

## General Terms and Conditions of Contract

### applicable to transactions with BARTEC Polska Sp. z o.o.

#### 1. General Terms and Conditions

- 1.1 Trade contracts under which BARTEC Polska Spółka z ograniczoną odpowiedzialnością, with its registered office in Tychy 43-100, ul. Murarska 28, National Court Register (KRS) No 0000213981 – hereinafter referred to as the “Customer”, acquires goods and/or services from third parties other than consumers, hereinafter referred to as the “Supplier”, shall be subject to the present General Terms and Conditions of Contract (hereinafter referred to as: the GTCC).
- 1.2 Any general terms and conditions of contract used by the Supplier, if these are contrary to the present GTCC, shall not be binding on the Customer and shall not form an integral part of the Contract, even if this has not been expressly stipulated by the Customer in any given case. The present GTCC shall form an integral part of the purchase order submitted by the Customer (hereinafter referred to as: the purchase order), and of the Contract.
- 1.3 In order to be effective, any statements of intent shall be submitted in one of the following forms:
  - 1.3.1 the original letter, containing the statement of intent, delivered to the other Party;
  - 1.3.2 a photocopy of the original letter, containing the statement of intent, sent by fax to the other Party;
  - 1.3.3 an electronic version (PDF format) of the original letter, containing the statement of intent, sent via e-mail to the other Party.
- 1.4 The statement of intent, presented by the Supplier in the form referred to in section 1.3 of the GTCC, to the effect that the purchase order has been accepted shall be accompanied by a reference to the purchase order received by the Customer.
- 1.5 The Supplier shall notify the Customer in the correspondence of the e-mail address or the fax number for sending the letters containing statements of intent. In the absence of such data, purchase orders and other statements of intent of the Customer shall be sent to the fax number or e-mail widely available on the website, in telephone directories, etc.

#### 2. Conclusion of the Contract

- 2.1 In order to be effective, any purchase order, offer and their acceptance, leading to the conclusion of the Contract, as well as the schedules of deliveries, including any amendments and additions thereto, shall be executed by the parties in one of the forms referred to in section 1.3 of the GTCC.
- 2.2 The purchase order or offer shall cease to be binding if a statement of their acceptance without any reservations has not been delivered immediately from the date of receipt of the purchase order or offer.
- 2.3 The Contract shall be concluded upon the delivery to the other Party of a statement of acceptance of the purchase order offer without any reservations, in the form referred to in section 1.3.
- 2.4 The Customer shall be authorised to refuse to accept any delivery in quantities falling outside of the scope of the Contract, and any delivery before the date stipulated in the Contract.
- 2.5 The Customer shall be authorised to demand, with respect to the goods ordered under the Contract, technical modifications, changes in quantities and agreed standards and parameters, if permitted by the manufacturing conditions; in the case of such modifications or changes the parties shall agree on respective changes in prices and delivery dates.
- 2.6 The Supplier shall be obliged to comply with all known standards related to technology, safety regulations and the agreed technical data (national and international standards), currently in force and applied in the mining industry.

#### 3. Transport and Delivery of Goods and Services

- 3.1 If not otherwise specified, all deliveries shall be to the Customer's address on the date indicated in the Contract, and the Supplier shall be obliged to organise and pay the costs of transport, and properly secure the goods during transport and unloading.
- 3.2 If the delivery is to be performed in parts, the dates and places of performance and the number of individual parts of the delivery shall be specified in the Contract.
- 3.3 All the risks as well as the benefits and burdens associated with the goods being delivered shall be transferred to the Customer at the time of their release to the Customer or any third party designated by the Customer in the manner specified in section 1.3.

- 3.4 The transport of goods must ensure their completeness and integrity, and in particular must comply with the characteristics of the goods being delivered.
- 3.5 An employee of the Supplier or a third party making the delivery shall be a representative of the Supplier authorised to submit and accept, on behalf of the Supplier, any statements related to the performance of the Contract. If an employee of the Supplier or a third party making the delivery refuses to submit or accept any statement, a certificate shall be drawn up and the circumstances identified therein shall be binding upon the Supplier.
- 3.6 When the delivery date is exceeded, the Customer shall be authorised to determine the mode of transport which the Customer deems most appropriate for the immediate performance thereof. Additional costs resulting from the change in the mode of transport shall be borne by the Supplier.
- 3.7 For each delivery there shall be issued a valid proof of delivery, including purchase order number, date of issue, description of goods, quantity, weight, and the name and address of the Supplier.
- 3.8 The Supplier shall be obliged to supply the Customer, in performance of the Contract, with brand new and unused goods – unless the Contract expressly states otherwise. Goods which have been produced no earlier than 12 months before the delivery date shall be considered to be brand new products.
- 3.9 The agreed delivery dates shall be binding. A complete delivery of goods, specified in the Contract or purchase order, together with the complete documentation prepared in the language specified by the Customer, and in the number of copies specified by the Customer, on terms and conditions agreed by the Parties, shall be considered to be the goods delivered, and thus meeting the delivery date.

#### 4. Acceptance of Goods and Services

- 4.1 Acceptance of goods shall be confirmed by employees of the Customer or other persons designated by the Customer. The Customer shall not be obliged to inspect the goods delivered when these are received at the place specified in the Contract.
- 4.2 If the goods being delivered are defective within the meaning of generally applicable laws or do not meet the requirements specified in the Contract or the GTCC, the Customer, at the Customer's sole discretion, shall be authorised to refuse to accept the delivery, in whole or in part, and to set an additional date of delivery of the goods, free from defects and meeting the requirements specified in the Contract and the GTCC, for the Supplier.
- 4.3 The receipt of the goods shall not exclude the Supplier's liability under the Contract and the GTCC or liability under the statutory warranty or the quality guarantee, and shall not confirm the compliance of the goods with the Contract and the GTCC.
- 4.4 The Customer shall be authorised to report visible defects of the goods delivered within 30 days of the date of receipt, while hidden defects may be reported within 30 days of the date of disclosure.

#### 5. Delayed Delivery Date and Contractual Penalties

- 5.1 The Supplier shall be obliged to cover the loss caused to the Customer by any delay in the delivery of the subject matter of the Contract.
- 5.2 In the case of the Supplier's delay in performance of any obligations under the offer, the Contract or the GTCC, the Customer shall be authorised to demand that the Supplier pay contractual penalty at 0.5% of the gross value of the subject matter of the Contract for each day of delay, but no more than 30% of the gross value of the subject matter of the Contract.
- 5.3 In the case of the Supplier's delay in performance of any obligations under the offer, the Contract or the GTCC, longer than 15 calendar days, the Customer shall have the right to submit a statement of withdrawal from the Contract or a part thereof, within subsequent 30 calendar days, and demand the payment of contractual penalty at 10% of the gross value of the subject matter of the Contract.
- 5.4 If the loss incurred by the Customer as a result of non-performance or improper performance of the Supplier's obligations in relation to the Customer exceed the level of contractual penalties, the Customer shall have the right to claim compensation on general terms.
- 5.5 If any contractual penalties, as stipulated in the Contract, have been charged, the Customer shall have the right to set them off against the amounts owing to the Supplier.

## 6. Invoices and Payment

- 6.1 Unless the Contract provides otherwise, the payment for performance by the Supplier of the subject matter of the Contract shall be effected by bank transfer or another method of payment agreed by the Parties within 45 days of the date of receipt of an invoice.
- 6.2 The invoice shall be issued by the Supplier on the basis of the acceptance certificate, signed by an authorised employee of the Customer, stating that the delivery is compliant with the Contract.
- 6.3 The original invoice shall be sent to the following address: BARTEC Polska Sp. z o.o. with its registered office in Tychy 43-100, ul. Murarska 28.
- 6.4 Except statutory requirements, the correct VAT invoice should specify:
  - a) Quantity of goods (type of service) and net and gross unit prices of individual items. Each item of the Contract (purchase order) should be specified in the invoice in the same manner as in the Contract (purchase order);
  - b) The number and date of the Contract or the Customer's purchase order;
  - c) The terms and date of payment, in accordance with the Contract or the purchase order;
  - d) In the case of deliveries from the territory of the European Union – an appropriate VAT ID number of the Seller.
- 6.5 The date of payment shall be understood as the date the Customer's bank account of debited.
- 6.6 If the subject matter of the Contract is defective, the Customer shall be authorised, upon giving a prior notice of the defect to the Supplier, to suspend the payment until the defect identified by the Customer is effectively removed.
- 6.7 The Supplier shall not be authorised to transfer any rights existing under the Contract or created in the course of its performance, in particular any claims against the Customer, without the prior written consent of the Customer.
- 6.8 The Customer shall be authorised to refuse to accept an invoice issued contrary to any applicable laws, requirements of the Contract and the present GTCC.

## 7. Supplier's Liability

- 7.1 The Supplier shall be responsible for the physical and legal defects of the goods and services.
- 7.2 Regardless of the statutory warranty, the Supplier shall guarantee the quality of the subject matter of the Contract for a period of 24 months from the date of commissioning of the installation using the goods delivered or services performed, no more than 30 months from the date of delivery or performance, unless the Contract states otherwise. Together with the goods, the Supplier shall deliver to the Customer the guarantee document, including the terms and conditions referred to in the GTCC, unless the Parties determine other terms and conditions of guarantee in the Contract.
- 7.3 The Supplier shall be obliged to transfer the ownership of the goods to the Customer, free from any physical or legal defects.
- 7.4 Any defects determined in accordance with Article 566(1) of the Civil Code, and any non-compliance of the subject matter of the Contract with the description in the Supplier's offer, the purchase order, the Contract, the GTCC and with any technical or technology standards resulting from generally applicable laws shall be considered to be physical defects.
- 7.5 The Supplier shall be responsible for any legal defects of the goods offered to the Customer, including any claims of third parties related to ownership, intellectual or industrial property rights, in particular copyrights, patents, trademark protection rights and the rights of registration of industrial and utility models.
- 7.6 The term of the statutory warranty shall correspond to the term of the guarantee, referred to in section 7.2.
- 7.7 If the Supplier or a person authorised by the Supplier fails to fulfil their obligations under the statutory warranty or guarantee after they receive a demand to fulfil such obligations from the Customer, the Customer shall be authorised to remove the defects, at the expense and risk of the Supplier, or to purchase, at the expense of the Supplier, goods free from defects while retaining other rights under the Contract, the GTCC and applicable laws.
- 7.8 Should third parties lodge any claims against the Customer, attributable to defective goods or services or a failure to fulfil the obligations on the part of the Supplier, the Supplier shall remedy or cover the loss incurred by a third party, caused by such defects, or the loss incurred by the Customer.

## 8. Confidentiality and Personal Data Protection

- 8.1 The Parties shall agree to keep confidential, and duly protect against unauthorised access of third parties, any information related to the negotiation or performance of the Contract, and any classified information related to the other Party to the Contract and its activities, that the Party has acquired in connection with the negotiation, conclusion or performance of the Contract.
- 8.2 Any drawings, models, templates and other data that have been provided to the Supplier in connection with the Contract shall not be made available to any third parties and remain the property of the Customer. Reproduction is permitted only

within the framework of the Contract and for its performance, subject to the author's economic rights and other intellectual property rights of the Customer. Any items manufactured on the basis of these data shall not be transferred to third parties, either as semi-products or as finished parts. The same shall apply to parts that the Supplier improves according to the Customer's specification.

- 8.3 The obligations referred to in sections 8.1 and 8.2 shall also extend to sub-contractors (sub-suppliers) of the Supplier who shall be responsible for any damages caused by their conduct in relation to the Customer.
- 8.4 Pursuant to Article 24(1) of the Personal Data Protection Act of 29 August 1997, the Customer advises that it is the controller of the Supplier's personal data, the data shall be processed in order to perform the Contract and shall not be shared with other entities, and the Supplier has the right to access their personal data and correct them.

## 9. Final Provisions

- 9.1 Any general terms and conditions used by the Supplier shall not apply, and their application shall be excluded under the present GTCC.
- 9.2 The Supplier shall not be permitted to transfer to a third party any rights or obligations, in whole or in part, under the Contract without the prior written consent of the Customer.
- 9.3 Each of the Parties to the Contract shall be authorised to withdraw from the Contract if:
- Liquidation of the other Party has commenced or the competent court has issued a decision on the opening of insolvency proceedings,
  - Suspension of the performance of the Contract as a result of force majeure has exceeded the period of 6 months,
  - After the cessation of force majeure, the Party claiming the occurrence of force majeure has not commenced immediately the performance of the Contract.
- 9.4 The liability of the Customer for damages caused to the Supplier as a result of non-performance or improper performance of the Contract shall be limited to the Supplier's actual loss and the gross value of the subject matter of the Contract.
- 9.5 In matters not covered by the present GTCC, the relevant provisions of Polish law, in particular the Act of 23 April 1964 – Civil Code – shall apply.
- 9.6 Any disputes between the Parties arising out of performance of the Contract shall be recognised by a court of law having territorial jurisdiction over the registered office of the Customer.
- 9.7 The present GTCC shall be valid from 1 January 2017 until further notice.