

**GENERAL TERMS AND CONDITIONS FOR PURCHASE OF GOODS  
AS WELL AS  
PURCHASE OF GOODS AND PROVISION OF SERVICES  
of Polski Koncern Naftowy ORLEN Spółka Akcyjna  
OWZ Rev. July 2018**

These General Terms and Conditions for Purchase of Goods or Purchase of Goods and Provision of Services of Polski Koncern Naftowy ORLEN Spółka Akcyjna (hereinafter "General Terms and Conditions"), together with the Purchase Order and all appendices, shall constitute a uniform Agreement between the Parties. All and any references to the Seller's quotations or proposals, both binding and non-binding, shall not mean acceptance of any conditions or reservations provided therein, save as explicitly stated otherwise in the Agreement. In the event of any discrepancies between the content of the Purchase Order and the General Terms and Conditions, the provisions of the Purchase Order shall prevail.

These General Terms and Conditions are divided into articles, sections and headings for reference purposes only and it shall not affect in any way the meaning or interpretation of the General Terms and Conditions.

**Definitions:**

"Buyer" – shall mean Polski Koncern Naftowy ORLEN Spółka Akcyjna, with its registered office in Plock, ul. Chemików 7, 09-411 Plock, entered into the National Court Register kept by the District Court for the Capital City of Warsaw in Warsaw, 14th Commercial Division, under National Court Register (KRS) Number: 0000028860, Tax Identification Number (NIP): 774-00-01-454, VAT-UE Number: PL7740001454, share/paid-up capital: PLN 534,636,326.25,  
"Seller" – shall mean the entity with whom the Buyer has entered into the Agreement,  
"Purchase Order" – shall mean the Buyer's request for Goods or Goods and Services, annexed with these General Terms and Conditions. Acceptance of the Purchase Order and of General Terms and Conditions by the Seller shall result in the conclusion of the Agreement,  
"Agreement" – shall mean an agreement concluded between the Seller and the Buyer, together with any annexes thereto and these General Terms and Conditions,  
"Goods" – shall mean tangible property (including any necessary equipment, additional materials, documentation and other) sold and delivered under the Agreement,  
"Service" – shall mean services provided additionally to the sale and delivery of Goods, where such services are necessary for their assembly, installation, training regarding their operation or ongoing maintenance, or preparation for use by the Buyer.

**Article I: AGREEMENT CONCLUSION CONDITIONS**

- 1.1. The Seller and the Buyer can enter into the Agreement by any method, including by acceptance of the Buyer's Purchase Order by the Seller. Except as provided otherwise in the Purchase Order, the Purchase Order shall be considered accepted if a copy thereof, signed by persons authorised to do so on behalf of the Seller, is sent within 5 business days as of the date of receipt of the Purchase Order. The acceptance of the Purchase Order shall mean acceptance of all and any amendments and additions to the Seller's quotation as made by the Buyer and it shall be tantamount to the conclusion of an Agreement under the Purchase Order as well as under the General Terms and Conditions. The Seller represents that the person signing the Purchase Order is authorised to act on behalf of the Seller.
- 1.2. Unless applicable legal provisions and the Purchase Order state otherwise, the Purchase Order may be accepted by the Contractor by a declaration made directly in writing, of which the Buyer shall be notified, prior to sending the declaration via electronic mail (e-mail).

**Article II: AGREEMENT PERFORMANCE CONDITIONS**

- 2.1. The Seller shall immediately inform the Buyer of any situation which may affect timely delivery of the Goods or Goods and Services. However, the notification shall not exempt the Seller from any of their obligations under the Agreement. The Buyer shall have the right to carry out, at their own expense, inspections aimed to verify progress in the performance of the Agreement by the Seller. The Buyer shall inform the Seller of such an inspection at least 3 days in advance.
- 2.2. Within 7 days prior to the scheduled date of shipment, the Seller shall send to the Buyer a delivery notice with the following details: number of the Purchase Order, method of delivery and expected date of shipment, delivery note showing the number, weight, dimensions and description of the content of packing units, as well as all and any directions necessary for proper transport and unloading of the Goods.
- 2.3. The following documents should be delivered together with the Goods (regardless of the documents for financial settlements between the Parties, sent by the Seller by post):
  - copy of the invoice (it may also be sent within 7 days as from the date of sale),
  - delivery note showing the number, weight, dimensions and content of packing units, transport requirements,
  - complete technical documentation necessary for proper installation of the Goods at the place of use and their proper start-up, working and operation, including e.g. construction and assembly drawings showing any necessary details of the mechanical, control and measuring, electrical parts, etc.,
  - certificates of material, certificates of analyses, tests and approvals as required in accordance with the law applicable in Poland and in the European Union,
  - directions for proper storage of the Goods.
- 2.4. The date of delivery means the date when the Goods are transferred to the Buyer at the location specified in the Agreement or General Terms and Conditions as confirmed by the Buyer in the form of an acceptance and delivery report or another document proving the actual transfer of the Goods.
- 2.5. All and any changes to the contractually agreed date of delivery must be approved by the Buyer in writing or otherwise they shall be invalid.
- 2.6. Partial deliveries, except as otherwise provided in the Agreement, must be approved by the Buyer in writing. In the event of partial deliveries, except as otherwise provided in the Agreement, the date of delivery (transfer to the Buyer) shall mean the date when the last partial delivery is made.
- 2.7. The Goods shall be considered non-delivered unless all and any documents necessary for shipment as well as any required documentation and certificates are furnished to the Buyer in the manner agreed in the Purchase Order, so that they may be consulted by the Buyer.
- 2.8. Except as otherwise provided in the Purchase Order, in the event of imported Goods, the Seller shall be responsible for placing the Goods on the market within the customs territory of the European Union in compliance with the existing law and for providing the Buyer with documents proving customs clearance, payment of customs duties and import VAT. It shall be acceptable for the Seller to submit a statement to the effect that customs clearance has been obtained and the Goods are in free circulation in the European Union and customs duties and import VAT have been paid on an invoice proving successful delivery of the imported Goods or on an invoice proving intra-Community delivery of the Goods.
- 2.9. Except as otherwise provided in the Purchase Order, in the case of the Goods delivered from the European Union, the Seller shall be required to meet all and any requirements under the existing European Union law, especially those related to INTRASTAT, VAT and excise duty.

- 2.10. 2.10. In the event that the Goods are delivered as part of intra-Community trilateral deliveries, the Seller shall be required to inform the Buyer (in written or electronic form) – before the date of the first delivery of the Goods – about their intention to use the simplified VAT procedure.
- 2.11. 2.11. Should the delivery of the Goods or Services make it necessary for the Seller to have access to the Buyer's manufacturing site, the Seller shall read and comply with provisions in the extract from the currently applicable version of the Regulation on the pedestrian traffic rules at Polski Koncern Naftowy ORLEN S.A. as annexed to the Agreement. If the Seller fails to observe the provisions of the provided extract from the Regulation, the Seller shall pay a contractual penalty prescribed for a given type of non-compliance as specified in an appropriate section of the Instruction on pedestrian traffic at Polski Koncern Naftowy ORLEN S.A.
- 2.12. In the case of circumstances indicating that the Seller will not perform the Agreement within the agreed time limit, the Buyer shall be authorised to withdraw from the Agreement with an immediate effect. The right may be exercised within 90 days from the lapse of time limit for delivery indicated in the Purchase Order.

#### Article III: PAYMENT

- 3.1. Except as provided otherwise in the Purchase Order:
- price in the Purchase Order is a fixed lump-sum price,
  - price in the Purchase Order is a net price for the Goods or Goods and Services. The Seller having their headquarters and/or registered in the Republic of Poland for VAT tax purposes shall at all times increase any invoiced amounts by the amount of goods and services tax (VAT) in accordance with the applicable rules of law. A Seller having their headquarters outside the territory of the Republic of Poland, not being registered in Poland for VAT tax purposes, shall not impose their national value added tax nor any other tax of similar nature; the due amount shall be paid by bank transfer within the time limit indicated in the Purchase Order, calculated as the number of days as of the date of receipt by the Buyer of an appropriately issued invoice, together with an acceptance and delivery protocol signed by both parties or another document proving successful delivery of the Goods, to the Seller's bank account specified in the invoice.
  - The date of payment shall mean the date when the amount due is debited from the Buyer's account,
  - In the event that the Goods or Goods and Services are not fully delivered in accordance with Article II hereof, the Buyer shall be entitled to withhold payments until the Seller fulfils all and any obligations falling into the scope of the Agreement. From that date, a 30-day time limit for payment shall be calculated, unless otherwise agreed by the Parties within the Agreement. This does not limit the Buyer's right to enforce the provisions of Articles II and VII of these General Terms and Conditions. If the delivered Goods are revealed to be damaged, incomplete or otherwise defective following their acceptance and unpacking, the Buyer shall be entitled to withhold payments until the Goods are replaced with non-defective Goods. In such a situation, the invoice payment time limit shall be calculated from the moment of delivery of non-defective Goods.
  - In the case of Purchase Orders submitted to national Sellers in currency other than PLN, the amount of the payment shall be equal to the value of the Purchase Order converted to PLN according to the average exchange rate of the National Bank of Poland (NBP) published on the day preceding the date of invoice and increased by the amount of VAT, unless otherwise provided in the Agreement.
- 3.2. In the case the Contractor is a domestic entity or is a registered VAT payer in Poland and the payment is settled in PLN, the remuneration of the Contractor shall be payable in the split payment mechanism.

#### Article IV: VAT AND INVOICE

- 4.1. A properly issued invoice shall comply with any statutory requirements and contain the following information:
- amount of Goods (type of Services), net and gross unit prices for each item. Each item in the Purchase Order should be specified in the invoice in the same way,
  - name / description of the Goods (Goods and Services) or reference to appropriate items in the specifications annexed to the invoice,
  - number of the Buyer's Purchase Order,
  - terms and 30-day time limit of payment calculated from the date of receipt of the invoice by PKN ORLEN S.A., unless otherwise agreed by the Parties within the Agreement,
  - information about the prohibition of assignment of the remuneration due under the Agreement, appropriate and valid VAT-EU number of the Seller (VAT-EU number),
  - statement referred to in Article II (2.8) hereof, unless the statement is provided as a separate document,
  - CN code of the Goods,
  - additional information as indicated in the Purchase Order.
- 4.2. Invoices shall be sent:
- in the form of a single-page document printed on continuous white paper, filled out in type, without any handwritten annotations, unnecessary stamps and marks;
  - in an envelope with an annotation "FAKTURA". To the following address:  
PKN ORLEN S.A.  
ul. Chemików 7,  
09-411 Płock.
- 4.3. Under a separate agreement, the Buyer shall allow for the possibility of receiving invoices in an electronic form. Signing the agreement shall be tantamount to the Seller's acceptance of sending invoices to the Buyer electronically.
- 4.4. The Buyer represents to be an active value added tax (VAT) payer with the following Tax Identification Number (NIP) assigned: 774-00-01-454. The Buyer's European Tax Identification Number for intra-Community transactions (VAT-EU no.) – PL7740001454.
- 4.5. The Seller represents to be an active value added tax (VAT) payer with a Tax Identification Number (NIP) assigned, and that the Buyer shall be informed of this number by the date of the Purchase Order / or is exempt from VAT and the Buyer shall receive appropriate supporting documents to this effect before the date of the Purchase Order. The Seller shall provide its European Tax Identification Number for intra-Community transactions (VAT-EU) for each and every Purchase Order.
- 4.6. The Buyer authorises the Seller to issue invoices without the signature of a person authorised by the Buyer.
- 4.7. The Seller shall not be entitled to assign (transfer) any remuneration due under the Agreement to any third parties without the Buyer's written consent or else any such assignment shall be null and void.
- 4.8. By issuing a VAT invoice, the Seller represents that they are authorised to do so in accordance with the tax regulations on VAT invoices. In the event that the Seller is a national operator, the Seller guarantees and bears responsibility for the correctness of the applied VAT rates which means that if the tax authorities question the Buyer's right to make a tax deduction due to the fact that a given transaction is not subject to taxation or has been exempt from taxation in accordance with relevant regulations, the Seller, as and when requested by the Buyer, shall correct the VAT invoice and reimburse the Buyer for the resulting difference within 30 days as from the date of delivery of the request. In the event that the Seller refuses to correct the VAT invoice, the Seller shall reimburse the Buyer for the equivalent of the VAT amount questioned by the tax authorities, and this reimbursement shall be made based on an accounting note issued by the Buyer and within 30 days as from the date of delivery thereof to the Seller. Whatever the case, the Seller shall also reimburse the Buyer for the equivalent of any penalties, interest charges, sanctions and any other additional fees incurred by the Buyer or demanded from the Buyer by the tax authorities, and this reimbursement shall be made as described in the preceding sentence.
- 4.9. In the event that the Seller is a national operator, the Seller shall keep a record of invoice copies to prove and support transactions, which for the Buyer form the basis for reducing the amount of output VAT by the amount of input VAT as at the date of delivery of the Goods or Services. In the event that the Seller fails to comply with this requirement or in the event that the Seller's invoice copy differs from the original submitted to the Buyer, is incorrect for formal, legal or substantive reasons, the Seller shall reimburse the Buyer for the total damage incurred due to the tax obligation, including any sanctions and interest charges imposed on the Buyer by the tax authorities in amounts arising from the decision of the tax authorities.

## Article V: INTELLECTUAL PROPERTY RIGHTS

- 5.1. The Seller guarantees that there are no patents or other industrial property rights, copyrights and other related rights or third-party know-how in force which could be infringed by the Buyer by using or disposing of the purchased Goods.
- 5.2. The Seller hereby undertakes to defend and hold the Buyer harmless from and against any third-party claims or objections due to infringement of the rights referred to above and to pay all and any costs (including attorney costs) and compensations awarded to be paid by the Buyer, provided that the Buyer shall immediately notify the Seller of any such claims and demands arising therefrom and that the Seller shall have an opportunity and right to clarify at its own expense any such claims and demands and to defend or control defence from and against any third-party claims.
- 5.3. If it is provided in the Purchase Order that the Agreement includes also delivery of documentation and transfer of copyrights to the documentation that shall be considered a work in accordance with the Copyrights Act, the following shall apply:
  - 5.3.1. The Seller shall provide documentation specified in the Purchase Order (hereinafter "documentation"),
  - 5.3.2. The Seller represents and guarantees that it shall be the owner of proprietary copyrights to the documentation and that these rights shall not be restricted or encumbered in any way with any third-party rights.
  - 5.3.3. As soon as the documentation is provided, the Seller shall transfer to the Buyer, as part of the price (value) of the Goods or Services specified in the Purchase Order, all and any proprietary copyrights and related rights without any time-limits or territorial limitations on the use of the documentation using any forms of exploitation known as at the date of the Purchase Order.
  - 5.3.4. The transfer of proprietary copyrights and related rights without any time limits and territorial limitations shall cover the following forms of exploitation:
    - recording the documentation on any data carriers known as at the date of the Purchase Order and using any technique known as at the date of the Purchase Order;
    - multiplying the documentation using any technique known as at the date of the Purchase Order on any data carriers known as at the date of the Purchase Order;
    - publishing the original or copied documentation in any form and without any limitations;
    - recording in computer's memory;
    - publishing in and distributing via computer networks, including the Internet and intranet;
    - leasing and lending;
    - publishing in the form of brochures, publications, leaflets and folders or any other industry-related presentations.
  - 5.3.5. The transfer of proprietary copyrights shall also include consent to exercise derivative copyrights and authorisation of the Buyer to give consent for such derivative rights to be exercised by third parties with respect to the forms of exploitation referred to in section 5.3.4 above.
  - 5.3.6. To the extent allowed by separate regulations, the Seller agrees that the Buyer shall be entitled to modify and to correct the documentation.
  - 5.3.7. The Parties agree that the documentations shall be used by the Buyer or any operators authorised by the Buyer to do so.
  - 5.3.8. In the event that a third party raises a claim towards the Buyer about the infringement of copyrights to the documentation falling into the scope of the Agreement which have been transferred to the Buyer in accordance with this Agreement, the Seller shall defend and hold the Buyer harmless from and against any such third-party claims.
  - 5.3.9. The Seller shall provide – in an explicit and legible manner – each and every page of the documentation, including pages with drawings, with the following wording: All and any copyrights and related rights to this documentation are owned by PKN Orlen S.A.
  - 5.3.10. The delivered documentation shall be prepared in Polish or also in English, if required so in the Purchase Order, and additionally in an electronic form.

## Article VI: ACCEPTANCE

- 6.1. The Goods shall be inspected by the Buyer immediately following their delivery, unless the acceptance procedure is carried out at a later date as specified in the Purchase Order on account of the intended use of the Goods and the fact that they must be stored in the original packaging. The delivery of the Goods shall be confirmed in the form of an acceptance-delivery report or another document proving successful delivery of the Goods. The Seller shall have a right to participate in the acceptance procedure at its own expense, provided that the Buyer is notified in advance of the Seller's intention and at latest on the day of shipment, except as provided otherwise in the Purchase Order.
- 6.2. The Seller shall be responsible for delivering the Goods in accordance with the shipment specifications and invoice sent together with the Goods. In the event of any non-included items, they shall be delivered to the Seller DDP "Buyer's warehouse or another location specified by the Buyer" in accordance with INCOTERMS@2010, except as the Buyer decides otherwise. The Seller shall bear all and any costs of delivery of such items.
- 6.3. A failure to make any claims about defects of the Goods in the acceptance-delivery report or another document proving successful delivery of the Goods shall not mean a waiver of the right to assert such claims at a later date, if such defects are only revealed following the acceptance procedure or concealed by the Seller in a deceitful manner.

## Article VII: FORCE MAJEURE

- 7.1. Neither Party shall be held responsible for non-performance or improper performance of the Agreement or for any losses caused by a Force Majeure event.
- 7.2. The occurrence of a Force Majeure event and its impact on the performance of the Agreement as well as any damage resulting therefrom must be evidenced by the Party claiming the existence of the Force Majeure event and confirmed by the other Party.
- 7.3. The Force Majeure events shall include all and any external events unforeseeable at the time of conclusion of the Agreement and beyond the control of either Party, and specifically wars, terror attacks, riots, natural disasters, accidents, decisions of governmental authorities or any other acts of God which cause contamination, chemical or radioactive poisoning of persons, immovable or movable property. The time when these events continue to be in existence shall be appropriately reflected in the schedule. If such events continue to occur for more than 3 months, both Parties shall agree new terms and conditions of their cooperation.
- 7.4. The Party unable to meet their obligations due to a Force Majeure event shall be obliged to:
  - 7.4.1. immediately inform the other Party thereof within 7 days as of the date of such an event;
  - 7.4.2. provide reliable evidence thereof.When the Force Majeure event ceases to occur, the other Party shall be immediately notified thereof, however no later than within 7 days. A failure to comply with the requirements referred to above shall be a waiver of the right to claim the Force Majeure event.
- 7.5. In the event of justified claim of the Force Majeure event and lack of possibility of further implementation of the Agreement due to the Force Majeure event, the Buyer shall pay the Seller for the Goods or Services delivered by the date of the Force Majeure event and the payment shall be calculated in accordance with the rules specified in the Agreement.

## Article VIII: CONTRACTUAL PENALTIES AND WITHDRAWAL FROM THE AGREEMENT

- 8.1. In the case of delay in the delivery of Goods or performance of Services due to reasons other than Force Majeure, one of the following provisions shall apply:
  - 8.1.1. The Seller shall be obliged to pay contractual penalties to the Buyer amounting to 0.2% of the net value (price) of the Goods delivered after the agreed deadline for each day of delay. Unless otherwise agreed by the Parties, the total amount of contractual penalties for delayed delivery shall not exceed 20% of the net value (price) of the Goods delivered with delay. Should the Goods or Services delivered/performed with delay constitute an integral part of the subject matter of the Agreement, the lack of which makes it impossible for the Buyer to use the already delivered Goods, the basis for charging contractual penalties shall be the total net value (price) of the Goods or Services.
  - 8.1.2. The Buyer shall have the right to consider the Agreement unperformed and to apply section 8.2.
- 8.2. If the Seller fails to perform the Agreement, the Buyer shall have the right to withdraw from the Agreement with immediate effect as well as to exercise jointly or separately the following remedies:

- 8.2.1. Charge a contractual penalty amounting to 20% of the value of undelivered Goods or unperformed Services,
- 8.2.2. Charge the Seller with costs of performance of the so-called substitute agreement implemented by a third party. The substitute agreement shall be performed if the object of service is a purchase of specific items of a determined nature or provision of Services which may be provided by a third party. In such an event, the Buyer shall, at their discretion, conclude an appropriate agreement with a third party, preserving the right to claim the payment of contractual penalty as well as the remedy of damage caused by the delay. The Seller hereby undertakes to reimburse the costs of implementation of the so-called substitute agreement incurred by the Buyer. The Seller shall be obliged to pay the costs on the basis of a debit note issued by the Buyer. The basis for issuance of a bookkeeping note by the Buyer shall be an invoice issued by the third party and received by the Buyer.
- 8.3. Moreover, the Buyer may charge the Seller and request them to pay contractual penalties in the case of a delay in the removal by the Seller of defects stated during the acceptance of Goods/Services or during the warranty period – in the amount of 0.2% of the net value (price) per each day of delay, counted from the date set for the removal of defects. The total amount of contractual penalties for the delay in removal by the Seller of defects stated during the acceptance of the Goods/Service shall not exceed 20% of the net value (price) of the Goods.
- 8.4. The Buyer reserves the right to withdraw from the Agreement if the Seller or a third party fails a bankruptcy petition regarding the Seller or if a non-final decision is issued by a court or another competent body against the Seller which may form the basis for the seizure of the Seller's assets to satisfy or secure any third party claims against the Seller.
- 8.5. The Buyer reserves the right to withdraw from the Agreement through the fault of the Seller with immediate effect, in particular in the following cases:
- 8.5.1. due to an improper performance of the contractual obligations by the Seller,
- 8.5.2. when the Seller loses the capacity to perform the subject matter of the Agreement,
- 8.5.3. due to unjustified delays in the performance of the subject matter of the Agreement caused by the Seller,
- 8.5.4. due to a failure by the Seller to observe the OHS and fire regulations applicable on the premises of PKN ORLEN S.A. (if the subject matter of the Agreement is performed on the premises of the Buyer's site).
- 8.6. The Buyer's contractual right to withdraw from the agreement may be exercised within 90 days from the lapse of the time limit for delivery indicated in the Purchase Order.
- 8.7. 8.7. The rights mentioned above shall not exclude any right of the Buyer to withdraw from the Agreement in accordance with the principles provided for in the Civil Code.

#### **Article IX: GUARANTEES**

- 9.1. The Seller guarantees that the Goods delivered under the Agreement shall comply with specifications, drawings and any other requirements referred to in the Agreement and they shall be brand-new, not second-hand, of good quality and suitable for its intended use described in the Agreement, properly designed, adequately carried out of appropriate materials, defect-free and comply to a satisfactory extent with technological requirements set out in the Agreement.
- 9.2. The Seller guarantees that the Goods shall be manufactured and – if provided for in the Agreement – assembled/installed in accordance with the provisions of law, fire protection and occupational health and safety regulations applicable in the Republic of Poland, Polish Standards as well as UDT/PED regulations and standards applicable in the European Union.
- 9.3. Unless otherwise provided in the Agreement, the guarantee shall remain in force for a period of 24 months as of the date when the Parties sign an acceptance delivery report or another document proving successful delivery of the Goods or – in the case of delivery of Goods and Services – Goods start-up/installation report.
- 9.4. The Buyer shall lodge a complaint concerning the Goods as soon as any defects of the Goods are revealed. The Seller shall inform the Buyer – within 2 days as of the date when the Seller is informed about the defects – about measures taken or to be taken as well as about the time needed to remove the defects.
- 9.5. Pursuant to this Article, the Seller shall be required to immediately repair or replace the Goods or any damaged parts thereof at their own expense, including the costs of de-installation and re-installation, costs of travel and accommodation for the Seller's dedicated personnel. Items replaced or to be replaced by the Seller shall remain at their disposal Ex Works "Buyer's warehouse" or at another location specified by the Buyer (INCOTERMS@2010). New items shall be delivered DDP "Buyer's premises or another location specified by the Buyer" (INCOTERMS@2010).
- 9.6. If it is necessary for the Seller to carry out an inspection prior to starting repairs or replacement, the Seller shall carry out such an inspection at their own expense and as soon as possible, however, within not more than 3 business days (excluding Saturdays) as of the date when the complaint is received and the Buyer is informed accordingly.
- 9.7. If the Buyer's complaint concerning the quality of the Goods is not accepted by the Seller, then the results of analyses of the Goods carried out by an independent laboratory selected by both Parties shall be final and binding. The costs of such analyses shall only be borne by the Buyer if the analysis of an independent laboratory shows that the Goods' defect does not result from reasons inherent in the sold Goods or other reasons for which the Seller would be responsible. If the analysis of the independent laboratory does not indicate the reasons of occurrence of the Goods' defect, the costs of the analysis shall be borne by both Parties, each of them paying their half. In other cases, the costs of the analysis shall be borne by the Seller.
- 9.8. The Buyer shall also have a right to repair and replace parts on their own or through a third party, in the event that the repairs are minor or necessary to avoid any further damage or must be carried out immediately due to another important reason. The provision of the preceding sentence shall only apply if the Seller is informed thereof in advance.
- 9.9. If the Seller – having been informed about the defect – fails to take immediate measures to remove the defect within the time limit prescribed by the Buyer, the Buyer shall have a right to take any necessary steps to remove the defect at the cost and risk of the Seller. However, this shall not release the Seller from any of their contractual obligations.
- 9.10. The Seller's guarantee for the Goods or any parts thereof, repaired or replaced in accordance with this article, shall be extended to include 24 months as from the date of repair / replacement.
- 9.11. The guarantee is without prejudice to the Buyer's rights under the warranty for physical or legal defects of the Goods or Goods and Services.

#### **Article X: SERVICES**

- 10.1. The Agreement for supply of Goods can also include an obligation to deliver Services which are specifically delivered by the Seller at the Buyer's premises. Except as otherwise provided in the Purchase Order, it shall be assumed that:
- The value (price) of the Services is included in the price of the Goods, as specified in the Purchase Order.
  - All and any additional costs related to the Services delivered by the Seller, such as costs of accommodation, travel and insurance for the Seller's personnel, etc., shall be borne by the Seller. Rules for acceptance and payment for the Services the value of which is not included in the Goods' price shall each time be separately indicated in the Purchase Order.
- 10.2. In the case of foreign Sellers, the Buyer shall have a right to reduce the payment for Services made to the Seller by the amount of Polish income tax (hereinafter "withholding tax") if required to do so pursuant to provisions of Polish law. To apply tax exemption or a specific rate of withholding tax under double taxation avoidance agreement between Poland and the country where the Seller is based (residence for tax purposes), the Seller shall provide the Buyer – together with the first invoice, however, no later than 5 business days before the deadline for the first payment – with an original document or certified copy of their certificate of residence (i.e. certificate of the Seller's residence for income tax purposes issued by competent tax authorities). If the Seller fails to furnish the certificate of residence within the time limit specified in the preceding sentence, the Buyer shall be entitled to reduce the payment to be made to the Seller by the amount of withholding tax at a rate prescribed in separate Polish tax regulations.
- 10.3. In the case of foreign Sellers not being income tax payers (in particular partnerships), to apply tax exemption or a specific rate of withholding tax under a relevant and applicable double taxation avoidance agreement, the foreign Seller shall provide – together with the first invoice, however, no later than 5 business days before the deadline for the first payment – with an original document or a copy certified by a notary of a valid certificate of residence of each of the partners/shareholders. If the Seller fails to furnish the certificate(s) of residence within the time limit specified in the preceding sentence, the Buyer shall be entitled to reduce the payment to be made to the Seller by the amount of withholding tax at a rate prescribed in separate Polish tax regulations. A foreign Seller not being an income tax payer shall also, within the same time limit, present a list of all partners authorised to the abovementioned payment, indicating the manner of allocation of the said payment to particular partners/shareholders.

- 10.4. In the case of any subsequent payment for the Seller, the Buyer shall apply the exemption or reduced rate of withholding tax provided for in a relevant and applicable double taxation avoidance agreement only if the Buyer is in possession of valid original certificate of residence of the Seller (in the case indicated in section 10.2) or original valid certificates of residence of their partners/shareholders (in the case indicated in section 10.3).
- 10.5. The "valid certificate of residence" mentioned in sections 10.2, 10.3 and 10.4 above shall be understood (depending on the type of certificates issued by the country in which the registered office of the Seller or of their partners/shareholders is located) as:
- certificate issued for the calendar year in which the time limit for payment lapses or
  - certificate of which the period of validity covers the payment time limit, or
  - certificate issued no earlier than 12 months before the payment time limit, unless it was issued for a specific calendar year and unless it contains in its content an expiry date.
- 10.6. In the case of modification of data indicated in the certificate(s) of residence provided by the Seller and possessed by the Buyer (e.g. change of the Seller's name, of the address of their registered office, etc.), the Seller shall promptly (however, no later than before the term of another payment) provide the Buyer with valid certificate(s) of residence with updated data.
- 10.7. The Buyer accepts that information provided in the certificate of residence provided by the Seller is true, accurate and correct and the certificate is issued in accordance with appropriate rules of law and by competent authorities. Where, by reason of any defects, errors, omissions or inaccuracies of information provided in the certificate, the Buyer shall have to pay the tax in excess of the tax amount withheld from the Seller or the Buyer shall be subject to any penalties, interest charges, sanctions, etc. due to a lower amount of withholding tax than the amount due or failure to withhold the tax despite the obligation to do so, the Seller shall reimburse the Buyer for the amounts of such tax as well as any penalties, interest charges, sanctions, etc. imposed on the Buyer by tax administration authorities.
- 10.8. If provisions of law indicate the Buyer as the entity obliged to settle VAT, the foreign Seller, having their registered office outside the territory of the Republic of Poland, shall include the following annotation on the invoice documenting the provision of the Services: "odwrotne obciążenie"/"reverse charge procedure". The Buyer shall settle VAT in accordance with the aforementioned procedure.
- 10.9. The Buyer declares that Services provided by the Seller having their registered office outside the territory of the Republic of Poland are not purchased for personal purposes of the Buyer's employees and that the Services are purchased for the headquarters (fixed place of business activity) of the Buyer located in the territory of the Republic of Poland.
- 10.10. An acceptance and delivery report shall be prepared to confirm successful completion of the Services by the Seller. The provisions of Article VI shall apply accordingly.
- 10.11. The Seller shall be required to provide personnel with qualifications suitable for proper and punctual delivery of the Services.
- 10.12. The Seller shall be required to obtain written consent of the Buyer to hiring subcontractors to perform the Services. If the Seller fails to comply with this obligation and entrust the Services to a subcontractor not approved by the Buyer, it shall be considered a serious breach of the Agreement and it shall authorise the Buyer to:
- a. withdraw from the Agreement for reasons attributable to the Seller. The Buyer can exercise this right up to the expiry of the time limit for delivery as specified in the Purchase Order,
  - b. exercise the rights referred to in sections 2.13.2, 8.1.3 of the General Terms and Conditions.
- 10.13. If it is necessary for the Seller's personnel and the Buyer's personnel to work together to complete the Services, the Seller shall be responsible that the Seller's personnel gives correct guidelines and instructions. Major instructions on assembly/services should be given by the Seller's personnel in writing.
- 10.14. Unless otherwise agreed by the Parties in the Purchase Order, the Seller shall be fully responsible for any damage and losses caused by the personnel providing the Services or any improper guidelines and instructions given by the Seller's personnel.
- 10.15. The Seller guarantees that the Services shall be carried out properly and in accordance with the Agreement. Should any defects be revealed within 24 months as from the date of completion of the Services, the Seller shall be required to remove them immediately at their own expense. For defects of the Services in the form of specific results, the Seller shall be liable under warranty as under a contract for specific work.
- 10.16. The Seller shall be required to fully insure its employees for the time when the Services are carried out on the premises of the Buyer. The Seller shall also assume the risk for any consequences and claims relating to:
- accidents of the Seller's personnel during the performance of the Services,
  - damage and losses caused by the Seller's personnel and incurred by third parties,
  - damage or destruction of tools and other equipment owned or used by the Seller or their personnel.
- 10.17. The Seller shall be required to and responsible for meeting any formal requirements, notifying competent administration authorities, obtaining any necessary approvals and consents, paying any taxes and social insurance contributions related to the employment of the Seller's personnel to carry out the Services on the Buyer's premises.
- 10.18. The Seller's personnel shall be required to comply with the rules and regulations applicable on the Buyer's premises.
- 10.19. The provisions of these General Terms and Conditions for Delivery of Goods shall apply accordingly to the Services to the extent not regulated hereunder.

#### **Article XI: LIABILITY**

- 11.1. The Seller shall release the Buyer from the obligation to make any payments to any third parties due to any bodily injuries or environmental damage caused by the Goods or during its use due to the defects of the Goods or Services.
- 11.2. If the damage suffered by the Buyer due to the violation of the Agreement by the Seller is greater than the amount of any stipulated contractual penalties for the violation, the Buyer shall have a right to enforce a claim in that regard based on general rules provided for in Polish general law.
- 11.3. If the Seller is liable to pay the contractual penalties referred to in the Agreement or causes damage to the Buyer, the Seller shall pay any such contractual penalties by bank transfer within 14 days as from the date of issue of an bookkeeping note (debit note) by the Buyer. The Buyer shall also be entitled to reduce the payment due under the Agreement by the amount of the contractual penalties or compensation to be paid by the Seller. The Buyer shall issue a debit note for the amount of the contractual penalties and the debit note shall form the basis for the deduction.

#### **Article XII: PROTECTION OF INFORMATION (BUSINESS SECRET)**

- 12.1. The Seller undertakes to keep the confidentiality of information conveyed directly or indirectly by the Buyer (in any form, i.e. in particular orally, in writing, by electronic means), as well as information obtained by the Seller in a different manner during mutual cooperation, also in relation to the execution and performance of this Agreement; such information referring directly or indirectly to the Buyer, companies belonging to the Buyer's Group or their contractors, including the content of this Agreement. The Parties agree that all technical, technological, organisational or other information of economic value, undisclosed to the public, provided by the Buyer or on the Buyer's behalf or obtained by the Seller in a different manner in the course of negotiations, execution and performance of this Agreement shall be treated as business secret within the meaning of Article 11 section 4 of the Act of 16 April 1993 on Counteracting Unfair Competition (consolidated text: Journal of Laws 2018, item 419) (hereinafter referred to as "Business Secret") unless at the moment of provision, a person providing the information determines in writing or in an electronic form different character of such information from the character stipulated above.
- 12.2. The obligation to keep confidential the information mentioned in section 12.1 above shall be understood by the Parties as prohibition to use, disclose or provide any such information in any manner whatsoever to any third parties, except for the following situations:
- 12.2.1. disclosure or use of the information is necessary to appropriately implement this contract and is consistent with this Agreement or
  - 12.2.2. information at the moment of its disclosure has been already publicly available and it has been disclosed by the Buyer or upon its consent or in a manner other than through an action or failure to act inconsistently with law or any agreement or
  - 12.2.3. The Seller has been obliged to disclose information by court or authorised body or in the event of a legal obligation to make such disclosure subject to the fact that the Seller shall immediately inform the Buyer in writing of an obligation to disclose information and its scope as well as shall take into consideration, if possible, recommendations of the Buyer concerning disclosure of information, in particular in the scope of filing a request for anonymity, legitimacy of filing a relevant remedy at law, appeal or another equivalent legal measure and shall inform court or authorised body on protected nature of provided information or
  - 12.2.4. Buyer has given written consent to the Seller to disclosure or use of information for a particular purpose, in a manner indicated by the Buyer.

- 12.3. The Seller shall be obliged to undertake such safety measures and manners of conduct which are appropriate and sufficient to ensure safe, including consistent with this Agreement and legal provisions, processing of the Business Secret in order to prevent any unauthorised use, provision, disclosure of or access to the information. The Seller shall not, in particular, copy or record the Business Secret if this is not justified by proper implementation of this Agreement by the Seller. The Seller shall be obliged to immediately inform the Buyer of any infringement of rules of protection or unauthorised disclosure or use of the Business Secret processed in connection with implementation of this Agreement.
- 12.4. The obligation to keep confidential the information referred to in section 12.1 above shall apply also to employees of the Seller and other persons, including in particular auditors, advisers and subcontractors, to whom the Seller discloses such information. The Seller shall commit to oblige the aforementioned persons in writing to protect the Business Secret under at least the same terms and conditions as set out in this Agreement. The Seller shall be fully liable for actions or omissions of persons who have obtained access to the Business Secret, including shall assume the liability referred to in section 12.8 below.
- 12.5. The Seller shall be obliged to send to the Buyer, at each request of the Buyer, within no more than 5 days, a list of persons and entities having gained access to the Business Secret through the intermediary of the Seller. Any failure to meet the obligation referred to in this section shall be treated as unauthorised disclosure of Business Secret, resulting in the liability referred to in section 12.8 below.
- 12.6. The obligation to keep the confidentiality of information shall be in force during the term of this Agreement as well as in a period of 10 years after its termination, expiry or annulment or annulment of legal effects. If despite expiry of the period of protection of the Business Secret mentioned in the previous sentence such information is still subject to protection based on internal regulations or decisions of the Buyer or on the basis of special legal regulations, the Buyer shall inform the Seller in writing of the extension of the period of protection by an additional period indicated by the Buyer (however not longer than 10 years), to which the Seller hereby agrees. The notification referred to in the foregoing sentence shall take place before expiry of the 10-year period of protection mentioned in the first sentence of this point, however not later than 10 working days before the end of binding the foregoing obligation. The Parties mutually agree that the obligation described in this section shall be in force irrespective of termination, expiry or annulment of this Agreement or annulment of legal effects thereof.
- 12.7. Not later than within 3 business days after expiry of the period of protection referred to in section 12.6 above, the Seller and all persons whom the Seller provided with the Business Secret shall be obliged to destroy all materials containing the Business Secret or return them to the Buyer.
- 12.8. In the case of an unauthorised use, provision or disclosure of the Business Secret by the Seller, the Buyer shall have the right to demand that the Seller pays a contractual penalty in the amount of 10% of the net value of the Agreement for each case of unauthorised use, provision or disclosure of the aforementioned information. Payment of the contractual penalty specified above shall not limit the right of the Buyer to seek damages from the Seller under general terms, as in the case when the value of damage suffered exceeds the amount of the contractual penalty stipulated in this Agreement. The foregoing shall not exclude in any manner the other sanctions and rights of the Buyer set out in legal regulations, including in the Act of 16 April 1993 on Counteracting Unfair Competition (Journal of Laws 2003, No. 153, item 1503, as amended).
- 12.9. In the case when, in connection with performance of this Agreement, it becomes necessary to grant access to or provide the Seller with any personal data within legal regulations in force about Personal Data Protection, the Seller shall be obliged to conclude with the Buyer, prior to commencement of processing of such data, an appropriate separate agreement, the subject matter of which shall be the principles as well as the terms and conditions of protection and processing of such data.
- 12.10. PKN ORLEN S.A. is subject to disclosure requirements towards capital market, regulated by the Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC („MAR Regulation“). Consequently, the Contractor shall be obliged to apply procedures existing in PKN ORLEN regarding inside information protection defined in MAR Regulation, if during realisation of the agreement it has an access to such information.
- 12.11. In the case when, during performance of this Agreement, it becomes necessary to grant access to or provide the Seller with any information, in any form whatsoever, constituting the Business Secret of PKN ORLEN S.A., understood as a specially protected type of the Business Secret of the Buyer, with regard to which special actions have been taken as specified in the internal acts of the Buyer in order to maintain confidentiality of such information, and the use, provision or disclosure of which to an unauthorised person significantly threatens or infringes the interests of the Buyer, the Seller undertakes to immediately conclude with the Buyer, prior to receipt and commencement of processing of such information, an annex to this Agreement, compliant with internal policies of the Buyer, the subject matter of which shall be the principles as well as terms and conditions of protection of the Business Secret of PKN ORLEN S.A.
- 12.12. To avoid any doubts the Parties confirm that the Seller irrespective of the obligations stipulated in this Agreement shall be also obliged to comply with additional requirements concerning protection of particular kinds of information (e.g. personal data, confidential information) arising from binding provisions of law.

#### **Article XIII EXTERNAL COMMUNICATION**

- 13.1. The Seller shall obtain prior written consent of PKN ORLEN S.A. to place the company's name, PKN ORLEN S.A.'s trademark or logo on its website, list of business partners, in brochures, advertisements and any other advertising and marketing materials. In such a case, the Seller shall provide PKN ORLEN S.A. – together with a request for approval – draft versions of materials in which such information would be placed.
- 13.2. The Seller shall also request written consent of PKN ORLEN S.A. to the delivery of any information related to the Purchase Order to mass media, such as press, radio, TV, Internet. In such a case the Seller shall provide PKN ORLEN S.A., together with the request for consent, the press release to be delivered to such mass media.
- 13.3. In the case of non-compliance or improper compliance with the requirements referred to herein, the Buyer shall be entitled to charge a contractual penalty equal to PLN 100 000 (PLN one hundred thousand) per each case of non-compliance. The payment of the contractual penalty referred to above shall not preclude PKN ORLEN S.A. from seeking a supplementary compensation based on general rules in the event that the amount of the damage incurred exceeds the stipulated amount of the contractual penalty.

#### **Article XIV: PERSONAL DATA PROTECTION**

- 14.1. Polski Koncern Naftowy ORLEN S.A. with registered office in Płock, ul. Chemików 7, (hereinafter referred to as “PKN ORLEN S.A.”) informs that they are your personal data controller.
- 14.2. To contact the data protection officer in PKN ORLEN S.A., please use the following e-mail address: daneosobowe@orlen.pl.
- 14.3. Your personal data are processed for the following purposes:
  - a) Undertaking activities for the purpose of conclusion and execution of the contract, to which you are a party,
  - b) Handling, exercising and defence in case of mutual claims.
- 14.4. The legal grounds for your personal data processing by PKN ORLEN S.A. for the purposes specified in sec. 2 above are:
  - a) Undertaking activities for the purpose of conclusion and execution of the contract (pertaining to article 6 sec. 1 letter b of the GDPR), to which you are a party;
  - b) Fulfilling legal obligations (pertaining to article 6 sec. 1 letter c of the GDPR), related to payment of taxes, including maintenance and storage of ledgers and documents related to maintenance of ledgers and storage of accounting records. The grounds of data processing are defined by legal obligations resulting from fiscal provisions (the Tax Ordinance, the Value Added Tax Act, the Corporate Income Tax Act) and accounting provisions (the Accountancy Act),
  - c) Legitimate interest of PKN ORLEN S.A. (pertaining to article 6 sec. 1 letter f of the GDPR), for the purpose of Handling, exercising and defence in case of mutual claims;
- 14.5. Your personal data may be disclosed by PKN ORLEN S.A. to cooperating entities (recipients), in particular to entities rendering invoicing services, settlements of receivables, delivery of correspondence and parcels, as well as legal, archiving and debt collection services.
- 14.6. Your personal data will be processed throughout the duration of the contract and until expiry of mutual claims under such contract.
- 14.7. Data are provided on voluntary basis, but their disclosure is necessary for conclusion and performance of the agreement.
- 14.8. You shall have the following rights related to personal data processing:
  - right to review own data,
  - right to rectify personal data
  - right to erase personal data
  - right to restrict personal data processing,

- right to transfer personal data, that is a right to receive personal data from PKN ORLEN S.A. in a structured, commonly used and machine-readable format. You may transmit those data to another controller or demand that PKN ORLEN S.A. transfers data to another controller. However PKN ORLEN S.A. shall execute this, if such transfer is technically possible. The right to transfer personal data shall be in force only in relation to the data processed under the agreement with you,
- right to object – in cases when PKN ORLEN S.A. processes your personal data due to its legitimate interest; an objection may be raised to a specific situation to e-mail address: daneosobowe@orlen.pl or address of the registered office of PKN ORLEN S.A. with information "Data Protection Officer"

14.9. You have the right to file a complaint to the Chairperson of the Office for Personal Data Protection.

#### **Article XV: FINAL PROVISIONS**

- 15.1. The provisions of Polish law, in particular the provisions of the Polish Civil Code, shall apply to any issues not regulated hereunder, and the provisions of the United Nations Convention on Contracts for the International Sale of Goods adopted in Vienna on 11 April 1980 shall additionally apply – to the extent not excluded hereunder – to Agreements with operators based outside Poland, in states which are parties to the Convention.
- 15.2. All and any disputes arising from the Agreement, in particular with respect to its conclusion, violation, expiry, termination and cancellation thereof, shall be resolved by the Polish court of law with local jurisdiction over the Buyer's registered office.
- 15.3. Save where mandatory rules of law provide otherwise, all and any conditions, amendments and additions to the Agreement shall only be binding and effective after they are approved in writing by both Parties or else they shall be null and void.
- 15.4. Polski Koncern Naftowy ORLEN Spółka Akcyjna with its registered office in Plock 09-411, ul. Chemików 7, informs that it is a controller of personal data given by the Seller\* within the meaning of the Act of 29 August 1997 on the protection of personal data (Journal of Laws 2002, No. 101, item 926, as amended), processed for the purposes of and in the scope necessary for handling and performance of the Agreement. The personal data are provided voluntarily and related to the conclusion and implementation of the Agreement. The data controller informs that the Seller's personal data may be received by operators cooperating with Polski Koncern Naftowy ORLEN S.A. to that effect. The Seller shall have a right to access and correct their personal data.

\*Applies to Sellers who are natural persons, including operators of business subject to registration in the Central Registration and Information on Business (CEIDG), and also partners of civil-law partnerships.