

# **GENERAL TERMS AND CONDITIONS OF PURCHASE OF GOODS AND/OR SERVICES of “Guala Closures DGS Poland” S.A. (version valid from 19 November 2021)**

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## **Chapter 1: GENERAL PROVISIONS**

These General Terms and Conditions for the Purchase of Goods and/or Services of GCDGS SA apply to orders placed for Goods and/or Services by “Guala Closures DGS Poland” S.A. with its registered office in Włocławek, address: Aleja Kazimierza Wielkiego 6 (postal code 87-800 Włocławek), registered by the District Court in Toruń VII Commercial Division under number

0000224737, TIN: PL 888 284 28 62, with the share capital of PLN 594,999.99 (paid up in full), hereinafter referred to as “GCDGS SA” and agreements for the purchase of Goods and/or Services concluded in writing by GCDGS SA’s whereof these General Conditions of Purchase of Goods and/or Services form are an integral part. GCDGS SA has the status of a large entrepreneur within the meaning of art. 4 (6) of the Polish Act on Counteracting Excessive Delays in Commercial Transactions of 8 March 2013 (Journal of Laws of 2019, item 118, consolidated text of 21 January 2019, as amended).

## **Chapter 2: DEFINITIONS**

2.1. Unless the Parties have agreed herein otherwise, the following words and phrases will have the meanings specified below:

**“Documentation”** - means all statutory attestations, certificates, inspection certificates, documentation specifying the conditions of repair and maintenance, catalogues of applicable repair and maintenance time standards, technical approvals, documents authorizing the use of the offered Goods in a given country, technical and development documentation, user manual, assembly manual or documents other than the above-mentioned (if required for a given type of Good/Service).

**“Supplier”** - means the entity from which GCDGS SA purchases Goods and/or Services and which is obliged to deliver the Goods and/or provide the Service in accordance with the Order and/or the Agreement.

**“Business Day”** - means any day from Monday to Friday, save for any Polish bank holidays.

**“Incoterms”** - means the terms and conditions set out in the Incoterms 2010 publication issued by the International Chamber of Commerce (ICC) in Paris, and any successors thereof in force on the date of the Agreement between the Parties.

**“Offer”** - means a binding offer of the Supplier within the meaning of applicable law, submitted to GCDGS SA in written, documentary, electronic form.

**“Software”** - means any software and applications that are developed for GCDGS SA based on information or specifications provided by GCDGS SA or are developed for GCDGS SA under the Agreements, or any other software or application designed for GCDGS SA or ordered by GCDGS SA as part of the Subject of the Agreement or as the Subject of the Agreement, as well as built-in and intended for use by each user of the Goods or necessary for the operation of the Goods, and delivered as an integral part of the Goods.

**“Third Party”** - means an entity that is not a Party to the Agreement.

**“GTCP”** - means this document of the General Terms and Conditions of Purchase of Goods and/or Services of GCDGS SA, which is an integral part of the Order or GCDGS SA’s model agreement for the purchase of Goods and/or Services.

**“Technical Parameters”** - means technical data, technical parameters of the Subject of the Agreement in the scope of the Deliveries carried out, which have been specified in the content of the

Agreement, Annexes and any other Documentation related to the Agreement, and which are to be complied with or fulfilled as required by the Agreement, applicable law or PN or EN standards.

**“Subject of the Agreement”** or **“Delivery”** - means any Goods and/or Services, as well as accompanying documentation in any form or on any medium, including, but not limited to, data, diagrams, drawings, reports and specifications, tangible and intangible property rights, intellectual property rights, Software, including those necessary for the operation of the Goods, built into the Goods or delivered as an integral part thereof, which the Supplier is obliged to deliver to GCDGS SA as part of the performance of the Agreement.

**“Party”** - means GCDGS SA of the Supplier.

**“Goods”** - means materials, raw materials, parts, prefabricated products, products, devices, consumables and any other products and movables used in the business activities conducted by GCDGS SA that are the Subject of the Agreement.

**“Agreement”** - means an agreement for the Delivery of Goods and/or the provision of Services concluded between GCDGS SA and the Supplier, in one of the modes specified in Chapter 4 of the GTCP, an integral part of which are these GTC.

**“Service”** - means the service provided by the Supplier in accordance with the Agreement.

**“Defect”** - means in particular any fault, legal or physical defect of the Subject of the Agreement, failure to meet the Technical Parameters, incompleteness of the Subject of the Agreement, including those which reduce the usefulness or

partly or wholly prevents or in any way hinders the use of the Subject of the Agreement, as well as any irregularity or non-compliance with the Agreement of any consideration of the Supplier covered by the Agreement.

**“Order”** - means an order placed by GCDGS SA with the Supplier in a written, electronic or documentary form, including the purchase of Goods and/or Services.

2.2. The remaining terms have been defined in the GTCP by writing them with a capital letter. In all provisions of the GTCP, such terms should be interpreted in accordance with the context of the sentence in which they were defined.

2.3. Unless the context requires otherwise, singular words and phrases used in the Agreement, the Order or the GTCP also include their plural form, and any references to GCDGS SA and the Supplier include their successors and assigns.

2.4. A reference to laws is a reference to these laws to the extent that they are in force at the given time, including any amendment, extension, application or re-drafting thereof, and includes any subordinate laws in force at that sec. in time and those adopted in accordance with such laws.

2.5. The tables of contents and headings for each Chapter of the GTCP serve only to facilitate the understanding of the wording and do not affect the interpretation, meaning or effect of the provisions contained herein. They will also not affect the rights or obligations of the Parties.

### **Chapter 3: APPLICATION OF THE GTCP AND RELATION TO OTHER CONTRACTUAL TEMPLATES**

3.1. The GTCP constitute a model contract referred to in art. 384 of the Polish Civil Code.

3.2. Purchase of Goods and/or Services by GCDGS SA from the Supplier will take place on the terms set out in these GTCP, unless the Parties agree otherwise.

3.3. The GTCP constitute an integral part of the Agreement and the Order in the form of its Appendix. If the GTCP have not been attached to the Agreement or the Order and were referred to in the content of the Agreement or the Order, the Supplier is bound by the GTCP in the wording in force in the version published at [www.gualaclosuresdgs.pl](http://www.gualaclosuresdgs.pl) on the date of concluding the Agreement or placing the Order, as the case may be. The version of the GTCP in force on the date of concluding the Agreement or placing the Order will apply to the Agreement.

3.4. Unless GCDGS SA and the Supplier decide otherwise in writing under pain of nullity by expressly excluding the provisions of the GTCP in favour of other agreed contractual terms and conditions, the use of any Supplier's contractual templates is excluded. The Supplier's contractual templates are also not used when GCDGS SA has not expressly excluded, amended or objected thereof. For the avoidance of doubt, the fact that GCDGS SA has commenced to perform the Agreement or the Order without any explicit reservation or objection to the Supplier's contractual template does not in any way constitute acceptance of any Supplier's contractual templates. The employees of GCDGS SA are not empowered to include any template of the Supplier in the Agreement or to recognize its validity, unless their power

of attorney expressly states otherwise. Moreover, the waiver by GCDGS SA of the application in special cases of certain provisions of the GTCP is binding only in relation to a specific Agreement or Order and in no case may be treated by the Supplier as binding for the performance of other Agreements or Orders placed by GCDGS SA.

3.5. By accepting the Agreement, Order or commencing to perform thereof, the Supplier hereby irrevocably and without reservations accepts these GTCP. No model contracts or terms and conditions provided by the Supplier or contained in its offer, confirmation, specification or similar documents will constitute part of the Agreement, and the Supplier waives any rights that it might be entitled to under such terms and conditions.

3.6. Any provisions of the Agreement concluded as a result of placing an Order or other written contracts and agreements relating to the delivery of the ordered Goods and/or Services that have been individually agreed between the Parties will prevail over the contradictory provisions of the GTCP.

#### **Chapter 4: AGREEMENT CONCLUSION PROCEDURE**

4.1. The Goods and/or Services will be purchased on the basis of an Agreement between GCDGS SA and the Supplier concluded under one of the procedures specified in this Chapter.

##### **4.2. Offer and acceptance procedure:**

4.2.1. GCDGS SA places an Order with the Supplier, specifying the date of its completion (hereinafter referred to as the “**Delivery Date**”).

4.2.2. The Supplier is obliged to confirm or reject the Order within 3 Business Days of its receipt.

4.2.3. The Order confirmation should include:

4.2.3.1. confirmation number and date;

4.2.3.2. Order number;

4.2.3.3. specification of the ordered Goods and/or Services, consisting of: (1) consecutive number consistent with the consecutive number of the Order; (2) name, type and quantity of Goods and/or Services confirmed for performance; (3) unit prices and total value; (4) Date of Delivery to GCDGS SA, where if no such date is indicated on the Order confirmation, the Delivery Date applies; (5) the internal material index of GCDGS SA (if applicable).

4.2.4. Subject to sec. 4.2.5. and sec. 4.2.6. of the GTCP, upon receipt by GCDGS SA of the confirmation of the Order, the Parties conclude the Agreement on the terms and conditions specified in the Order.

4.2.5. If the Supplier has not rejected or accepted the Order by express written statement within 3 Business Days of its receipt, it is assumed that the Agreement was concluded upon the expiry of this period on the terms and conditions specified in the Order and in accordance with these GTCP. The Agreement is concluded on the terms and conditions specified in the Order and in accordance with these GTCP before the expiry of the period of 3 Business Days indicated in the preceding sentence, if the Supplier, by performing actual actions, implicitly started its implementation, at least in part, i.e. when the first such action was performed by the Supplier.

4.2.6. If the Supplier states in writing that it can perform the Order with changes, it is understood that it has made GCDGS SA an offer to conclude the Agreement on the terms and conditions specified in the Supplier's statement that is valid and

irrevocable for a period of 10 Business Days. Such Supplier's offer may be accepted by GCDGS SA only by sending a written, electronic or documentary response. The GTCP will apply to the Agreement concluded in the manner specified in the preceding sentence.

4.2.7. The Order may be preceded by a request for quotation from GCDGS SA, to which the Supplier will reply within 2 Business Days. The offer must include the price, delivery or performance date and the offer validity period. Such offer of the Supplier is the basis for GCDGS SA to place an Order.

#### **4.3. Negotiation procedure:**

4.3.1. The Agreement is concluded by the Parties in writing on the GCDGS SA's agreement template upon its signing by the Parties, and these GTCP constitute its integral part. The conclusion of the Agreement by the Parties under this procedure may be preceded by negotiations between the Parties.

4.4. If the Delivery Date or the date of performance of the Agreement has not been properly specified in the Order, the Supplier undertakes to perform the Subject of the Agreement at the demand of GCDGS SA.

### **Chapter 5: DELIVERY OF GOODS/PROVISION OF SERVICES**

5.1. The Delivery Date is the date specified in the Agreement (including the Order) and means the date of delivery of the Goods to the place of delivery indicated in the Agreement (including the Order).

5.2. The Services will be provided on the date and at the place specified in the Agreement (including the Order), and if no such place has been specified, at the

place of business of GCDGS SA designated by GCDGS SA.

5.3. Deliveries may be made in parts, provided that the Parties so agree in the Agreement.

5.4. In justified cases, GCDGS SA reserves the right to postpone the delivery date of the Goods and/or the performance of the Service for a period not longer than 90 days from the date of receipt of the GCDGS SA's statement by the Supplier. In such case, GCDGS SA will submit a statement to the Supplier indicating the new delivery and/or performance date. The change referred to in the first sentence of this section does not require an amendment to the Agreement in writing, or submission of an additional statement by the Supplier, and does not affect the scope of the Agreement and the remuneration due to the Supplier and specified in the Agreement.

5.5. Unless the Parties agree otherwise, the ordered Goods:

5.5.1. will be delivered by the Supplier at its own cost and risk to the warehouse indicated by GCDGS SA, which is the place of performance of the Agreement. Deliveries may be made during the working hours of a given warehouse.

5.5.2. will be unloaded by the Supplier at its own cost and risk at the place of performance of the Agreement, unless the Parties agree otherwise in the Agreement.

5.6. After consultation with the Supplier, GCDGS SA may collect the Goods with its own means of transport, charging the Supplier with transport costs, or order the Goods to be collected at its own cost.

5.7. The Supplier is obliged to deliver the Goods in packaging that complies with applicable laws, in a way that prevents

damage and ensures the smooth course of unloading operations, and in cases specified by laws or in accordance with the requirements of GCDGS SA, the packaging should also bear appropriate symbols, warning notices or other markings allowing for identification of the Goods or a given Order in the warehouse of GCDGS SA or at the place of performance of the Agreement.

5.8. If the Supplier is responsible for the transport of the Goods and GCDGS SA specifies in the Agreement the requirement for notification of the Goods, the Supplier is obliged to notify such Goods, i.e. inform GCDGS SA about the Goods being ready for release, at least 3 days before the planned delivery. Notified deliveries are unloaded in accordance with the unloading time window specified by GCDGS SA. Deliveries that are not notified are unloaded according to the order of arrival at the GCDGS SA warehouse.

5.9. Together with the Subject of Delivery, the Supplier will provide the Documentation in Polish or another language agreed with GCDGS SA. In the case of Delivery of Goods, the Supplier is obliged to append: (1) bill of lading, (2) proof of issue of the delivery note, clearly describing the contents of the delivery and referring to the Order placed by GCDGS SA or the Agreement, including the internal material index.

5.10. In the absence of the required Documentation or any other consideration covered by the Delivery, the Delivery will be considered incomplete and will not be settled until it is supplemented with the missing Documentation and consideration.

5.11. Unless the Parties agree otherwise, GCDGS SA is not obliged to formally accept the Goods at the time of their

release or delivery by the Supplier. GCDGS SA will have sufficient time to inspect or test the Goods and to report any Defects to the Supplier, which means that it cannot be presumed that GCDGS SA has received and accepted the Goods and/or Services if it has not had sufficient time to inspect them and carry out a visual inspection thereof after the Delivery Day. If the Defect was not, for justified reasons, detectable during the inspection, GCDGS SA will be entitled to submit a complaint or to reject the Goods immediately after the Defect is detected. In addition, if the Goods and/or Services delivered to GCDGS SA do not comply with the Agreement or otherwise violate the terms of the Agreement, then - without limiting other rights or remedies to which GCDGS SA may be entitled - GCDGS SA may, at its own discretion, refuse to accept the Goods and/or Services and demand their replacement, re-performance or reimbursement of any payments made by GCDGS SA to the Supplier in relation to such Goods and/or Services, as the case may be.

5.12. The Parties may agree on a specific acceptance procedure whereunder the acceptance report will be signed.

5.13. Unless the Parties agree otherwise in the Agreement, the ownership of the Goods, costs and burdens related to the Goods and the risk of accidental loss or damage to the Goods will be transferred to GCDGS SA upon their delivery.

5.14. Subject to sec. 5.4. of the GTCP, in no event the Subject to may suspend the delivery of the Goods and/or the performance of the Services.

## **Chapter 6: PRICE AND PAYMENT**

6.1. The prices for the Goods and/or Services are specified in the Agreement.

The prices do not include VAT which will be added in accordance with applicable laws.

6.2. Unless the Parties agreed otherwise, the price for the Goods is determined in line with DDP place of delivery according to the applicable Incoterms.

6.3. If the Parties agree to convert the prices for Goods and/or Services specified in a foreign currency into PLN, the Parties are obliged to use the NBP's fixing exchange rate announced on the day preceding the date of issuing the invoice.

6.4. In the case of prices resulting from the Supplier's general price list, the Supplier is obliged to inform GCDGS SA about planned changes to such prices 4 weeks before their effective date. A change in the above prices may not apply to Orders accepted for performance or Agreements concluded prior to the provision of such information by the Supplier.

6.5. The Supplier will submit invoices in a form that allows their control, in accordance with applicable laws, generally accepted accounting principles and specific requirements of GCDGS SA. The invoice, apart from other elements required by law, should contain at least the following information: Supplier's name, address, invoice date, invoice number, Order number, GCDGS SA's address, quantity, specification of delivered Goods/Services, GCDGS SA's internal material indexes, price, total invoice value, currency, tax on goods and services or VAT amount, license number for the authorized economic operator or approved exporter or other customs identification number, if applicable, the agreed payment terms.

6.6. Invoices will be sent to the postal address of GCDGS SA and, if the Parties so agree, the Supplier may send invoices to the following e-mail address: faktura@gualaclosuresdgs.pl

6.7. If a defective or incomplete invoice is presented by the Supplier, GCDGS SA may withhold the payment of the invoice, without the Supplier's right to charge interest, until clarification and presentation of the corrected invoice (invoice or correction note).

6.8. If the invoice issued by the Supplier turns out to be incorrect for formal, legal or material reasons, the Supplier is obliged to compensate GCDGS SA for the damage resulting from the determination of the tax liability, including sanctions and interest imposed on GCDGS SA by the tax authority.

6.9. Unless the Parties agree otherwise, the payment will be made by bank transfer to the bank account indicated by the Supplier on the invoice within the time limit agreed by the Parties.

6.10. The date of payment is considered to be the date of a debiting the GCDGS SA's bank account.

6.11. All banking costs arising outside the GCDGS SA bank will be borne by the Supplier.

6.12. GCDGS SA reserves the right to make deductions or withhold payments for Goods and/or Services that have not been delivered in accordance with the Agreement, in particular, in the event of a complaint, payment will be withheld until the complaint is finally resolved.

6.13. In the case of Services settled according to hourly rates, it is necessary to confirm in writing to GCDGS SA the Supplier's working time reports, and the

Supplier will submit such working time reports to GCDGS SA for confirmation as requested by GCDGS SA, at the latest with the invoice to which they relate. For the avoidance of doubt, the confirmation of the working time reports will not be the tantamount to the confirmation of the Supplier's claims, and GCDGS SA is not obliged to pay the invoice based on the working time reports not confirmed in writing by GCDGS SA.

6.14. The Supplier included in the price for the Goods and/or the Service, respectively, the amount of any interest under the Act on Payment Deadlines in Commercial Transactions of 8 March 2013 for the period up to the payment dates agreed in the Agreement or the dates of payment resulting from the Agreement.

6.15. Any work, storage, documentation, materials, equipment or parts specified in the Agreement and/or in the Order as part of the scope of the Subject of the Agreement, as well as essential for technical completeness and necessary for the correct, regular and safe operation of the Subject of the Agreement, will be considered included in the Subject of the Agreement and in the total price specified in the Agreement, unless such work, as well as materials, equipment or parts have been expressly excluded on the basis of the provisions of the given Agreement. If, for example, a given part or detail is not included in the technical specification, although the given part or detail may, according to the normal and reasonable interpretation of the Subject of the Agreement, fall within the scope of its subject, the given part or detail will be treated as included in the total price specified Agreement.

## **Chapter 7: FINANCIAL SECURITY FOR THE PROPER PERFORMANCE OF THE AGREEMENT**

7.1. In cases justified by the nature or value of the Agreement, in order to secure the claims of GCDGS SA against the Supplier, arising in connection with the performance of the Agreement, GCDGS S.A. reserves the right to request the Supplier to provide a Bank Guarantee or an Insurance Bond, hereinafter referred to as "**Financial Guarantees**".

7.1.1 If GCDGS SA makes a full or partial prepayment on the price, the Supplier may be required to present, within 14 days from the conclusion of the Financial Guarantee Agreement securing the full refund of the full or partial prepayment in the event of the Supplier's failure to perform the Agreement.

7.1.2. Unless the Parties agree otherwise, the Supplier is obliged to present, within 14 days from the conclusion of the Financial Guarantee Agreement securing Good Performance of Guarantee Obligations in the amount of at least 10% of the Price of the Subject of the Agreement, with the term of validity until the end of the Warranty and Guarantee period, whichever is longer + 45 days.

7.2. The Financial Guarantees submitted by the Supplier will be issued by a recognized and reliable Bank or Insurance Institution (hereinafter referred to as the "**Guarantor**") in the form of a Bank Guarantee or Insurance Bond.

7.3. The Financial Guarantees will be unconditional, irrevocable and payable on first demand, governed by Polish law. The language of the Financial Guarantee will be Polish or English.

7.4. In any case, the Guarantor issuing the Financial Guarantee and the contents of the Guarantee must first be approved by GCDGS SA under the pain of refusing to accept the Guarantee.



7.5. If the Supplier fails to submit the required Financial Guarantees within the required time, GCDGS SA will withhold the amount of the required Financial Guarantee from the payments due to the Supplier.

7.6. The amounts withheld in accordance with sec. 7.5 Of the GTCP due to failure to submit the required Financial Guarantee to GCDGS SA will constitute interest-free cash deposits securing the proper performance of the Subject of the Agreement during the Guarantee and Warranty period. GCDGS SA will release the guarantee deposits and transfer them to the Supplier's account in the following cases: (1) after providing GCDGS SA with an appropriate and compliant with the Agreement Financial Guarantee; or (2) after the Warranty and Guarantee Period, whichever is longer +45 days.

7.7. Any change to the content of the Financial Guarantee is subject to prior approval by GCDGS SA.

7.8. All costs relating to the issuance, obtaining and administration of the Financial Guarantee will be borne by the Supplier.

## **Chapter 8: SUPPLIER INSURANCE REQUIREMENTS**

8.1. The Supplier is obliged to maintain appropriate third party liability insurance in a reputable insurance company with a stable financial situation, whereby the sum insured will not be less than PLN 5 million for one and all events (unless the Supplier requests a higher amount of insurance, taking into account the nature and value of the Agreement).

8.2. The scope of insurance should cover, in particular, damages:

8.2.1. resulting from non-performance or improper performance of the Agreement;

8.2.2. caused by a Defect in the Good and/or the Service provided under the Agreement;

8.2.3. consisting in incurring the costs of removing the delivered Goods, if they turn out to be defective, and replacing them with defect-free Goods.

8.3. At the request of GCDGS SA, the Supplier will present the proof of insurance referred to in sec. 8.1. of the GTCP.

8.4. The fulfilment of the requirement referred to in this Chapter does not release the Supplier from full liability to GCDGS SA for the damage suffered, and the sum insured cannot be treated as a limitation of this liability.

## **Chapter 9: GOODS/SERVICE QUALITY STANDARDS AND QUALITY CONTROL AT THE SUPPLIER'S**

9.1. The Supplier is obliged to deliver the Goods and/or Services:

9.1.1. in accordance with the Agreement;

9.1.2. that meet the technical requirements specified in current standards, legal regulations and in accordance with the technical and formal requirements of GCDGS SA;

9.1.3. free from any Defects, not encumbered with the rights of third parties;

9.1.4. suitable for the purpose specified in the Agreement - or in the absence of such information - suitable for the purpose for which they are used.

9.2. The Supplier warrants that the Goods are new and of high quality, and comply with the highest safety and environmental standards regarding materials and workmanship, and that

they have not been used until the Delivery Date, and that there are no circumstances reducing the value or usefulness of the Goods due to their intended use or the intended purpose of purchasing the Goods.

9.3. The Supplier guarantees that the Subject of the Agreement does not pose a threat to safety, health and the environment, and that all elements/parts used to perform the Subject of the Agreement must have attestations, permits, declarations of compliance required by applicable regulations and standards (certificate, technical approval, material approvals) and must be fully operational.

9.4. The Supplier undertakes to analyse the scope of applicable regulations, in particular the European Union laws, to the subject of the performance of the Agreement. For all cases of manufactured and/or delivered Goods, to which the requirements of EU regulations apply, the Supplier will conduct the process of assessing their conformity, issue an EC Declaration of Conformity and mark the products with the CE mark. All products that the Supplier will purchase under the Agreement from its suppliers to which the requirements of the European Union apply will have the CE marking and EC Declaration of Conformity.

9.5. The Supplier is also responsible for the Defects of the Goods that will be revealed in the course of the production process of the final product or during its operation.

9.6. If the Supplier, before or in connection with the placement of the Order, the conclusion of the Agreement, presented to GCDGS SA the specifications of the Goods and/or the Service or referred thereto, then, by concluding the Agreement, the Supplier also warrants to

GCDGS SA that the Goods and/or the Service will comply with the presented specifications.

9.7. During the process of performing the Agreement, the Supplier is obliged to meet the requirements of the quality management system implemented in its plant, and the Goods manufactured by the Supplier or its sub-suppliers / Services provided by the Supplier or its subcontractors should be subjected to all the required tests specified by applicable laws and quality standards according to the quality standards implemented at the Supplier or sub-supplier / subcontractor. GCDGS SA reserves the right to agree with the Supplier an Inspection and Test Plan, i.e. guidelines and rules for maintaining the proper quality of the manufactured Goods / provided Services and their quality acceptance.

9.8. GCDGS SA reserves the right to conduct an audit at the Supplier's prior to the commencement of the Agreement performance process.

9.9. GCDGS SA reserves the right to carry out inspections in all workshops and facilities where the Goods are manufactured, assembled or prepared for shipment / the Service is performed. The Supplier will provide all means and assistance to obtain access to such workshops and facilities. The purpose of the inspection is to verify the progress of the performance of the Subject of the Agreement or the quality of the Goods and/or Services.

9.10. If the activities referred to in sec. 9.8. of GTCP are held at the sub-supplier's or subcontractor's plant, the Supplier will obtain consent for ZPUE to carry out such an inspection.

9.11. GCDGS SA may entrust the inspection to an independent entity, hereinafter referred to as the "**Authorized Representative**", which

will perform the inspection and test of the Subject of the Agreement at the Supplier's, sub-supplier's or subcontractor's plant instead of GCDGS SA.

9.12. The performance of inspections and tests by GCDGS SA or an Authorized Representative does not release the Supplier from liability for Defects in the Subject of the Agreement or for the proper performance of obligations under the Agreement.

## **Chapter 10: WARRANTY**

10.1. The Supplier grants GCDGS SA a warranty for the delivered Goods / performed Services. The warranty period is 36 months from the date of GCDGS SA's acceptance of the Goods/Service or 24 months from the date of their receipt by the customer of GCDGS SA, as the case may be, whichever is longer, unless the Agreement specifies a different warranty period. The Supplier undertakes to remove the Defect free of charge or replace the Goods with defect-free Goods if the Defect is revealed in the above-mentioned warranty period.

10.2. If the warranty obligation is fulfilled by replacement or repair, the warranty period starts anew from the moment of delivery of the defect-free item or from the date of its repair, as the case may be.

10.3. Defects detected by GCDGS SA will be immediately notified to the Supplier. The notification is made by GCDGS SA by phone, fax or e-mail to the telephone number, fax number or e-mail address indicated by the Supplier, which does not deprive GCDGS SA of the right to report the Defect in writing to the address of the Supplier's registered office.

10.4. Under the warranty, within 24 hours from the moment of reporting the

Defect, the Supplier is obliged to inform GCDGS SA about the method and date of its removal taking into account the provisions of sec. 10.5 and 10.6 GPC. The Supplier will be responsible for all costs incurred in connection with the removal of the Defect, including those related to the repair or replacement of the defective item, including (without limitation) any costs of transportation, removal, uninstallation and reinstallation, works on site or on site, in which there are defective Goods, materials that will not be reused.

10.5. The Supplier's response time to notified Defects in order to take action to remove Defects is 12 hours from the moment of its notification by GCDGS SA.

10.6. The Supplier undertakes to remove the Defects free of charge at its own cost and risk, within a period not exceeding 7 days from the date of notification of the Defect by GCDGS SA, unless the Parties agree otherwise in writing under pain of nullity. If the time limit for removing the Defect resulting from the obligations of GCDGS SA made towards the customer is shorter than that resulting from the preceding sentence, the Supplier is obliged to remove the Defect within the time limit taking into account the obligations undertaken by GCDGS SA towards the customer (after prior notification of the Supplier by GCDGS SA).

10.7. GCDGS SA may pursue claims under the warranty also after the expiry of the warranty period, if the Defects are revealed before its expiry.

10.8. The Defect will be removed by repairing the item covered by the warranty or replacing it with a new one, which will be decided by GCDGS SA each time.

10.9. GCDGS SA reserves the right to suspend or postpone the departure of the Supplier's service or the entity performing warranty services on behalf of the Supplier in any case and without giving any reason. GCDGS SA reserves the right to participate in or supervise the works of the Supplier's service or the entity performing warranty services on behalf of the Supplier.

10.10. The Supplier, in any case and without giving any reason, agrees to the independent visit of the GCDGS SA service in order to perform a technical assessment of the Defects, and at the request of the client of GCDGS SA and after notifying the Supplier, to carry out the repair or replacement at the Supplier's expense. In addition, GCDGS SA will be entitled to repair or replace at the Supplier's expense in the event that the Supplier is unable to meet the requirements of sec. 10.6 GPC. The above actions of GCDGS SA do not affect the loss of any rights of GCDGS SA resulting from the warranty to the Supplier.

10.11. If the Supplier fails to take actions to remove the Defect or delay its removal, GCDGS SA has the right to repair or replace it on its own, and charge the Supplier with all costs of the undertaken service activities, which does not affect the loss of any rights of GCDGS SA resulting from the warranty.

10.12. In the event that as a result of the Defect there was damage to another device, material, installation, the Supplier undertakes to repair or replace the damaged devices, materials, installations with new ones or to cover the documented costs related to the repair or replacement of the damaged devices, materials and installations with new ones at GCDGS SA's choice.

10.13. The Supplier provides post-warranty service, including spare parts, for 10 years after the end of the warranty period.

10.14. The rights and remedies granted to GCDGS SA in accordance with these GTC and the Agreement are cumulative and do not exclude the right of GCDGS SA to use other rights and remedies under the law, in particular the rights resulting from the warranty.

## **Chapter 11: COMPLIANCE AND SUPPLIER CODE**

11.1. The Supplier will provide Goods and/or provide Services in accordance with applicable laws, codes, guidelines and other applicable requirements applicable to the Supplier. In addition, the Supplier undertakes to follow business ethics in its activities, and the ethical priorities at every level of the organization that GCDGS SA requires from the Supplier to meet are related mainly to areas such as anti-discrimination, respect for human rights and environmental protection.

11.2. The Supplier represents and warrants that it complies and will comply in full comply with all applicable laws, regulations, instructions and policies relating to trade and customs, including but not limited to ensuring compliance with all necessary customs clearance requirements, certificates of origin, import and export licenses, and exclusions in their application, as well as submission of relevant documents to appropriate government bodies.

11.3. The Supplier warrants that it will not, directly or indirectly, make any payments or undertake any obligations towards its customers, public officials or representatives, directors and employees of GCDGS S.A. or any other

person in a manner inconsistent with applicable law, and that it will comply with all applicable laws, regulations, orders and rules relating to bribery and corruption.

11.4. The Supplier confirms that it has received and read the GCDGS SA's Supplier Code and undertakes to perform its obligations under the Agreement and relevant contractual relations in line with the ethical standards set out in the GCDGS SA's Supplier Code. Respecting the values and principles set out in the GCDGS SA's Supplier Code is an important criterion in the supplier qualification process at GCDGS SA. Other requirements of GCDGS SA, including those with regard to raw materials, required materials and limitations, will be specified in the Agreement.

11.5. Any breaches by the Supplier of the obligations contained in this sec. 11 of the GTCP constitute a gross breach of the provisions of the Agreement, which authorizes GCDGS SA to terminate the Agreement with immediate effect, without the need to incur any costs, fees in connection with such breaches of the Supplier and the terminated Agreement and without limitation to any other GCDGS SA's rights and legal remedies under the Agreement or applicable law.

**Chapter 12: LIABILITY AND CONTRACTUAL PENALTIES**

12.1 The Supplier warrants to GCDGS SA that patent rights and other protected intellectual property rights of third parties will not be infringed by the performance of the Subject of the Agreement.

12.2. If the following are raised against GCDGS SA or the entity purchasing the final product from GCDGS SA with the Goods and/or Service covered by the Agreement:

12.2.1. third-party claims;

12.2.2. allegation of violation of applicable law;

12.2.3. initiated court proceedings, including administrative, civil or criminal; provided that they are based (directly or indirectly) on the allegations of (1) physical or legal defects, (2) non-compliance of the Goods and/or the Service with the law, in particular the allegation that the Goods are a dangerous product, (3) violation of third party rights or unfair competition, in particular intellectual or industrial property rights, then the Supplier is obligated to indemnify and hold harmless GCDGS SA against all liabilities and to compensate GCDGS SA for any damage suffered, including the amounts of damages, fines, fees, legal aid costs and the like.

12.3. If the Supplier fails to meet the Delivery Date (including a given stage) of the Goods and/or Services, GCDGS SA has the right to demand the Supplier to pay a contractual penalty in the amount of 1% of the net Agreement value for each commenced day of delay. Incomplete or defective delivery of the Goods and/or Services will be treated as a lack of the entire Delivery.

12.4. If the Supplier is delayed with the delivery of the Goods and/or Services or withdraws from the performance of the Agreement for reasons not attributable to ZPUE, apart from other consequences set out in these GTCP, GCDGS SA may:

12.4.1.refuse to accept any subsequent deliveries of the Goods and/or Services;

12.4.2. require the Supplier to reimburse any expenses reasonably incurred by GCDGS SA in order to obtain the Goods

and/or replacement Services from another supplier;

12.4.3. demand compensation for all costs, losses, expenses and contractual penalties incurred by GCDGS SA and resulting from the Supplier's delay or the Supplier's withdrawal from the Agreement.

12.5. In the event of the Supplier's delay in issuing all or part of the Documentation, GCDGS SA has the right to demand the payment of a contractual penalty in the amount of 1% of the net value of the Agreement for each commenced day of delay. The issue of incomplete or defective Documentation will be treated as equal to the failure to issue the Documentation.

12.6. If the Supplier is delayed with the performance of the obligations under the warranty for the Goods and/or the Service, specified in Chapter 10 of the GTCP, GCDGS SA has the right to demand the payment of a contractual penalty in the amount of 1% of the net value of the Agreement for each commenced day of delay.

12.7. If the Subject of the Agreement or its part does not achieve efficiency (defined by the declared Technical Parameters), GCDGS SA has the right to demand the payment of a contractual penalty in the amount of 1% of the net value of the Agreement for each commenced 1% of such decrease in efficiency.

12.8. The demand for payment of contractual penalties does not prevent GCDGS SA from seeking damages exceeding the amount of the contractual penalties, if the contractual penalty does not fully compensate for the damage suffered.

12.9. The payment of the contractual penalty by the Supplier does not release the Supplier from the obligations of proper performance of the Agreement.

12.10. GCDGS SA has the right to set off the calculated contractual penalties from the Supplier's remuneration under the Agreement or from the Supplier's receivables due to other binding parties to the agreements. GCDGS SA is also entitled to collect an amount equal to the contractual penalties from the Financial Guarantee presented by the Supplier in order to secure the proper performance of the Subject Matter of the Agreement.

12.11. The Supplier is liable for the acts and omissions of the sub-suppliers and subcontractors involved as for its own acts and omissions. The Supplier will be fully and solely liable for any claims of employees, sub-suppliers and subcontractors in relation to the delivery of the Goods and/or the provision of Services to GCDGS SA.

12.12. The indemnity liability of GCDGS SA towards the Supplier will in no case cover damages for any loss of profit, loss in use, loss of contracts, any consequential or indirect losses, including lost benefits.

## **CHAPTER 13 - TERMINATION AND RESCISSION FROM THE AGREEMENT**

13.1. GCDGS SA may terminate the Agreement (cancel the Order) without giving any reason, in whole or in part, upon written notice to the Supplier. In such situation, the Supplier may demand payment of justified, documented and proven costs incurred in connection with the commencement of the performance of the Agreement, provided that the already performed services are delivered to GCDGS SA, but in no case may this amount exceed the agreed price for the

Subject of the Agreement. The Supplier will not be entitled to claim any additional compensation, including for lost profits.

13.2. GCDGS SA may terminate the Agreement with immediate effect upon written notice to the Supplier and without the obligation to pay any damages to the Supplier or incur any costs if:

13.2.1. the delay in the performance of any of the Supplier's obligations covered by the Agreement exceeds 14 days; in particular, this applies to delays in the performance of the Subject of the Agreement, including a given stage, delay in removing the Defect, delay in providing Financial Guarantees (for the avoidance of doubt, in this case, it is not required to grant the Supplier any additional time limit for removing violations);

13.2.2. a bankruptcy petition has been filed against the Supplier or liquidation proceedings have been initiated against the Supplier, or the Supplier has submitted a statement on the initiation of rehabilitation proceedings, unless this is in conflict with the law;

13.2.3. The Supplier has subcontracted or assigned to a third party rights or obligations under the Agreement without the prior written consent of GCDGS SA;

13.2.4. The Supplier has breached any of the obligations set out in accordance with sec. 11 of the GTCP.

13.3. GCDGS SA has the right to rescind the Agreement within 3 months from the conclusion of the Agreement if the Supplier does not start its performance within 7 days from the date of its conclusion.

13.4. After the termination of the Agreement, the Supplier will immediately, but not later than within 3 days from the date of termination of the Agreement, return to GCDGS SA at its own expense and in a safe manner, all items owned by GCDGS SA (including documentation, data, relevant intellectual property rights) and information belonging to GCDGS SA, which the Supplier has at the moment or over which it has control, and will provide GCDGS SA with full information and documentation regarding the already delivered parts of the Goods and/or the Services already performed. The provisions referred to in the preceding sentence will apply accordingly to the rescission from the Agreement.

#### **Chapter 14- FORCE MAJEURE**

14.1. Neither of the Parties will be liable to the other Party for any failures in the performance of the Agreement, in a situation where they are caused by objectively independent reasons, the occurrence of which could not have been prevented even in the case of due diligence by the given Party, constituting cases of Force Majeure in accordance with sec. 14.2 of the GTCP.

14.2. Force Majeure is understood by the Parties as an extraordinary event, independent of a given Party, impossible to foresee and prevent, also when its avoidance would require taking actions the costs of which would exceed the salvageable benefits; in particular, the cases of Force Majeure include war, natural disaster such as earthquake or flood, explosion, fire, strike, riots, etc. The Party will not be liable if such circumstances prevent this Party from performing the Agreement despite all reasonable efforts, and such Party must provide the other Party with notice

without undue delay, but not later than five (5) days from the occurrence of the relevant Force Majeure circumstances.

14.3. Either Party may not effectively invoke the circumstances referred to in this Chapter 14 of the GTCP against the other Party if:

14.3.1. it failed to inform the other Party about the occurrence of Force Majeure immediately, but not later than within 7 days from the date on which it became aware of its occurrence;

14.3.2. immediately after receiving information about the occurrence of the circumstances of Force Majeure, it failed to take factually and economically possible actions enabling the achievement of the objectives provided for in the provisions of the Agreement in a manner other than that expressly provided for in the Agreement.

14.4. If the circumstances of Force Majeure last for more than thirty (30) days, GCDGS SA has the right to terminate the Agreement (including cancelling the Order) with immediate effect upon written notice to the Supplier, without liability towards the Supplier.

## **Chapter 15 - CONFIDENTIALITY, DATA PROTECTION, INTELLECTUAL PROPERTY**

15.1. The Parties agree to:

15.1.1. keep in strict confidence all information, in particular technical, technological, economic, financial, commercial, legal and organizational information regarding the other Party and the concluded Agreement, regardless of the form of providing them with this information and its source, as well as personal data received under the Agreement;

15.1.2. not to copy, duplicate, in any way disseminate or use any part of the information specified in sec. 15.1.1. of the GTCP for purposes other than those resulting from this Agreement;

15.1.3. take appropriate measures necessary to ensure the protection of the information specified in sec. 15.1.1. of the GTCP and their sources, both as a whole and with regard to individual issues.

15.2. The provisions of sec. 15.1. of the GTCP will not apply to the information obtained from each of the Parties, which:

15.2.1. is published, known and/or officially made public without violating the provisions of the Agreement;

15.2.2. is known to the general public or was provided by a third party without violating any obligations not to disclose thereof;

15.2.3. was disclosed to governmental, administrative, judicial or public authorities due to legal decisions or requirements.

15.3. The confidentiality clause regarding the information provided is binding for each of the Parties for the duration of the Agreement, as well as after its performance, expiry or termination - for a period of 10 years from the occurrence of any of these events.

15.4. All data obtained during the implementation of the Agreement, after the completion of the part of the Subject of the Agreement for which they were needed - will be permanently deleted by the Party, including the carriers on which they were provided.

15.5. The Supplier undertakes to keep confidential any legally protected



information within the meaning of the following legal acts: (1) Act on Personal Data Protection of 29 August 1997; (2) Unfair Competition Act of 16 Act of 1993.

15.6. The processing of personal data, the administrator of which is a given Party, is allowed only for the performance of the provisions of the Agreement and only to the extent necessary to achieve the purpose of the Agreement.

15.7. When performing the Agreement, the Supplier undertakes to comply with the provisions of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46 / EC (general regulation on data protection) (Journal of Laws UE L 119, p. 1) (hereinafter referred to as “**GDPR**”) and the Polish Act on Personal Data Protection of 10 May 2018. GCDGS SA reserves the right to carry out an inspection at any time with regard to the applied protection measures and the course of the personal data processing by the Supplier.

15.8. The Supplier will be liable to GCDGS SA for any damage caused by violation of the provisions of the GDPR and the Personal Data Protection Act, in particular for damage caused by misplacement, loss of documentation or allowing any access to data by unauthorized persons.

15.9. Subject to sec. 15.10. of the GTCP, as part of the price for the Goods and/or Services, as the case may be, the Supplier transfers to GCDGS SA the proprietary copyrights to all works, including designs, specifications, sketches within the meaning of the Act on Copyright and

Related Rights of 4 February 1994, which also includes the Documentation and Software developed by the Supplier or persons/entities cooperating with the Supplier in the performance of the Agreement (hereinafter: “**Works**”), to the extent and in the manner described below:

15.9.1. Upon the transfer of the Work, regardless of the form and method of transferring the Work and the fact of confirming or not confirming the acceptance of the Work by GCDGS SA, the Supplier transfers to GCDGS SA the proprietary copyrights to this Work in the fields of use indicated in sec. 15.9.2 of the GTCP.

Together with the transfer of these proprietary copyrights, the Supplier will provide GCDGS SA with the source codes for the Works that are computer programs. If the Work is not released by GCDGS SA, but only installed or implemented in any system or IT environment indicated by GCDGS SA, the Supplier, upon installation or implementation of a given Work, transfers to GCDGS SA the proprietary copyrights to this Work in the fields of use indicated in sec. 15.9.2 of the GTCP. Together with the transfer of these proprietary copyrights, the Supplier will provide GCDGS SA with the source codes for the Works that are computer programs. If the Work is performed in parts, the above provisions will apply to each part of the Work performed. These provisions also apply to the recovery and backup procedures.

15.9.2. The transfer of proprietary copyrights covers the following fields of use: (1) use the Work to the extent that is necessary for its proper use in the business activities of GCDGS SA carries out as at the date of the transfer of the Work, including improvement,

introduction for sale, development, distribution; (2) permanent or temporary multiplication of the Work in whole or in part by any means and in any form, in particular for the purposes of introducing, displaying, applying, saving, recording, transmitting and storing thereof; (3) translation, adaptation, rearrangement or any other changes to the Work, preserving the rights of the person who made these changes; (4) any dissemination (including dissemination of copies), including lending for use, renting, performing, exhibiting, displaying, reproducing, broadcasting and rebroadcasting, introducing to IT networks, introducing to economic trading, leasing of Works, using for the purpose of modifying the Goods, extending them; (5) permission to exercise derivative copyrights by disposing and using thereof in all fields of use listed in sec. (1) - (4) above.

15.9.3. With the transfer of proprietary copyrights to the Works, the exclusive right to grant permits for the exercise of derivative copyright passes to GCDGS SA. Upon acquisition of the proprietary copyright to the Work, GCDGS SA may use the Works both in whole or in any part thereof. The Supplier authorizes GCDGS SA to make modifications, including translations into other languages, of the Works, including source codes.

15.9.4. Upon the release of individual Works made under the Agreement to GCDGS SA, GCDGS SA acquires the ownership of the carriers on which the Works were released to GCDGS SA as part of the price for the Goods and/or Services, as the case may be.

15.10. If the Agreement clearly stipulates that the Supplier grants only a license to certain Works, in particular to the indicated Software, the following

provisions will apply. As part of the price for the Goods and/or Services, as the case may be, the Supplier grants GCDGS SA a non-exclusive, indefinite, irrevocable, territorially unlimited license for the Works, which will allow for free distribution of the Work to end users without limitation in the number of copies of the license made and on the fields of use specified in sec. 15.10.1 of the GTCP. GCDGS SA is entitled to grant a further license ( sublicense) to any users without a numerical limit and on the terms identical to the terms of this Agreement.

15.10.1. The license for the Work entitles to: (1) use the Work to the extent that is necessary for its proper use in the business activities of GCDGS SA carries out as at the date of the transfer of the Work, including improvement, introduction for sale, development, distribution; (2) permanent or temporary multiplication of the Work in whole or in part by any means and in any form, in particular for the purposes of introducing, displaying, applying, saving, recording, transmitting and storing thereof; (3) translation, adaptation, rearrangement or any other changes to the Work, preserving the rights of the person who made these changes; (4) any dissemination (including dissemination of copies), including lending for use, renting, performing, exhibiting, displaying, reproducing, broadcasting and rebroadcasting, introducing to IT networks, introducing to economic trading, leasing of Works, using for the purpose of modifying the Goods, extending them.

15.10.2. The license is irrevocable; the Parties exclude the application of art. 68 of the Act on Copyright and Derivative Rights of 4 February 1994.

15.10.3. The Parties mutually exclude the application of art. 55 (3) of the Act on Copyright and Derivative Rights of 4 February 1994.

15.11. In the event that a third party raises a claim against GCDGS SA related to the Works regarding infringement of the copyright of that third party or another entity submits a recourse claim against GCDGS SA, as well as if there is a threat of such claims, the Supplier will be obliged, at the choice of GCDGS SA, to: (1) obtain for GCDGS SA the right to use the Works being the subject of the claims in accordance with their intended purpose, but in a manner that does not infringe any intellectual property rights; (2) modify the Works being the subject of the claims so that they do not infringe any intellectual property rights, while maintaining their full compliance with the requirements of GCDGS SA; (3) obtain and introduce a replacement, functionally identical Work that does not infringe any intellectual property rights; (4) use other means available pursuant to laws. Notwithstanding the above obligations, the Supplier will be obliged to cover all damage incurred by GCDGS SA in connection with the infringement by Supplier or entities/persons cooperating with the Supplier of third party copyrights, in particular to cover the costs of defines, court costs, and awarded damages or settlements.

15.12. GCDGS SA will retain exclusive ownership of all intellectual property rights belonging to GCDGS SA, including but not limited to copyrights to software, drawings, documents and specifications that belonged to GCDGS SA prior to the conclusion of the Agreement or belong thereto or which arose independently and separately from the Agreement.

## **Chapter 16 - NOTICES**

All notices must be sent by duly signed registered mail, courier, fax or e-mail to the address of the other Party specified in the Agreement or to any other address notified to the other Party in writing. Notices sent by e-mail or fax require acknowledgement of their receipt by the receiving Party.

## **Chapter 17 - MISCELLANEOUS**

17.1. The Supplier may not assign its rights and obligations under the Agreement (including receivables payable from GCDGS SA) without the prior written consent of GCDGS SA.

17.2. Failure to enforce or perform any terms of the Agreement will not constitute a waiver there and will not affect the right to subsequently enforce such terms.

17.3 If it is found that any provision of the Agreement is invalid or ineffective by operation of law, this will not affect the validity and effectiveness of the remaining provisions of the Agreement, unless the circumstances clearly indicate that without such invalid or ineffective provisions the Agreement would not have been concluded. In the situation referred to in the preceding sentence, the Parties will be obliged to conclude an amending attachment to the Agreement in which they will formulate substitute provisions whose economic and commercial purpose will be equivalent or as close as possible to the purpose of the invalid or ineffective provisions.

17.4. Any amendments to the Agreement or deviations from these GTCP will be made in writing under pain of nullity. No reservations in documents, including confirmation of acceptance of the Order, documents confirming delivery and receipt, invoices will be considered an amendment to the Agreement.

17.5. The provisions of Polish law, in particular the Polish Civil Code, will apply to any matters not governed by this Agreement.

17.6. Any possible disputes arising from the Agreement, including those relating to the interpretation or performance of the Agreement, which the Parties are not able to settle amicably, will be settled by

the common court having jurisdiction over the registered office of GCDGS SA;

17.7. The provisions of the Agreement which - due to their nature - should apply after its termination, will remain in force and will fully apply regardless of such termination.