERAL TERMS AND CONDITIONS

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### **Article 1. Definitions.**

1.1. The definitions refer to the respective expressions as used in the GTC, the Contract and appendices thereto, and shall have the following meanings:

- 1) **"GTC"** - these general terms and conditions.
- 2) **"Employer"** - a company of the Bridgestone Europe capital group placing the Orders or executing the Contract with the Contractor.
- 3) **"Contractor"** - an entity which is a party to the Contract executed with the Employer, performing construction, refurbishment, engineering, construction and assembly and any other technical works for the Employer.
- 4) **"Parties"** - the Employer and the Contractor.
- 5) **"Contract"** - a separate document setting forth particular conditions for performance of the Contract; the Contract also denotes an order sent by the Employer to the Contractor.
- 6) **"Provisions of the Contract"** - all provisions of the Contract and its appendices, including construction documents and working designs, as well as the provisions of GTC.
- 7) **"Engineering Works"** – all works relating to engineering, collection of the relevant approvals and preparation of technical documents, whose outcome is a technical design prepared in accordance with the applicable laws, as well as the building permit if its grant is specified as an item of the Contract object, performed by the Contractor for the Employer, and included as an item of the Contract object.
- 8) **"Construction and Assembly Works"** - construction, assembly or installation works performed by the Contractor for the Employer, included as an item of the Contract object.
- 9) **"Technical Specifications"** – detailed technical specifications for the works submitted by the Contractor to the Employer prior to execution of the Contract.
- 10) **"Technical Documents"** – detailed technical documents for performance of the works, prepared by the Contractor in the course of the

works, including as-built documentation, covering in particular certificates and approvals relating to the works.

- 11) **"Time Schedule"** – a time schedule specifying activities to be carried out as part of the works, accepted by the Employer at or before execution of the Contract. The Time Schedule is the basis for assessing the value and completion dates for systems and works which are subject to interim acceptance. The Time Schedule divides the activities forming part of the works into milestones, and provides specific dates and rules, if any, for advance payments to the Contractor.
- 12) **"Facility"** – the outcome of Construction and Assembly Works.

### **Article 2. General provisions.**

- 2.1. The Provisions of the Contract apply to the Contract between the Employer and the Contractor. In case of any discrepancies between the GTC and the Contract, the conditions of the Contract take precedence.
- 2.2. The Contractor's own conditions of contracts are not binding upon the Employer and will not be considered applicable to relations between the Parties, even if the Contractor invokes them, for example in correspondence between the Parties.
- 2.3. The Employer declares that it is a taxpayer of the tax on goods and services (value added tax) pursuant to the provisions of the Act on Goods and Services Tax of 11 March 2004 (Journal of Laws of 2017, item 1221, as amended). If the Contractor does not expressly declare otherwise, it is assumed to be a taxpayer of the aforesaid tax. The Contractor shall also notify the Employer immediately of its loss of such status, or otherwise be liable for damages.
- 2.4. When justified, the Employer is entitled to deny access to the facilities to employees, subcontractors or representatives of the Contractor, or other persons acting on its behalf, which applies in particular to the Contractor's representatives' entering or remaining on the Employer's premises under the influence of alcohol or drugs, and to their violation of environment and occupational health and safety regulations applicable on the Employer's premises, etc.
- 2.5. The Contractor is responsible for actions and omissions of persons it uses to perform the Provisions of the Contract, as well as persons it entrusts with performing the Provisions of the Contract, as for its own actions and omissions. The Contractor is also responsible for all actions and omissions of the aforesaid persons in performance of the Provisions of the Contract.
- 2.6. If the Contractor conducts any activities related to the performance of the Provisions of the Contract on the Employer's premises, the Contractor shall comply with all internal regulations of the Employer, in particular health and safety regulations, as well as follow the instructions provided by the Employer's staff in that respect. In particular, the Contractor shall comply with the Occupational Health and Safety Management Procedure applicable on the Employer's

premises, available on the website. The Occupational Health and Safety Management Procedure is subject to change at any time, which does not require the Contractor's consent.

- 2.7. The Parties may, in particularly justified cases, expressly agree in writing to waive provisions of GTC or the Contract, however any such waiver shall not be construed as automatically applicable to subsequent contracts.

### **3. Performance of the Provisions of the Contract.**

- 3.1. To establish a legal relationship between the Parties the Contract must be signed by both Parties, or the Employer must submit a declaration of will accepting the proposal (order form), subsequently confirmed as accepted for execution by the Contractor, provided that until the Contractor confirms acceptance for the execution to the Employer, the Employer is entitled to cancel or change its declaration of will for convenience.
- 3.2. The Contractor undertakes that its Engineering Works or Construction and Assembly Works will comply with the requirements agreed between the Parties in the Provisions of the Contract, the Technical Specifications and construction documents and working designs, and be performed to the Time Schedule, which is a precondition of the Employer's approval of work acceptance forms for hidden or temporary works, work-in-progress acceptance forms, or final acceptance forms.
- 3.3. The Contractor declares that it will perform the Provisions of the Contract in accordance with good practice, the applicable Polish Standards, or the Employer's internal requirements referred to in the Contract and its appendices, including guidelines on the Employer's supervision of contractors, provided for in the Occupational Health and Safety Management Procedure.
- 3.4. The Contractor represents that it has the experience, expertise, qualifications, personnel and funds required to timely and duly perform Engineering Works or Construction and Assembly Works and that it is familiar with the Technical Specifications and construction documents and working designs, and with the scope of the Engineering Works or Construction and Assembly Works, and that it has been fully advised of conditions at the site where such works are to be performed, which has allowed it to fully assess the scope of the Engineering Works or Construction and Assembly Works, the conditions and time required to duly complete them, and to provide the final calculation of the total fixed remuneration to be paid to the Contractor.
- 3.5. If the Employer anticipates that the Contractor does not give assurance of due performance of the Contract, including in compliance with the Provisions of the Contract, the Employer may construe it as breach of the contract. Assurance of due performance of the Contract is construed by the Parties as performance of the Contract in accordance with generally applicable provisions of law, requirements agreed by the Parties in the Provisions of the Contract, with due care and

according to good practice, the applicable Polish Standards or the Employer's internal requirements indicated in the Provisions of the Contract, as well as in accordance with experience and expertise, and, in addition, as performance of all other contracts, which were, are or will be executed between the Parties, including the contracts performed concurrently by the Parties. Performance of the Contract contrary to the aforesaid criteria causes the Contractor to lose the status of the so-called duly performing contractor.

- 3.6. Regardless of any other Provisions of the Contract, the Employer is entitled to withdraw from the contract object, at any time, but not later than within 3 months of the expiry of the Contractor's completion date for the contract object, Construction and Assembly Works whose value is up to 20% of the agreed remuneration, provided that the Contractor has not yet proceeded to such works. If the Contractor has already incurred costs in conjunction with the withdrawn scope of the works, the Employer will reimburse the Contractor's reasonable and document cost up to the total amount of 4% of the remuneration. The value of the withdrawn works deducted from the remuneration will be specified by the Employer in accordance with the remuneration for the respective works as indicated in the proposal, or in accordance with customary remuneration for such works.

### **Article 4. Performance of Engineering Works.**

- 4.1 Engineering documentation shall be complete in terms of its purpose, consistent and coordinated for all disciplines (including construction and MEP, connections to external networks) it comprises, approved by the relevant experts, and enable in particular:
  - a) grant of the building permit decision and any other decisions, approvals, opinions and permits, as well as making notifications required to perform the Provisions of the Contract,
  - b) completion of the project covered by the engineering documentation,
  - c) grant of the final occupancy permit for the facility upon its completion.
- 4.2 The Contractor will consult engineering solutions with the Employer on an ongoing basis and, promptly, but not later than within 2 working days, reply to questions asked by the Employer in conjunction with performance of the Provisions of the Contract. The Contractor shall make any changes as instructed by the Employer, provided that they comply with the law and good technical practice.
- 4.3 The Contractor is fully responsible for ensuring that the engineering documentation is correct, in particular in terms of performance of the Provisions of the Contract. If any errors or deficiencies in the engineering works are identified, in particular resulting in additional or varied works, the Contractor will pay the cost of such additional works, and if they are contracted to a third party, reimburse the related costs to the Employer.
- 4.4 The Contractor's remuneration covers the cost of

obtaining any documents (including the map for design purposes), studies, reports and opinions required to perform the Provisions of the Contract, including any handling fees for their issue. The payment of costs does not apply to fees specified in the decisions as those which the Employer is liable to pay.

- 4.5 Upon completion of the engineering documentation, the Contractor shall notify the Employer accordingly, and the Employer will then set the acceptance date for the documentation. Handover will be at the Employer's registered office, on the basis of an acceptance form, however signature of the acceptance form is not to be construed as accepting the engineering solutions as correct, but as a mere receipt of the engineering documentation.
- 4.6 The engineering documentation will be submitted to the Employer in the number of copies required by the Provisions of the Contract, wherein it will also be specified whether the copies are to be in hard-copy or electronic format. Unless provided otherwise, the engineering documentation will be submitted in two hard copies (printout) and in electronic format.
- 4.7 The Contractor shall incorporate in the engineering documentation comments made by the Employer, and do so within 7 days, if they do not contravene prior instructions of the Employer, or the applicable laws and good technical practice, as well as requirements provided for in the Contract.
- 4.8 If the Contractor is in breach of Articles 4.1-4.7, the Employer will demand from the Contractor by notice to incorporate them, setting an appropriate time-limit for the same, and if it expires without the Contractor complying, the Employer will be entitled to contract such works from a third party at the risk and expense of the Contractor.

#### **Article 5. Performance of Construction and Assembly works.**

- 5.1. The Employer will give possession or make available the site to the Contractor on the date indicated in the Contract. The giving of possession will be by the Parties' signature of the site handover form. The commencement of Construction and Assembly Works is conditional upon due notification of the same by the Contractor to construction administration authorities, if so provided under the law, and in particular notification of details about the site manager selected by the Contractor and approved by the Employer.
- 5.2. The Contractor is responsible for all actions and risks in conjunction with the sourcing, purchase and delivery to the site of the required construction and installation materials, tools, and with providing the site with the necessary plant and equipment as is required to perform the Provisions of the Contract. The Contractor ensures in this respect that the materials are new and approved for trading, and comply with the requirements of generally applicable laws, and shall provide the Employer with approvals for the materials and products used, not later than upon

notifying readiness of the works for acceptance. The Contractor shall also submit the relevant safety data sheets in Polish for all chemical substances and mixtures, unless the Employer decides otherwise.

- 5.3. In the period from taking possession of the site to the Employer's signature of the final acceptance form, the Contractor is responsible for preliminary works referred to in Article 41 of the Building Law Act of 7 July 1994, as well as for:
  - a) protective measures stipulated in EHS, fire protection and property security provisions,
  - b) collection and disposal, at its expense, of waste from the site in accordance with the environmental protection laws and for payment of damages, if any, resulting from non-compliance with such laws,
  - c) make payments on an ongoing basis for water and electricity used for Construction and Assembly Works, on the basis of re-invoiced costs charged by the Employer. The Contractor will ensure access to the above utilities at its own expense, unless the Parties decide otherwise,
  - d) keeping the site free of any obstacles, removing on an ongoing basis unneeded materials, waste, and temporary structures no longer needed, and for tidying up the site by the date of the final acceptance form at the latest.
- 5.4 The Employer may appoint a supervising inspector indicated in the Contract for the duration of the works.
- 5.5 The Contractor appoints a works manager indicated in the Contract for the duration of the works, unless the applicable laws do not require the appointment.
- 5.6 Substitution of persons referred to in Articles 5.4 and 5.5 shall be promptly notified to the other Party, not later than within 3 days of such substitution. The Employer may demand that the Contractor substitute the site manager if the Employer claims that he does not duly perform his duties, and the Contractor shall act accordingly not later than within 14 days of the Employer's submission of such demand.
- 5.7 The Contractor will enable access to the site, at the Employer's request, for persons indicated by the Employer other than the owner's supervising inspector.
- 5.8 The Contractor shall participate in briefings, meetings, expert examinations and tests organised by the Employer.

#### **Article 6. Subcontractors.**

- 6.1. If the Contractor uses subcontractors to perform the Provisions of the Contract with the Employer's consent, the provisions of this article apply. The Employer prohibits performance of any works by a subcontractor under a contract with further-tier subcontractors without the Employer's prior consent in writing.
- 6.2. The scope of the subcontractors' work will be specified in a written contract between the Contractor and a subcontractor (below: the "Subcontract").

- 6.3. To obtain the above consent the Contractor shall submit to the Employer a draft Subcontract, initialled by the Contractor and the Subcontractor, to include:
- name of the subcontractor, precise indication of its activities and of the bank account for remuneration for activities performed by the subcontractor,
  - list of amounts or formulae for determination of remuneration for activities performed under the Subcontract.
- 6.4. If the Employer grants its consent, the Contractor, promptly upon execution of the Subcontract(s) provides the Employer with the list of the subcontractors and their works, and the maximum remuneration due to each. It shall also provide the Employer with a copy of that contract.
- 6.5. The Contractor is responsible for actions and omissions of the subcontractors as for his own actions and omissions.
- 6.6. The Contractor will submit a declaration confirming payment of the remuneration to the subcontractor with the notice of readiness for acceptance. If the declaration is not submitted, or a false declaration is submitted, the Employer is entitled to disburse the remuneration to the subcontractor directly, to which the Contractor consents and for which it grants the Employer an irrevocable power of attorney in that respect. The remaining remuneration will be paid to the Contractor.
- 6.7. Contracting works from a subcontractor or a further-tier subcontractor without the Employer's consent granted as specified in this article relieves the Employer of the duty to pay remuneration to the subcontractor or the further-tier subcontractor.
- 6.8. The provisions of Articles 6.6-6.7 do not apply where the contract object is not construction or refurbishment works.

#### **Article 7. Acceptance of Construction and Assembly Works.**

- 7.1. The Parties establish the following acceptances for the Works:
- Acceptance of hidden or temporary works,
  - Acceptance of work in progress,
  - Final acceptance,
  - Defects liability acceptance.
- 7.2. The owner's supervising inspector proceeds to the acceptance of hidden or temporary works within 3 working days of receiving the notice of readiness of such works for acceptance. The inspector may demand production of the relevant documents and provision of additional clarifications from the Contractor to enable evaluation of compliance of the hidden or temporary works with the Contract, and positive acceptance of such works. Acceptance of hidden or temporary works will be by entry in the site log.
- 7.3. The acceptance of work in progress will be based on the progress report signed by the Parties in accordance with the Time Schedule.
- 7.4. Final acceptance is conducted upon full completion of all works, upon the Employer's completion of all acceptances, upon remedy of

the identified defects and snags, clean-up of the site, including removal of the site camp and equipment, and upon giving possession of the site to the Employer, but not earlier than upon submission along with notice of readiness for acceptance to the Employer.

- 7.5. The Contractor shall submit to the Employer the following for the final acceptance, within 7 days of completion of Construction and Assembly Works:
- certificates for construction materials, including in particular safety mark certificates required under the law, declarations of compliance and technical approvals, catalogue sheets, test reports, acceptance forms with utility providers and third parties whose rights were used by the Contractor;
  - documents authorising the Employer to exercise guarantee rights in accordance with the Contract,
  - instruction manuals, descriptions and guidelines on operation and maintenance of building systems, as well as furnishings covered by the Contract,
- and if the Provisions of the Contract also apply to construction works:
- as-built documentation,
  - operating and maintenance manuals for the Facility and Fire safety manual consulted with the local Fire Department and, in a separate document, as-built documentation for fire safety and protection,
  - energy certificate,
  - other documents required to be issued to the Employer under the Contract or under the building law in conjunction with the performance of the works and handing over of the Facility for occupancy.
- 7.6. The Employer will set the acceptance date, which may not be later than within 7 days of the Contractor's notice of readiness for acceptance. The failure to submit the documents referred to above causes the date to be postponed until actual submission of those documents.
- 7.7. Experts appointed by the Parties may also participate in acceptance, in addition to the authorised representatives of the Parties and other persons designated by the Employer. The participation of the experts in the acceptances does not affect the scope of the Contractor's liability for non-performance or defective performance of the Contract.
- 7.8. The acceptance activities involve verification of due performance of the Provisions of the Contract, continue for 14 days as a maximum, and culminate with the Parties' preparation of the final acceptance form for Construction and Assembly Works.
- 7.9. The final acceptance will be by the Parties' signature of the final acceptance form. The final acceptance form signed by the Parties will include all arrangements made in the course of the final acceptance, as well dates for remedy of defects and snags, if any, identified during the acceptance.
- 7.10. Unless the Contract provides otherwise, the Facility shall be duly installed/assembled. Upon completion of the installation/assembly, the

Contractor shall start up the Facility if the Employer so requires, and train personnel indicated by the Employer on the operation and maintenance of the Facility. Upon installation, the Contractor shall dispose of all waste and items used for the installation at its own expense.

- 7.11. If Construction and Assembly Works are accepted with a reservation on identified defects, or if such defects are identified in the warranty period, the Employer may:
- if the defects can be remedied, demand remedy of the same by setting an appropriate time-limit in writing, not shorter than 3 days;
  - correspondingly reduce the Contractor's remuneration;
  - terminate the contract in full or in part if such defects cannot be remedied, or if there are reasons to believe that the Contractor will not be able to remedy them on time, or if the Contractor has failed to remedy the defects in the time-limit set by the Employer and the defects are material.
- 7.12. If the Contractor refuses to remedy defects or fails to remedy them in the time-limit set by the Employer, or there are reasons to believe that the Contractor will not be able to remedy them on time, the Employer will be entitled to contract the remedy of such defects from a third party at the expense and risk of the Contractor.
- 7.13. If the defects are remedied, the Contractor shall notify the Employer accordingly.
- 7.14. Non-attendance by the Contractor's representative or site manager does not postpone acceptance activities or results of the acceptance committee's works. In that case, the findings of the acceptance committee and its works, including the final acceptance form of Construction and Assembly Works it prepares, are binding upon the Contractor.
- 7.15. The final acceptance form unreservedly signed by the Parties and, where required under the law, the grant of the unconditional final occupancy permit for the Facility, constitutes joint confirmation of due performance of the Provisions of the Contract by the Contractor and provides the basis for the final settlement between the Parties.

#### **Article 8. Remuneration and payment method.**

- 8.1. The Contractor's remuneration for performance of the Contract is specified in detail in the Contract.
- 8.2. Unless expressly provided otherwise in the Contract, the Contractor's remuneration is fixed and constitutes the total remuneration due to the Contractor for performance of all Engineering Works or Construction and Assembly Works and completion of the Facility. Any increase in the remuneration must result from a project scope modification approved for execution under a separate contract executed by the Parties.
- 8.3. Advance payments to the Contractor are permitted if so provided by the Contract. A precondition for payment of the advance is prior submission by the Contractor of an irrevocable, unconditional and payable at sight bank or insurer-issued guarantee for the amount of at least the value indicated in the Contract, valid at least 90 days after unreserved

signature of the final acceptance form. The Contractor shall submit a proof of continuous cover of the bank or insurer-issued guarantee at each Employer's request. The advances will be settled by deduction of their amounts from the Contractor's remuneration covered by the final invoice issued on the basis of the final acceptance form.

- 8.4. The Employer will pay the remuneration to the Contractor on the basis of a VAT invoice submitted to the Employer, the basis for which is the relevant acceptance form.
- 8.5. The remuneration will be paid in the amount and on dates indicated in the Time Schedule upon fulfilment of the following conditions:
- for engineering documentation - signature of the engineering documentation acceptance form, along with the final building permit (if covered by the Provisions of the Contract),
  - for work in progress - signature of the progress reports for milestones indicated in the Time Schedule, and in the case of completion of the works - signature of the final acceptance form.
- 8.6. If the Parties have not agreed on the Time Schedule, the remuneration will be payable within thirty (30) days of the Employer's receipt of the VAT invoice issued pursuant to the provisions of law and the requirements included in the Provisions of the Contract.
- 8.7. Unless the Parties expressly decide otherwise, the Contractor shall issue electronic invoices. The Employer consents to receiving invoices in electronic format, however it is entitled to revoke the consent at any time. The electronic invoice is construed by the Parties as the invoice defined in Article 2(32) of the Act on Goods and Services Tax of 11 March 2004.
- 8.8. The Contractor declares that the invoices will be sent to the Employer by e-mail, exclusively as PDF files and acknowledges that other types of files will not be accepted by the Employer. Invoices other than in electronic format may be sent solely on an exceptional basis.
- 8.9. One PDF file will contain one invoice as a maximum, and one e-mail will contain one e-invoice as a maximum.
- 8.10. Additional appendices to the invoice will be saved in the PDF file together with the invoice.
- 8.11. Scanned, handwritten documents will not be considered electronic invoices and will not provide the basis for payment by the Employer.
- 8.12. The Contractor declares that the e-mail address at which invoices will be sent is the e-mail address indicated to the Employer in a separate document. For Bridgestone Poznań sp. z o.o. the address is: [invoices.bspzm@bridgestone.eu](mailto:invoices.bspzm@bridgestone.eu), for Bridgestone Stargard sp. z o.o. the address is: [invoices.bsstm@bridgestone.eu](mailto:invoices.bsstm@bridgestone.eu), for Bridgestone Europe NV/SA Spółka Akcyjna Oddział w Polsce (branch in Poland): [invoices.bsps@bridgestone.eu](mailto:invoices.bsps@bridgestone.eu) or [invoices.bebs@bridgestone.eu](mailto:invoices.bebs@bridgestone.eu).
- 8.13. The Contractor declares that access to the e-mail address from which the electronic invoice will be sent, will be limited exclusively to authorised persons and secure as required by law.
- 8.14. The date of receipt of the invoice by the Employer is considered to be the date of recording the delivery

of the invoice as a PDF file to the Employer's electronic mail box indicated above.

- 8.15. In addition to the mandatory items as provided by the law, invoices issued by the Contractor will also include:
- 1) currency in which the invoice is issued, denoted by a three-character code (e.g. PLN, EUR, USD),
  - 2) the Contractor's full bank account number, in IBAN and SWIFT format,
  - 3) the Employer's cost centre number, Contract number and name of the ordering person on the part of the Employer.
- 8.16. Illegible invoices or invoices not including the items listed above will cause suspension of payment deadline until the missing items are added and a revised invoice is received, with such delay not resulting in the Employer duty to pay late payment interest.
- 8.17. The rules set out above are applicable accordingly to all revised invoices, duplicate invoices and accounting notes, etc.

#### **Article 9. Warranty and guarantee.**

- 9.1. Regardless of its liability under warranty laws and guarantee documents for materials or equipment, the Contractor provides a 36-month guarantee for the Facility, unless a longer term is provided in the Contract. It is triggered by the unreserved signature of the final acceptance form.
- 9.2. Under the guarantee and warranty, the Contractor shall remedy any defects occurring during their respective terms. The Contractor shall also, within the remuneration specified in Article 8, perform mandatory inspections and maintenance of the Facility and its constituents for the term of the warranty and guarantee, if the duty is provided for in the manufacturer's instructions or generally applicable laws. The Contractor shall use qualified personnel for the purpose. If the inspections or maintenance activities are for a fee as specified in the manufacturer's instructions, the Contractor shall first notify the Employer thereof and submit documentary proof of the same, and the failure to notify the Employer waives any claims for related remuneration from the Contractor.
- 9.3. The Contractor shall remedy defects notified under the warranty or guarantee in the period not longer than 2 days after receiving a notice to that effect from the Employer, and if not technically feasible, by another date agreed between the Parties, or if the Parties cannot agree on such date, in a longer time-limit as set by the Employer.
- 9.4. If the Contractor fails to comply with the duty specified in Article 9.3, the Employer is entitled to contract the remedy of the defects from a third party at the Contractor's expense and risk.
- 9.5. The Contractor will perform the final review of the Facility not later than 30 days before the expiry of the warranty and guarantee.
- 9.6. Any works concerning remedy defects will be performed with due regard for the Employer's reasonable needs, and the proceeding to the remedy shall be notified to the Employer duly in advance.

#### **Article 10. Withdrawal.**

- 10.1. Regardless of cases provided for in the Civil Code, the Employer is entitled, at its option, to withdraw the contract or terminate it with immediate effect in the following cases:
- a) if the Contractor performs the Contract in breach of law, the Employer's instructions or the Provisions of the Contract, and fails to remedy the breach in an additional period of 3 days set by the Employer,
  - b) If the Contractor, without the Employer's consent, contracts performance of all or some parts of the contract from a subcontractor, or if the Contractor fails to incorporate requirements specified in the Contract in its contract with the subcontractor,
  - c) The Contractor is found twice to be in breach of health and safety or environmental regulations applicable on the Employer's premises, or it has grossly violated the aforesaid regulations once;
  - d) if the Contractor, where not warranted by the Contract or the Employer's consent in writing only, ceases to perform Engineering Works or Construction and Assembly Works for a period longer than 5 days, or the delay relative to the respective milestones or final completion date as stipulated by the Time Schedule is longer than 10 days.
- 10.2. In cases referred to in Article 10.1, the Employer is also entitled, at its option, to contract performance of all or some works from a third party, or to perform them on its own at the cost and expense of the Contractor.
- 10.3. In the case of withdrawal or termination of the Contract without notice and with immediate effect by the Employer, the Contractor shall immediately suspend its works, unless the Employer decides otherwise.
- 10.4. Immediately upon suspension of the works as provided in Article 10.3, not later than within 14 days of the withdrawal or termination, the Contractor shall:
- a) complete a full survey of the works as at the withdrawal date. The survey document, agreed with the Employer, will be used for the final settlement of quantities of the works completed by the Contractor's withdrawal or termination date, and if the Contractor refuses to prepare the document, the Employer is entitled to prepare it on its own, and such form will be the basis for settlements between the Parties,
  - b) secure the works to the extent agreed with the Employer,
  - c) tidy up and clean up the site and remove the site camp in the period agreed with the Employer, and where not agreed on the matter, within 5 days of expiry of the Contract.
- 10.5. Any costs of the works referred to in Article 10.4 and any other reasonable costs of withdrawal or termination of the Contract will be paid by the Party to which such withdrawal or termination is attributable. The refusal to perform those

activities entitles the Employer to perform them at the expense and risk of the Contractor.

- 10.6. The Employer may exercise its right to withdrawal not later than within 6 months of the lapse of the final date of completion of the Contract by the Contractor.

#### **Article 11. Penalties under the guarantee.**

11.1 Notwithstanding any contractual penalties provided for in the Contract or its appendices, the Contractor will pay to the Employer the following penalties under the guarantee:

- 1) for delay in completion of Engineering Works or Construction and Assembly Works - in the amount of 0.5% of the total, VAT-inclusive remuneration due to the Contractor for each day of delay relative to the final deadline or relative to the date(s) of completion for the respective milestones (provided that the Contractor is entitled to request a waiver of the penalty if the completion dates for the respective milestones are not observed, but the final completion date is),
- 2) for delay in the remedy of defects in the warranty or guarantee period - in the amount of 0.5% of the total, VAT-inclusive remuneration due to the Contractor for each day of delay relative to the completion date for the remedy,
- 3) for delay in the submission of information or documents specified in Article 7.5. GTC - in the amount of 0.5% of the total, VAT-inclusive remuneration due to the Contractor for each day of delay relative to the completion date for the remedy,
- 4) for failure to comply with OHS, environmental and other requirements resulting from the Occupational Health and Safety Management Procedure, in the amount specified in the Contractual Penalties List,
- 5) in the event of the Employer's termination or withdrawal of the Contractor for reasons for which the Contractor is liable - in the amount of 20% of the total, VAT-inclusive remuneration due to the Contractor.

11.2 Penalties under the guarantee provided for in the Provisions of the Contract are independent of each other and may be aggregated.

11.3 The Employer is entitled to seek supplemental damages on general terms if the penalties under the guarantee do not cover the damage suffered or if a penalty is not stipulated for a given breach.

11.4 Penalties under the guarantee fall due upon materialisation of the underlying reason for their charging.

#### **Article 14. Insurance.**

14.1. The Contractor shall execute an insurance agreement with a first-rate insurance company for the amount at least equal to the Contractor's total remuneration inclusive of VAT, to cover third-party liability and any risks involved with non-performance or defective performance of Engineering Works or Construction and Assembly Works. The duty does not apply if the Contractor already holds such insurance at the

Contract execution date.

14.2. The Contractor shall maintain the insurance cover throughout the period of Engineering Works or Construction and Assembly Works, and throughout the warranty and guarantee term. If the insurance agreements are executed for a shorter term than indicated in the section above, the Contractor, at least 7 days before the expiry of the current insurance agreement, will produce to the Employer proofs of insurance for the following period.

14.3. The proofs of insurance will be submitted to the Employer within 7 days of executing the Contract.

#### **Article 15. Copyright and industrial property rights.**

15.1. If, in performance of the Provisions of the Contract, the Contractor and/or its subcontractors create copyrighted works within the meaning of the Act on Copyrights and Related Rights of 4 February 1994, the provisions of this Article apply.

15.2. The Contractor transfers to the Employer, on the date of receipt and approval or first use of the copyrighted works (whichever is earlier), the economic rights to those copyrighted works (where such rights also covers the ownership title to storage devices on which such works are recorded), including the exclusive right to exercise and authorise the exercise of derivative rights in the domains of use indicated in Article 50 of the aforementioned Act, in particular in the following scope:

- 1) copying in any technology, such as print or digital copying;
- 2) sale of copyrighted works or their copies;
- 3) lending of copyrighted works or their copies for gratuitous use or lease;
- 4) presentation of copyrighted works or their copies in any technology;
- 5) public broadcast and presentation by other media not mentioned above, deemed appropriate by the Employer;
- 6) entering and storing in computer memory or distribution over computer networks, for example on the Employer's intranet or the Internet;
- 7) making available of copyrighted works so as to enable access to them for any person at the time such a person so decides;
- 8) use of copyrighted works or their parts or derivative works to execute and operate the project for indefinite time;
- 9) use of the respective solutions employed in the copyrighted works to develop any technical and/or construction documents and/or studies, in particular designs (e.g. building permit and working designs), diagrams, drawings, models and visualisations, and use of such works and/or studies to construct civil structures or their parts, including building installations and/or systems;
- 10) use of copyrighted works for further engineering, design verification, correction of engineering errors, if any, construction, completion of construction, remodelling, modification, maintenance, advertising, extension,

refurbishment, repair, finishing, alteration, occupancy, lease and promotion;

- 11) translation of copyrighted works in full or in part into foreign languages;
  - 12) any other use of copyrighted works.
- 15.3. The Contractor hereby undertakes that authors of copyrighted works will not exercise any moral rights (including the right to copyrighted work integrity) to the copyrighted works against the Employer, the Employer's related entities, entities contracted by the Employer, even upon changes to them. If the Contractor is in breach of this obligation in full or in part, the Contractor shall pay to the Employer a penalty under the guarantee equal to PLN 50,000 (fifty thousand zloty, 00/100) for each case of the breach. The Employer is entitled to seek supplemental damages on general terms if the penalties under the guarantee do not cover the damage suffered.
- 15.4. On the date of receipt and approval or first use (whichever is earlier) of the Contractor's Documents by the Employer, the Contractor (a) consents to the Employer's exercise of derivative rights with respect to modification of copyrighted work within the meaning of Article 2 of the Act on Copyrights and Related Rights, (b) transfers to the Employer the right to authorise the exercise of derivative rights with respect to copyrighted work modifications, and (c) authorises the Employer to grant further consents to the exercise of derivative rights attaching to copyrighted work, and (d) authorises the Employer's first public presentation.
- 15.5. If, during the term of the Contractor and thereafter, a third party files any claims against the Employer for breach of copyright of that or another person, the Contractor shall take any legal or factual actions to mitigate the effects of such breach, and make every effort to effectively transfer such rights to the Employer, and reimburse the Employer's reasonable cost of defence if any such costs are incurred by the Employer.
- 15.6. If Engineering Works or Construction and Assembly Works constitute an invention, utility model or industrial model within the Industrial Property Law Act of 30 June 2000, the right to apply for a patented invention or protection right for the utility model or industrial design, as well as to apply for registration of the industrial model, is vested with the Employer.
- 15.7. The rights referred to in this Article of GTC inure to the Employer in consideration for the Contractor's remuneration.

#### **Article 16. Miscellaneous provisions.**

- 16.1. The Contractor shall not assign any receivables arising under the Provisions of the Contract without the Employer's prior consent in writing, on pain of nullity of such assignment.
- 16.2. Any changes to the Provisions of the Contract require the consent of both Parties expressed in the same form as the Contract, on pain of nullity of such changes.
- 16.3. Any letters, statements and notifications submitted by the Parties in performance of the

Provisions of the Contract shall be sent by courier mail or registered mail with delivery confirmation to the addresses indicated in the Contract. The Parties authorise correspondence by electronic mail.

- 16.4. Any disputes arising from the performance of the Contract will be resolved by the common court having jurisdiction over the Employer's registered office.
- 16.5. The Parties undertake mutually to notify each other of each change of address and any data affecting the performance of the rights and obligations of each of the Parties. In the case of no notification given of the change of address, delivery at the address and data known to date is effective, and mail which has not been collected is regarded as delivered after 7 calendar days, starting from the day of the first mail advice.
- 16.6. Any documents referred to in the Contract as its appendices form its integral part, regardless of when they were accepted by the Parties, and whether they were physically added to each copy of the Contract, and are binding upon both Parties.
- 16.7. Matters not regulated in the Provisions of the Contract are subject to the provisions of generally applicable Polish laws.