

# GENERAL TERMS AND CONDITIONS OF PURCHASE

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## THE GENERAL CONDITIONS OF PURCHASE of Zakłady Magnezytowe „ROPCZYCE” S.A.

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### § 1

#### General provisions

This document presents the general conditions of purchase (hereinafter referred to as GCP), which shall be applied to all purchase contracts of the Goods, equipments, tools and service under which Zakłady Magnezytowe "ROPCZYCE" S.A. with its registered seat in Warsaw, Postępu 15c Street, 02-676 Warszawa, registered with the Economic Activity Register in the Regional Court for Warsaw under the number KRS 000036048 (hereinafter referred to as ZMR) purchases the above specified Goods.

Any deviating general conditions of sale or of purchase/ delivery of our contracting parties shall not be binding to ZMR, unless ZMR confirmed them in writing, also then ZMR has not expressly refused to be bound by them.

Any deviating provisions made by broker or agents of ZMR are binding to ZMR provided that these persons have the appropriate authorisation to that's actions or only then ZMR has expressly confirmed them in writing.

### § 2

#### Orders

- The deliveries must be always subject of the orders ("Order") which shall be valid for defined or undefined period of time.
- The orders must be made in writing, by registered letter, courier, courier mail, e-mail or fax. All additional oral arrangements between ZMR and the Supplier are valid unless ZMR confirm acceptance for such arrangements in writing. The Supplier is obliged to confirmation of the order to ZMR within 5 days from the date of its sending. Where the Supplier fails the confirmation in the above stated period, ZMR has the right to withdraw the order and the Supplier has no right to any claim compensation for his any potential damages. Where the Supplier makes the order's confirmation within the above stated 5 days, which contains any deviations from the ZMR's conditions, in order for ZMR to be bound by such order it is necessary that the Parties agree final conditions of the agreement. If ZMR receipt the copy of the order on which the Supplier confirm acceptance of the order's realisation. As the moment of the conclusion of the agreement shall be deemed the moment when ZMR receipt a copy of the order on which the Supplier confirm acceptance of the order's realization according to his wording and these GCP.
- In the event between the Parties has been concluded the frame contract regarding delivery of the Goods or service, then it is allowed to attach these GCP to the frame contract in form of appendix, so it is no require to submit each time the wording of these GCP by order's making by ZMR to the Supplier. In such cases ZMR in its order shall invoke the provisions of these GCP, which were previous submitted by him to the Supplier.
- If the Supplier started to realize the order it shall be deemed he confirms the detailed order's conditions and these GCP.
- ZMR allows deviations in the placed orders in range +/- 10%.

### § 3

#### Conditions of delivery, Supplier's delay, Contractual penalty

- The delivery base for all realizing orders shall be each time determined by the Parties. The Incoterms2020 clauses constitute an integral part of these GCP. If the contractual obligations are not followed appropriately according to the Incoterm 2020 clause, the Party which doesn't follow the obligation is obliged to pay all the charges which are the result of such situation.
- The time of delivery, mean of transport, address of delivery shall be determined each time by the Parties. These conditions shall be strictly observed and are binding. If the delivery date cannot be met, the Supplier shall immediately inform the ZMR in writing of the expected delay period, the reason for the delay and a new delivery date. Failure to provide the above-mentioned information or providing information on the impossibility of timely delivery for any reason (including force majeure) may be the basis for the ZMR to withdraw from the contract by written notice to the Supplier, with the consequences specified in §3, section 7 of the Contract.
- ZMR reserves the right to withdraw from the contract within 7 days, in whole or in part, of an unrealized order within the deadline specified in the order, with no compensation obligations. At the same time ZMR reserves the right to seek compensation from the Supplier for improper performance of the order on general principles set out in the Civil Code and reimbursement of all costs incurred for the replacement performance of the order.
- The risk of loss of the Goods bears the Supplier until ZMR (or other by it authorized persons) will take possession of the Goods, at place determined in the order.
- The potential earlier delivery (as it was previously determined between the Parties) of the Goods is possible under condition the price for the above deliveries must be paid by the payment due date indicated in the order.
- The Supplier obliges oneself to attach the appropriate specification, quality certificate, certificate of origin, invoices, transport documents (B/L), producer's certificate (conformity certificate, quality certificate etc.) to each delivered good to ZMR (partial of the goods) unless the Parties otherwise agreed.
- In the event of delay in delivery, failure of delivery or improper realization of the delivery in whole or in part, the Supplier shall be obliged to pay the contractual penalty at fixed flat rate of 0,5% of the value of delayed goods for each common week but the maximal contractual penalty shall amount 20 % of the value of delayed goods, unless the Parties otherwise agreed. If the contractual penalty does not cover the damage suffered, the ZMR may seek supplementary compensation on the general principles laid down in the Civil Code.
- In case of the Supplier's delay with the performance of the subject matter of the order, either in full or in part, or non-performance by the Supplier of the obligation set out in §3 (2) above, the ZMR may - without waiving its rights to claim a contractual penalty and supplementary damages - exercise one or more of the following rights:
  - to require performance of the order in whole or in part;
  - purchase from another supplier, at the Supplier's cost and risk;
  - withdraw from the order for reasons attributable to the Supplier without setting an additional time limit for the performance of the order, upon written notice to the Supplier.

### § 4

#### Packaging and Marking

- Unless the Parties otherwise agreed, it is assumed that the Goods shall be packed according to the current rules and standards applied in ZMR.
- The costs of packaging shall be covered by the Supplier.
- Each packaging unit shall include legibly information according to the requirements of the provisions of the carrier law, instruction regarding detailed conditions of storage. The above information shall contain order number, precise name and address of ZMR and the Supplier, quantity, net and gross weight of the delivered Goods. Each delivery shall contain also two (2) identical copies of bill of lading, unless the Parties otherwise agreed. It is assumed, that each raw material or goods, delivered from abroad must be delivered on fumigated pallet. In such cases apart from fumigated certificate it is necessary to add the appropriate producer's marking, according to the ISPM 15 norm.
- The Supplier bears the financial responsibility for damages in delivery resulting from its improperly packaging.

### § 5

#### Prices, Payments and Accounting

- The prices of the Goods are the net prices and must be increased with the Valuable Added Tax in the recent amount according to the appropriate tax law provisions in force.
- The Buyer is obliged to pay for the Goods in currency mentioned in the invoice. If the delivery base is CIF clause and the delivered raw material is loose, then the basis to the end issuing of the invoice is weight in the port of the loading, unless the Parties otherwise agreed.
- ZMR is obliged to pay the invoice amount in full, by transfer, within 60 days from the date of issuing of the invoice, unless the Parties agreed otherwise.
- The Supplier shall immediately notify ZMR about all amendments relating to prices applying to the sold Goods and the payment dates.
- Any costs of the Buyer's bank are covered by the Buyer; any costs of the Seller's bank are covered by the Seller.
- If the Parties as payment form settled CAD in the order, ZMR shall indicate the bank where the Supplier shall send the documents. Unless otherwise agreed it shall be:  
INGBANK SŁĄSKI S.A.  
SUPER CIRCLE FINANSOWANIE KLIENTA BIZNESOWEGO, CIRCLE AKREDYTYWY,  
CHORZÓWSKA 50 STREET, 40-101 KATOWICE; SWIFT: INGBPLPW
- In the event the letter of credit (L/C) constitutes the basis of accounting, the Parties shall define in the order the conditions to open of the letter of credit, in particular:
  - kind of letter of credit: a) payment at sight or deferred; b) revocable or irrevocable; c) transferable or not transferable; the letter of credit shall be not confirmed.
  - the require documents shall be presented to the bank (see clause 6) in the period of validity of letter of credit and mean to its submission to the bank.
  - term of validity of letter of credit.
- ZMR is entitled to deduction, compensation its due and indisputably amount in relations to the Supplier from the due and indisputably amount of the Supplier in relation to ZMR.
- Without the prior acceptance of ZMR, The Supplier is not entitled to cession of his rights resulting from the sales contract of the Goods or service
- The Buyer reserves the right to refuse to accept or withhold the payment if there is any quality, environmental or health and safety inconsistency

### § 6

#### Claims

- Unless otherwise agreed in writing between the parties, the warranty period is 24 months. In case of repair or replacement, the warranty is extended for another 24 months starting from the date of replacement or repair.
- The Seller is obligated to promptly consideration the Buyer's claims under the guarantee or warranty, no later than within 10 days from the date of their submission by the Buyer. Failure to refer to the claims in writing within the prescribed period shall be deemed recognition of the Buyer's claims in full.
- ZMR is obliged to immediately notify the Seller in writing about loss, damage, shortages or disclosure of defects in quality in the delivered product.

- In case of a quality claim concerning the goods purchased, mediatory samples will be taken according to the ISO 8656-1:1988 standard. Mediatory testing will be made by a testing company, agreed upon by the Contract parties, according to the following standards:  
For raw materials:  
chemical analysis – PN-EN ISO 12677  
sieve analysis - PN-ISO 2591-1  
bulk density - ISO 8840/PN-EN 993-18  
LOI - PN-EN ISO 26845  
For refractories:  
chemical analysis – PN-EN ISO 12677  
compressive strength – PN-ISO 10059-1  
bulk density, porosity – PN-EN-993-1  
refractoriness under load – PN-EN ISO 1893  
The results from the above company will be binding for both parties of the Contract.  
The losing party shall be charged with the costs of the conciliatory tests.
- Where goods are non-conforming (and provided the ZMR, having given notice of the lack of conformity, does not select in the notice to retain them), the Supplier shall at his option:  
a) replace the goods with conforming goods, without any additional expense to ZMR, or  
b) reimburse to ZMR the price paid for the non-conforming goods. In this case the non-conforming goods will be returned at the Supplier's cost.
- Where ZMR selects to retain non-conforming goods, he shall be entitled to a discount accepted by both Parties.
- If the Supplier has failed to perform the above obligations resulting from the clause 3  
a) or b) within four (4) weeks from the date of finishing of the mediatory testing, ZMR will be entitled to terminate the Contract in relation to the non-conforming goods by giving a written notice to the Supplier. In such case, as well as in case of termination of the Contract mentioned in clause b. above, the Buyer is entitled to compensation for any damage suffered as a result of the fact that the Contract was not effected.

### § 7

#### Supplier's liability

- The Supplier guarantee ZMR that the by him purchased Goods, service are new, without defects, verified and so produced that they are useable according to its nature and conditions specified in the order of ZMR.
- The Supplier declares, that the by him purchased Goods, service perform the safety requirements and meet all norms and specifications defined in the order.
- The Supplier is responsible for any damages resulting from the delivered product. The Supplier is obliged, at the first demand of ZMR, relief it from any claims of the third parties. In that case the Supplier is also obliged to return all potential costs, borne by ZMR, connected with the recall and return proceeding. The claims resulting from the general rules of law are binding independently.
- The Supplier guarantee ZMR, that the rights of the third parties are not broken in connection with his deliveries. In the event the third parties claimed ZMR, The Supplier is obliged to relief ZMR at its first demand. The above obligation includes also the costs connected with necessity protection from the claims of the third parties.
- The supplier declare, that delivered materials and goods fulfill conditions included in regulations about environment protection, industrial safety and waste disposal.
- Every Supplier of a substance or a preparation, which is subject to the REACH Regulation (EC No. 1907/2006) concerning the registration, evaluation, authorisation and restriction of chemicals, is aware of all the obligations resulting from the provisions of the REACH Regulation. The Supplier is obligated to observe them. In the same time he guarantees that the substances or preparations he delivers are registered in accordance with the REACH regulations in force. In case of any discrepancy or infringement of the above provisions, the Supplier assumes his responsibility in connection with any charges or claims that may be laid by third parties. The Supplier assumes his obligation to bear all costs resulting from the infringement of the provisions of the REACH Regulation. The Supplier obliges himself not to deliver any substances (on their own or in a preparations) nor articles from the Appendix XIV to the REACH Regulation that require obtaining authorization, without a prior written consent from ZMR.
- The Supplier undertakes to comply with all applicable laws and regulations, including health and safety, environmental and labour laws. The Supplier is also responsible for complying with international laws, standards and regulations concerning health and safety, the environment, child labour, illegal, forced or disguised employment, discrimination and human rights and the prohibition of corruption. In this regard, the Supplier shall in particular: ensure that the supply of products, goods or services complies with all laws and regulations applicable in the country of manufacture and sale of the products, goods or services; hold and maintain all permits necessary for the operation of the business and provide copies upon request to the OMR. Any consequences of non-compliance with the provisions of this paragraph shall be borne solely by the Supplier.

### § 8

#### Insurance

- The Supplier is obliged to the conclusion of the transport insurance agreement with reputable and professional insurer at own cost and present it to ZMR at first demand of ZMR.
- The Supplier is obliged to the conclusion of liability insurance connected with the business activity (deductual, contractual liability and liability for the product- including the clause concerning connected and mixed goods with other objects) with a minimum insurance limit of PLN 5.000.000,00 and present it to the ZMR at first demand of ZMR, unless under the circumstances the Parties otherwise agreed.

### § 9

#### Additional provisions

- All the information disclosed the Supplier by ZMR, its representatives, connected subjects, in particular technical, technology, industrial, trade, financial information, regardless of the form of its disclosure are confidential during the realization of the agreement as well after its termination ("Information").
- The Information shall include also the information disclosed during the realization of the agreement to employees, the Supplier's broker, his suppliers, the subcontractors, the representatives, permanent or temporary partners. The Supplier obliges oneself to protect the above Information from the non- authorized access, loss or use by the third parties, unless the Information is public.
- ZMR has an property right and author right regarding all provided to the Supplier pictures, drawings, calculations an other documentation. Without prior clearly acceptance of ZMR, they can not be available to the third parties. They must be returned to ZMR upon finishing the realization of the order or in case of ending of the trade contacts.
- The Party, which is responsible for breach of obligation resulting from this paragraph bears the responsibility for any damages arising in connection with disclosure or lack of properly protection of trade information and obliges oneself to pay the sufferer the compensation to the limit of full amount of supplied documentary evidence.
- The Supplier obliges oneself to submit to ZMR his current registry documentation and fulfillment the supplier's survey at least annual.
- The service contractor is obligated to send to the works coordinator the following completed documents before work start:
  - permission to enter
  - the contractor's statement about his commissions and employees' qualifications
  - the contractor's statement about acquainted with the instructions for contractors of services and the policy of the integrated management system and health and safety brochure

### § 10

#### Resolution of disputes and governing law

- Any disputes which may arise between the Parties which may be connected with the relations based on the domestic sales agreements or any other domestic agreements to which these GCP would apply, shall be resolved by a common court appropriate for the registered seat of ZMR.
- Any disputes which may arise between the Parties which may be connected with the relations based on the export sales agreements or any other agreements with the foreign partners to which these GCP would apply, shall be resolved by the Court of Arbitration in Vienna in the International Arbitration Centre of the Austrian Federal Economic Chamber:  
Wiedner Hauptstraße 63, BP 319  
Vienna, Austria A-1045  
In cases not covered by the order, these GCP, the United Nations Convention on International Sales of Goods signed on 11 April 1980 (unless its provisions are not contrary to these GCP) the law of the Federal Republic of Germany will be applied. The language for arbitration will be English.
- Each domestic sale agreement shall be governed by these GCP, the United Nations Convention on International Sales of Goods signed on 11 April 1980 (unless its provisions are not contrary to these GCP) and relevant provisions of the Civil Code.
- The Incoterm 2020 constitutes an integral part of these GCP, unless it is not in contrary to the provisions of these GCP.

### § 11

#### Final provisions

- All additional provisions or amendments to these GCP shall only be valid if made in writing in form of annex and must be undersigned by the both Parties.
- Each probably appendix to these GCP constitutes an integral part of these GCP.
- This GCP has been made in a Polish, English, German and Russian language version. In the event of any discrepancies resulting from the interpretation of these GCP then the binding version shall be English version.