

PGNiG TERMIKA SA

GENERAL TERMS AND CONDITIONS FOR PURCHASE OF GOODS BY PGNiG TERMIKA SA Release 10 of 07.09.2020

1. General Provisions and Definitions

- 1.1. These General Terms and Conditions for Purchases of Goods form an integral part of Purchase Orders placed with Suppliers by PGNiG TERMIKA SA, with its registered office in Warsaw, 15 Modlińska Street, for the purchase of Goods.
- 1.2. Acceptance of the Purchase Order by the Supplier means that it acquaints itself with these Terms and Conditions and acknowledges them as binding and applicable to the Purchase Order.
- 1.3. Acceptance of the Terms and Conditions by the Supplier shall exclude the application of any sales and delivery conditions applicable to the Supplier.
- 1.4. The expressions used in these General Terms and Conditions for Purchase of Goods shall be understood as:
 - a) Terms and Conditions - General Terms and Conditions of Purchase of Goods by PGNiG TERMIKA SA (hereinafter also referred to as "GTC");
 - b) Ordering Party - PGNiG TERMIKA SA with its registered office at 15 Modlińska Street, 03-216 Warsaw;
 - c) Supplier - legal or natural person or organisational unit without legal personality which conducts sale and delivery of the Goods;
 - d) Goods - respectively materials, spare parts, equipment supplied by the Supplier;
 - e) Purchase Order - an order for purchase of Goods placed with the Supplier by the Ordering Party, made in writing, on a form sent to the Supplier in electronic form or by post, specifying in particular the name, type, quantity, net price of the Goods, confirming previously agreed conditions of delivery and technical requirements;
 - f) Agreement - the agreement for sale and delivery of Goods concluded between the Ordering Party and the Supplier on the basis of the Purchase Order confirmed by the Supplier and these Terms and Conditions;
 - g) Price of the Goods - the net price of the Goods (excluding VAT);
 - h) Party - shall be understood to mean the Ordering Party or the Supplier / Parties - shall be understood to mean the Ordering Party and the Supplier;
 - i) Working Days - means days from Monday to Friday excluding public holidays in the territory of the Republic of Poland;

2. Conclusion and Termination of the Agreement

- 2.1. The subject matter of the Agreement shall be the sale and delivery of the Goods specified in the Purchase Order, signed by the authorised representatives of the Ordering Party, to the indicated locations.
Purchases of Goods shall be made exclusively on the basis of Purchase Orders and any verbal agreements shall require written confirmation to be valid.
- 2.2. Each Purchase Order placed with the Supplier shall specify in particular the name, type, quantity, unit of measure, net unit price, total net value of the Goods, transaction currency, payment currency, payment terms, delivery terms, delivery date, places and addresses of delivery of the Goods.
Any additional arrangements concerning the subject matter of the Purchase Order may be made only by authorised representatives of the Ordering Party.
- 2.3. The Agreement shall be considered concluded if the Supplier delivers to the Ordering Party a confirmation of the Purchase Order in writing, i.e. sends a copy of the Purchase Order, signed by the Supplier's authorised representatives, within 3 Business Days of receipt of the Purchase Order.

In the event that such written confirmation from the Supplier is not received by the Ordering Party within this period, the Ordering Party shall cease to be bound by the contents of the submitted Purchase Order.

In the case of purchase orders with a net value of up to PLN 20,000.00 it is permissible to send the Purchase Order confirmation in electronic form.

- 2.4. The Supplier shall be obliged to carry out the subject of the Purchase Order in its entirety, without dividing it into parts, unless the Ordering Party consents to this in advance in writing, or unless it was indicated in the Purchase Order submitted by the Ordering Party.
- 2.5. The Ordering Party shall have the entitlement to terminate the Agreement with immediate effect in the event that the Supplier fails to comply with the regulations in force.

3. Delivery of the Goods

- 3.1. The delivery of the Goods which are the subject of the Purchase Order is specified each time by the Ordering Party in the content of the Purchase Order. The subject matter of the Purchase Order must be performed in accordance with the content of the Purchase Order, applicable standards and regulations.
- 3.2. The subject of the delivery shall be brand new Goods complying in all respects with the agreed technical requirements, manufactured in accordance with Polish Standards, within the meaning of the Act of 12.09.2002 on standardisation, and the standards in force in the European Union, as well as in compliance with safety regulations and other legal provisions in force in the territory of the Republic of Poland.
- 3.3. The Supplier shall provide the Ordering Party, together with the Goods, with all documents relating to the Goods, in particular a copy of the Purchase Order confirmed by the Supplier, a copy of the invoice for the Goods delivered, a waybill / Stock Issue Confirmation document and comprehensive technical documentation necessary for proper use, assembly / installation of the Goods, proper operation and handling, instructions in the Polish language, certificates, safety certificates, attestations, materials and approvals relating to the Goods, instructions for proper storage of the Goods, as well as other documents required in the territory of the Republic of Poland and/or the European Union specified by the Ordering Party in the Purchase Order.
- 3.4. The Supplier declares that conclusion and performance of the Purchase Order / Agreement does not infringe rights of third parties.
- 3.5. The Supplier is responsible for obtaining all required documents. The Supplier shall be solely responsible for the consequences of incorrectly drafted or incomplete documents.
- 3.6. The date of delivery of the Goods shall be the date indicated in the Purchase Order and shall mean the date of delivery of the Goods to the place of delivery indicated in the Purchase Order.
- 3.7. At the latest 2 working days before the agreed date of delivery of the Goods, the Supplier shall provide the Ordering Party's representative indicated in the Purchase Order with information on the exact date of delivery and the manner of packing the Goods (number of pallets / dimensions of packaging).
- 3.8. Deliveries made in quantities, quality or on dates other than those specified in the Purchase Order shall be deemed non-conforming with the Purchase Order, which means that the Ordering Party shall be entitled to charge the Supplier with contractual penalties and the right to refuse to accept the Goods or to withdraw from the Agreement within the following 14 days.

- 3.9. Delivery of the Goods to the place indicated in the Purchase Order shall be at the expense and risk of the Supplier.
- 3.10. The Supplier shall be obliged to maintain all compulsory insurances required by law, in particular third party motor vehicle liability insurance. The Ordering Party reserves the right to require proof of insurance.
- 3.11. Delivery of the Goods and transfer of ownership of the Goods, danger of loss or damage and burdens and benefits to the Ordering Party shall take place at the moment of acceptance of the Goods by the Ordering Party and simultaneous transfer of complete documents by the Supplier, as referred to in Para. 3.3. of the GTC.
- 3.12. The Ordering Party reserves the right to withdraw, in whole or in part, from a Purchase Order / Agreement not fulfilled within the time limit specified in the Purchase Order, without the necessity of setting an additional time limit for the Supplier to perform the delivery and without the obligation to provide any compensation. The declaration of withdrawal from the Purchase Order/Agreement in whole or in part shall be submitted by the Ordering Party within 45 days from the date on which the Purchase Order was to be completed.
- 3.13. For all acts or omissions of persons with the assistance of whom the Supplier performs the subject of the Purchase Order or to whom it entrusts its performance, the Supplier shall be liable as for its own.
- 4. Personal Data Protection**
- 4.1. The Parties declare that, with regard to the processing of personal data collected pursuant to the Agreement, they act in accordance with the provisions of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons in relation to the processing of personal data and on the free movement of such data and repealing Directive 95/46/EC (Official Journal of the EU L 119/1 of 4.5.2016) and any other applicable provisions relating to the processing of personal data.
- 4.2. The Parties declare that each of them acts as a Controller in relation to the personal data made available in connection with the performance of the Agreement.
- 4.3. The Ordering Party shall inform the Supplier, and the Supplier shall provide this information to the persons performing the Agreement, that the information clauses that the Ordering Party is required to provide in relation to the processing of personal data are posted on the Ordering Party's website at www.termika.pgnig.pl in the GDPR (*pol. RODO*) tab as pdf files.
- 5. Payments**
- 5.1. The price of the Goods specified in the Purchase Order includes all costs of the Supplier incurred in order to fully and correctly perform the activities indicated therein. The agreed Price covers in particular the costs of the Goods, packaging, insurance, transport and unloading of the Goods to the place of delivery indicated by the Ordering Party, guarantees granted for the Goods delivered, as well as public levies, in particular taxes and duties. The price of the Goods shall be increased by VAT calculated in accordance with applicable regulations.
- 5.2. The prices of the Goods stated in the Purchase Order are fixed and are not subject to change.
- 5.3. If the Supplier determines prices on the basis of a price list, a change in the price list during the performance of the Purchase Order shall not affect the agreed price for the Goods.
- 5.4. If the equivalent of the Price of the Goods expressed in the Purchase Order in foreign currencies is calculated in Polish zlotys, it shall be converted into Polish zlotys according to the average exchange rate for a given foreign currency announced by the National Bank of Poland on the last working day preceding the date of invoice issuance.
- 5.5. The Supplier shall endeavour to issue the invoice with the Purchase Order number as the basis for settlement and payment no later than within 7 days from the date of delivery of the Goods to the Ordering Party.
- 5.6. The original invoice shall be sent by the Supplier to the following address: PGNiG SERWIS Sp. z o.o., ul. Modlińska 15, 03-216 Warszawa, indicating as the purchaser: PGNiG TERMIKA SA, ul. Modlińska 15, 03-216 Warszawa.
- 5.7. Unless otherwise specified in the text of the Purchase Order, payment of the invoice shall be made within 30 days of receipt of a correctly issued invoice, however not earlier than within 30 days (thirty) of acceptance of the Goods without reservation. Payments for partial deliveries of Goods shall only be made if this has been expressly indicated in the Purchase Order.
- 5.8. Payment shall be made by transfer to the Supplier's bank account indicated in the invoice. For the avoidance of doubt, the Parties agree that:
- a) The Ordering Party will execute the payment to the bank account indicated by the Supplier, compliant with the specification of entities kept by the Head of the National Fiscal Administration, referred to in Art. 96b Para. 1 of the Act of 11 March 2004 on tax on goods and services.
- In the event that the Supplier's bank account number, referred to above, is not on the specification of entities maintained by the Head of the National Fiscal Administration, the Ordering Party:
- shall make payment to the bank account indicated by the Supplier above, subject to item d) below. At the same time, with the first payment of the amount due, the Ordering Party shall submit a notification of this fact to the Head of the Tax Office competent for the Ordering Party within 7 days from the date of the transfer order;
 - shall notify the Supplier by e-mail about the bank account number, referred to above, not being on the specification kept by the Head of the National Fiscal Administration.
- b) The Ordering Party shall not be obliged to pay the invoice earlier than within 30 days from the date of receiving a correctly issued invoice, and in the case referred to in item d) below, not earlier than within 30 days from the date of indicating by the Supplier a new bank account included in the specification of entities kept by the Head of the National Fiscal Administration (concerns payments covered by the obligatory split payment mechanism).
- c) The Ordering Party shall apply the split payment mechanism (SP) in each case in which it is obliged to apply it in accordance with the applicable regulations, taking into consideration the provisions of items b) and d). In other cases, the Ordering Party, at its own discretion, shall be entitled to apply the split payment (SP) when executing the transfer.
- d) In the event that the bank account indicated by the Supplier, referred to in item a) above, prevents application of the obligatory split payment (SP), referred to in Art. 108a Para. 1a of the VAT Act, the Ordering Party shall suspend execution of the payment until the Supplier indicates a new bank account, referred to in Art. 108e of the VAT Act, enabling payment using the split payment, to which the Supplier hereby agrees and does not file any objections. In such an event, the Supplier waives the right to claim interest for late payment for the period from the first day after the payment deadline set in accordance with item b) to the 7th day from the date of notifying the Ordering Party of the account number meeting the requirements referred to in the previous sentence.
- 5.9. The date of payment shall be the date on which the Ordering Party's bank account is debited.
- 5.10. The Supplier may not reserve the ownership of the Goods until the Ordering Party has paid the invoice. The Goods which are the subject of the Purchase Order become the property of the Ordering Party as soon as they are released.
- 5.11. The Ordering Party shall be entitled to set off any claims to which it may be entitled against the Supplier, irrespective of their nature, against any amounts due to the Supplier.
- 6. Contractual Penalties and Damages**
- 6.1. The Supplier shall pay the Ordering Party the following contractual penalties:
- 6.1.1 for delay in delivery of the Goods which are the subject of the Purchase Order - in the amount of 0.5% of the Price of the Goods not delivered at the date specified in the Purchase Order, calculated for a full Working Day of delay,
- 6.1.2 in the event of withdrawal from the Purchase Order by the Ordering Party or from the Agreement by any of the Parties for reasons for which the Supplier is responsible, in the amount of 10% of the total net value of the entire subject of the Purchase Order,
- 6.1.3 in the amount of 2% of the price of the Goods whose defects have not been removed within the time limit specified for

their removal, calculated for each commenced day of delay in removing the defect.

- 6.2. The total amount of contractual penalties under the above-mentioned titles may not exceed the amount of 25% of the total net value of the entire subject of the Purchase Order.
- 6.3. The Supplier may demand statutory interest for delay in commercial transactions from the Ordering Party in the event of delay in payment for the performance of the subject of the Purchase Order.
- 6.4. If the damage caused to the Ordering Party is more severe than the amount of the reserved contractual penalties, the Ordering Party shall be entitled to seek damages in excess of the amount of the reserved contractual penalties on general terms.
- 6.5. The Ordering Party may deduct due contractual penalties from the Supplier's receivables.
- 6.6. The basis for payment of contractual penalties shall be a debit note of the Ordering Party delivered to the Supplier. Notwithstanding Para. 6.5, the contractual penalties shall be payable within 7 days from the date of delivery of the debit note to the Supplier.

7. Quality Guarantee, Warranty for Defects, Complaints

- 7.1. The Supplier grants the Ordering Party a guarantee for the delivered Goods for the period of 24 months counted from the date of delivery of the Goods (unless otherwise specified in the content of the Purchase Order) or for the period of guarantee of the Goods manufacturer, if the latter provides for a longer period. The Purchase Order signed by the Supplier, of which these GTCs are an integral part, constitutes a guarantee document in the meaning of Art. 577² of the Civil Code. The Ordering Party may oblige the Supplier to deliver, at the latest on the date of delivery of the Goods, also the guarantee card(s) of the Goods.
- 7.2. Under the guarantee, the Supplier shall be obliged to replace the defective Goods with Goods free of defects or otherwise rectify the defect free of charge within 15 Working Days (unless another time limit has been specified in the Purchase Order) from the date of notification of the defect to the Supplier.
- 7.3. If the Supplier, in the performance of his obligations, undertakes substantial repairs to the Goods, the guarantee period shall start anew from the moment when the defects have been rectified. In other cases, the guarantee period shall be extended by the time during which the Ordering Party cannot use the Goods due to defects.
- 7.4. The Supplier shall only be entitled to reject a claim for defects in the Goods if it proves to the Ordering Party that the defects were caused by the Ordering Party's sole fault.
- 7.5. Failure to remove defects within the time limit shall entitle the Ordering Party to remove the defects on its own or to have the defects removed by third parties (without the need to obtain a separate court authorisation) as well as to charge the Supplier with the related costs, without losing its rights under the guarantee and to charge the Supplier with contractual penalties. Notification of defects to the Supplier in advance shall be a prerequisite.
- 7.6. Irrespective of rights under the guarantee, the Supplier shall be liable to the Ordering Party under the guarantee for physical and legal defects, pursuant to the provisions of the Civil Code.
- 7.7. The Supplier warrants that no third party rights attach to the Goods ordered and that the Goods may be processed and used without damage to third parties. If, however, it would appear that there are third-party rights in the Goods delivered, the Supplier shall provide the Ordering Party with the required documents and support the Ordering Party to the fullest extent in defending against such claims. As such, the Supplier shall be fully liable for any damage incurred by the Ordering Party.
- 7.8. The warranty period shall be equal to the guarantee period.

8. Final Provisions

- 8.1. The Parties undertake to keep confidential any information constituting an enterprise secret within the meaning of the Act of 16.04.1993 on counteracting unfair competition.
- 8.2. The Supplier may not assign (transfer) claims under the Purchase Order to third parties without the Ordering Party's prior written consent.
- 8.3. The Ordering Party declares that it has the status of a large entrepreneur within the meaning of Art. 4(6) of the Act of 8 March 2013 on counteracting excessive delays in commercial transactions (i.e. Journal of Laws of 2020, item 935, as amended).
- 8.4. All matters not covered by the content of these GTCs shall be exclusively governed by the applicable provisions of Polish law, in particular the Civil Code.

- 8.5. Where written form is stipulated in these Terms and Conditions, it shall be considered null and void unless otherwise specified.
- 8.6. The court competent to settle disputes arising in connection with the performance of the Purchase Order and the performance of the Agreement shall be the common court having jurisdiction over the registered office of the Ordering Party.
- 8.7. The Terms and Conditions and the Purchase Order, including any appendices, shall constitute a whole and form the Agreement. In case of discrepancies between the documents, the provisions of the Purchase Order shall take precedence over the GTC.