



International Tobacco Machinery Poland Sp. z o.o.
P.O. Box 113
ul. Warsztatowa 19A
26-600 Radom
Poland
Tel +48 48 3686100
Fax +48 48 3686101
info.pl@itmgroup.eu

**GENERAL TERMS AND CONDITIONS
OF INTERNATIONAL TOBACCO MACHINERY POLAND SP. Z O.O.
valid as of 1st September 2015 ("Effective Date")**

1. DEFINITIONS

In these General Terms and Conditions (the "**General Conditions**" or "**GT&C**"), the following terms, identifiable by the use of a capital letter, shall have the following meanings:

Affiliate means an entity effectively controlling or controlled by or associated with the Buyer/ ITM, or under common ownership or control of the Buyer/ ITM.

Agreement: means any agreement concluded between ITM and Buyer;

Buyer: any party or customer to which ITM submits an offer or concludes an Agreement with;

Confidential Information: means the specific contents of ITM's offers, any agreements of the Parties, and all information and data which either Party receives from the other Party and which is marked as confidential or the confidential nature of which is known or can reasonably be deemed to be known by the receiving Party, including technical, financial and business information, names of actual or potential customers, partners, suppliers or proposed business transactions, reports, plans, computer programs, computer files, designs, models, know-how, show-how and any other information which can be deemed confidential and all documents and records containing such information, relating to the disclosing Party and/or its subsidiaries, group companies or Affiliates and/or business relations. "Confidential Information" shall not include any information which: (i) is already in the public domain or becomes available to the public through no breach of this Agreement by the receiving Party; information shall not be deemed to be in the public domain merely because any part thereof is embodied in general disclosures or because individual features, components or combinations thereof are known or become known to the public; (ii) was in the receiving Party's possession prior to receipt from the disclosing Party, as proven by its written records; and (iii) is independently received by the receiving Party from any third party which is not bound by any confidentiality obligation with respect to such information.

Direct Damages: means: (a) reasonable expenses which Buyer would have to incur to make ITM's performance in compliance with the Agreement; (b) reasonable expenses incurred by Buyer to determine the cause and scope of the damage, insofar as the determination relates to direct damages within the meaning of the Agreement; (c) reasonable expenses incurred to prevent or to mitigate damages, insofar as Buyer incurring such expenses demonstrates that these expenses resulted in mitigation of direct damages within the meaning of the Agreement;

Disclosing Party means a Party that discloses Confidential Information, including any or all of the Party's Affiliates.

Effective Date means the day of signing hereof or a date of signing an agreement or a document accepting Buyer's purchase order or a date of acceptance by the Buyer of ITM's offer without any reservations (either of which shall constitute acceptance of these GT&C), whichever comes sooner.

Force Majeure: means any circumstances reasonably out of Party's control, that could not have reasonably been foreseen, prevented or overcome by reasonable diligence and without unusual expense, including but not limited to

war, the threat of war, civil war, revolt, mobilisation, molestation, fire, water damage, flood, frost, communicable, infectious and/or virulent diseases, excessive health-related absenteeism of personnel, site or building blockages, strikes, specific work interruptions or work-to-rule slowdowns and lock out, storage- and transport difficulties, shortage of raw materials, energy or personnel, disturbances of import and export, measures by the government and the delay in the provision to the Party of parts, goods, or services ordered from third parties, other than by circumstances, accidents and interruptions of business operation to be imputed to Party;

Goods means the machinery and/or parts thereof, plant, spare parts, conversions, materials, devices and/or Services as more specifically described in respective offer and/or Agreement.

Guarantee Period: means the guarantee period of:

- a) 12 months from the date of signing of the acceptance protocol (regarding the machinery) or from the delivery date (regarding spare parts, conversions, materials, devices etc.), based on single shift working, or
- b) 2000 hours working of the Goods, or
- c) 18 months from the date of delivery or readiness of shipment notice,

whichever comes sooner.

Intellectual Property Rights: means all inventions, patents, designs, design rights, database rights and copyrights, know how, internet names, domain names, email address names, trademarks, trade names, logos and other source identifiers (whether registered or not) and the goodwill therein and applications for any of the same and any rights or forms of protection of a similar nature and having equivalent or similar effect to any of them which may subsist in any part of the world whether owned by or consisting of a right to use for the benefit of ITM together with any application by or on behalf of ITM or the owner granting the right to use for any such rights.

NDA means non-disclosure agreement regarding Confidential Information, concluded between the Parties.

New IPR means the IPR, or the right to apply for registration of such rights, that are created, developed or arisen in the provision of, or in connection with, the Goods' or Services' procurement under specific agreement with the Buyer. The New IPR does not include the ITM's/Buyer's IPR existing before conclusion hereof.

Receiving Party means a Party that has received Confidential Information from a Disclosing Party.

Related Persons means, in respect of a Party, its Affiliates, its shareholders, its directors, its employees, its advisers, its agents and its consultants at any time during the period in which the provisions of these GT&C apply.

Services means the services being the subject of a respective ITM offer and/or an agreement as described therein.

Specification means any data concerning Goods, such as objective, main features, scope of supply, machine data, utilities as described in a respective offer and/or agreement and/or layouts.

ITM: means the supplier under the Agreement, International Tobacco Machinery Poland Sp. z o. o.;

Total Contract Value: means the purchase prices of the Goods and/ or Services as mentioned in the respective ITM offer and/ or agreement;

Parties/ Party: means ITM and Buyer collectively and each of ITM and Buyer individually;

Variation: means the changes and/or additions to the Agreement and/or to the Specifications of the Goods, including but not limited to changes and/or additions regarding materials and/or parts of Goods;

Working Day: means a day on which the banks in Poland are open for business, excluding, however, Saturdays and Sundays and public holidays in Poland.

2. APPLICABILITY

- 2.1. These General Conditions apply to all quotations and offers from and all orders to ITM for the sale and delivery of Goods and to all agreements with ITM with respect thereto. General Terms & Conditions become binding as of the Effective Date and shall last until full realization of the Parties' obligations under respective agreement or until termination pursuant to the provisions set individually in an agreement.
- 2.2. The applicability of conditions of Buyer is hereby explicitly rejected.

- 2.3. Provisions which deviate from these General Conditions can be invoked by Buyer only if and to the extent that these provisions are accepted by ITM in writing.
- 2.4. By accepting the applicability of these General Conditions once Buyer agrees and accepts that these General Conditions shall also apply to all future agreements with ITM.
- 2.5. ITM reserves the right, at its complete discretion, to change these General Conditions at any time by posting revised terms on the ITM's site: www.itmgroup.eu
- 2.6. Each of the provisions of these GT&C is intended to be severable. In case one or more of the provisions set forth in these GT&C shall, for any reason, be held to be invalid, or unenforceable in any respect, the legality, validity or enforceability of the remaining provisions of this document shall not in any way be affected or impaired thereby.

3. OFFERS, ESTABLISHMENT OF AGREEMENT

- 3.1. All offers from ITM are non-binding, unless such offer shall contain a validity date. The offer shall become a binding agreement once all terms and conditions are mutually agreed between the Parties and upon the fulfillment of the following conditions:
 - a) the offer is accepted in writing without reservations by duly authorized Buyer's representatives, and
 - b) such acceptance is confirmed in writing by duly authorized ITM's representatives, and
 - c) all applicable acceptance criteria are agreed in writing by both parties.
- 3.2. Should Buyer grant ITM an order, then the Agreement shall take effect only at such time as ITM shall have accepted such order in writing, *casu quo* shall have commenced execution of said order.
- 3.3. General Terms & Conditions apply to all ITM's offers, to any Buyers' purchase orders placed in response to ITM's offers and to agreements concluded as a result of ITM's acceptance of Buyer's purchase orders and any other basis of delivery of Goods and Services. Any agreements must be concluded in writing in order to become effective. Moreover, any and all Buyer's purchase orders must be accepted and confirmed by ITM in writing for them to be executed.
- 3.4. In case of any discrepancies between Buyer's purchase orders and GT&C, the General Terms & Conditions shall supersede the Buyer's purchase orders in its entirety and any inconsistencies shall be resolved in favor of the GT&C, save to the extent that any subject matter of an offer and/ or agreement is not within the scope of the GT&C or is regulated differently in the ITM's offer and/or agreement concluded by the Parties.
- 3.5. Acceptance of the GT&C by the Buyer constitutes an assurance that the Buyer has informed ITM of any and all statutory or other mandatory requirements necessary for proper conclusion of an agreement in the Buyer's home country.
- 3.6. For defects or deviations in the Goods as regards to illustrations, drawings, and in mention of sizes, weights, and other specifications occurring in folders, price lists, and the like, ITM is not liable unless specific reference to such specifications shall have been made in the Agreement.

4. SAMPLES, MODELS AND EXAMPLES

- 4.1. In case ITM shall display or provide a sample, model, or example to Buyer, this shall be considered to have been displayed or provided only as a demonstration. The quantities and/or specifications of the Goods to be delivered can deviate from the sample, model or example, unless it shall have been specifically agreed to the contrary by the Parties in the Agreement that delivery of the Goods shall take place in accordance with such displayed or provided sample, model or example.

5. PRICE, PRICE INCREASES

- 5.1. The prices are exclusive of VAT and based on delivery EXW ITM Factory, Radom, Poland and therefore exclusive of import or export duties, excise, taxes, packaging taxes, any other charges, levies and rights unless explicitly provided otherwise which should be paid by the Buyer in connection with the domestic purchase or with the import of the Goods to the territory as negotiated with the Buyer or export taxes or other duties if applicable. The prices are furthermore exclusive of all costs of packaging, loading, transport, unloading, insurance, assembly, commissioning and any other services unless explicitly indicated otherwise. Any and all applicable taxes, levies and duties shall be added to the Total Contract Value in accordance with respective legal regulations binding at the moment of delivery or invoice issuance.

- 5.2. The price stated by ITM is based upon (cost) determining factors (such as cost of raw materials, materials, transport and wages) prevailing at the date of the Agreement. If the inflation increases thereafter (i.e. after the date of the Agreement) by 5%, ITM is entitled to adjust the prices accordingly and to charge Buyer a corresponding price increase.
- 5.3. In the event a Variation which has been mutually agreed upon by the Parties in writing, ITM shall have the right to amend the prices in accordance with the consequences of the Variation to the prices.
- 5.4. The prices shall be finally confirmed with reference to the requested layout and Specification.
- 5.5. Expenses concerned with procedure of bank payments, including conditional forms of payment such as letter of credit, if applicable, together with the expenses borne by the bank opening the letter of credit, shall be borne in whole by the Buyer.
- 5.6. The price specification amounting to Total Contract Value is valid for a period of time stated in the ITM's offer and/or respective agreement between the Parties.

6. DELIVERY

- 6.1. Unless the Parties have explicitly agreed upon otherwise, delivery of the Goods shall take place on the basis of the Incoterms®2010 EXW ITM Factory, Radom, Poland.
- 6.2. Unless expressly agreed otherwise, loading, dispatching or transport, unloading and insuring of the Goods to be delivered shall be effected for the risk of Buyer, even if ITM arranges for this or pays for the same.
- 6.3. The risk of each delivery shall pass to Buyer in accordance with the above specified Incoterms (Clause 6.1.). From this moment on, the Buyer is obliged to insure the Goods for the Total Contract Value against all risks until the delivered Goods become the Buyer's property, unless otherwise agreed between ITM and the Buyer in writing. ITM has the right to request written evidence of such insurance.
- 6.4. ITM shall be deemed to have delivered the Goods to Buyer ex-works 14 calendar days after ITM has informed Buyer that the Goods are available and ready for transport or dispatch in the designated warehouse of ITM. Goods consisting of services are deemed to be delivered as soon as ITM has notified Buyer that the Goods are completed.
- 6.5. Buyer is obliged to receive the Goods at the moment at which the Goods shall be made available to Buyer, *casu quo* at the moment at which said Goods shall be delivered to Buyer. In such case as Buyer shall refuse such receipt, or shall be negligent in the granting of information or instructions necessary for such delivery, then the Goods shall be stored by ITM at the risk of Buyer. ITM reserves the right to demand immediate payment by the Buyer of Total Contract Value increased by the costs of the Goods' storage due to untimely collection and/or takeover of the Goods by the Buyer. Buyer shall in such case be responsible for the payment of all supplementary costs, including in any case storage costs, thus incurred by ITM.
- 6.6. If the Goods are not collected within 14 days after delivery has taken place, Buyer shall be in default without prior notice of default and ITM will be entitled either to rescind the Agreement or hand over the Goods to Buyer in any way that ITM deems appropriate. All costs and damages which result from the default of Buyer are at the expense of Buyer. A failure to export the Goods outside of the European Union territory and provide ITM with the proper confirmation from the customs office within 45 calendar days from the date when the commercial invoice is issued by ITM due to reasons attributable to Buyer, shall entitle ITM to increase the Total Contract Value by VAT at domestic rate.

7. DELIVERY TIME

- 7.1. An agreed-upon delivery time by the Parties is not a deadline unless specific agreement shall have been reached to the contrary by the Parties.
- 7.2. A delivery time only becomes effective after all the following requirements have been fulfilled: (a) conclusion of the Agreement and/or purchase order's acceptance by ITM in writing, (b) receipt by ITM of all documents and data to be provided by Buyer in connection with the Agreement and/or with the accepted purchase order, at the agreed time, and (c) receipt of any advance payments agreed upon by ITM and/or a security for the benefit of ITM and/or appropriate insurance policy has been provided by or on behalf of Buyer.
- 7.3. Delivery periods will be extended by the amount of time that: (a) the implementation of the Agreement is delayed due to Force Majeure, and/or (b) Buyer exceeds a term which has been set or agreed upon with ITM or which could reasonably be expected by ITM for the fulfillment of any obligation of Buyer.

- 7.4. In the event of a Variation which has been mutually agreed upon by the Parties in writing, ITM shall have the right to amend the delivery time in accordance with the consequences of the Variation to the delivery time.
- 7.5. Whilst all reasonable endeavors will be made to meet the quoted delivery time, ITM shall not be liable in any manner for failure to deliver within the delivery time quoted.
- 7.6. If ITM expects that the agreed delivery time will be exceeded, it will inform Buyer thereof as soon as possible. A failure to make a timely delivery shall never entitle Buyer to additional or substitute compensation or to non-compliance by Buyer of any of its own obligations vis-à-vis ITM arising from the Agreement.

8. PARTIAL DELIVERIES

- 8.1. ITM has the right to deliver the Goods in parts. Each partial delivery will be deemed an independent delivery with respect to the applicability of the provisions of these General Conditions. ITM has the right to invoice a partial delivery separately.

9. CHANGES IN THE DELIVERED GOODS

- 9.1. Minimal deviations with regard to the specified sizes, weights, quantities, colors and other similar specifications in the Goods to be delivered by ITM are permissible, and shall not be considered as shortcomings on the part of ITM in its fulfillment of the Agreement.

10. PAYMENT AND COLLECTION COSTS

- 10.1. The payment shall be made according to the payment schedule included in the offer. In case the offer does not specify the schedule, the payment shall be made in the currency indicated in the ITM's offer or on the invoice (in case lack of the offer) according to the payment schedule below:

10.1.1. Sales:

- a) Non-returnable down payment amounting to 30 % of the value of Goods payable within 30 calendar days from receiving the confirmed order from the Buyer upon the request for down payment issued by ITM but in any case prior to shipment.
- b) 70% of the value of Goods plus relevant packing, loading, transport and insurance charges (if applicable) payable within 30 calendar days from issuance of notice of Goods' readiness for shipping but in any case prior to shipment.

- 10.2. ITM shall issue commercial invoice upon shipment.

- 10.3. In case ITM and the Buyer agree to realize the payment on the basis of the letter of credit, the terms should be the following:

10.3.1. The irrevocable letter of credit payable at sight of the shipping documents defined in 10.3.3. below, will be opened by the Buyer in favour of ITM not later than within 14 calendar days from the Effective Date.

10.3.2. The letter of credit's validity date and an opening bank should be mutually agreed by the Buyer and ITM in writing.

10.3.3. The 100% value of the Goods will be effected by the bank to the ITM's account at sight against submission of the following shipping documents by ITM (not later than within 14 calendar days from such submission):

- a) invoice,
- b) transport documents,
- c) packing list.

However, in the event the shipment is postponed, as described in Clause 10.6., the 100% payment by the bank shall be realized solely on the basis of the down payment request, in which case the documents defined above are not required.

- 10.4. The payment for the installation is payable upon commercial invoice within 30 calendar days after the installation is finished.

- 10.5. The payment for the start-up and commissioning is payable upon commercial invoice within 30 calendar days after the acceptance protocol is signed.

- 10.6. In the event of a Variation which has been mutually agreed upon by the Parties in writing, ITM shall have the right to amend the payment schedule in accordance with the consequences of the Variation to the payment details.
- 10.7. Delay in shipment, receiving the Goods, installation and commissioning attributable to the Buyer, should not affect any due dates related to the Total Contract Value's payment and it shall become immediately due and payable.
- 10.8. Delay in shipment and receiving Goods, installation and commissioning attributable to the Buyer does not release the Buyer from the obligation to make the payment. In such a case the payment is deemed as a prepayment due and payable based on down payment request instead of the commercial invoice.
- 10.9. Should ITM suspect any non-compliance with the terms of payment, ITM shall at all times have the right to demand full or partial payment in advance from Buyer and/or otherwise obtain security for payment from Buyer. Any full or partial payment made in advance by Buyer is non-refundable unless the Agreement is terminated by Buyer due to a breach of the Agreement by ITM.
- 10.10. All the payments should be settled via bank transfer onto ITM's account indicated on the invoice. In such case, the Buyer must at all times mention the respective invoice numbers. Payments by bank transfer which are not / not completely specified in this manner are first applied against the oldest invoices of Buyer as well as against the interest due and costs made in relation thereto.
- 10.11. If Buyer fails to pay any amount due in the manner described above, it shall be in default without prior notice of default. If Buyer remains in default with any payment, all other ITM claims on Buyer shall be immediately and totally due and the default becomes effective also with respect to those other claims, and without notice of default. As from the day Buyer is in default with a payment, overdue payment interest equal to 10% of the outstanding amount per annum shall be due for any number of days during which the default continues.
- 10.12. Should the Buyer fail to make payments within the dates specified in the ITM's offer/ respective agreement, ITM reserves the right to refrain from performing the agreement i.e. suspend Goods' production and/ or delivery of the Goods until the Buyer's dues are paid in whole, including any dues related to previous contracts.
- 10.13. Buyer's payment shall be deemed to have been made on the moment the payment is credited to ITM's bank account.
- 10.14. Buyer relinquishes any right to settle amounts charged by and between the Parties. The submission of guarantee claims does not suspend the payment obligations of Buyer.

11. PROPRIETARY RIGHTS

- 11.1. After the Goods have been delivered as per Article 6, the Goods are for Buyer's risk and expense.
- 11.2. All Goods sold by ITM to Buyer shall remain the property of ITM until Buyer has paid in full all that is owed to ITM in connection with the Agreement and/or in connection with prior or subsequent agreements of the same nature, including, without limitation, damages, costs and interest. Buyer has no right of retention in respect of these Goods.
- 11.3. Buyer is not entitled to pledge or otherwise encumber the Goods covered by the retention of title.
- 11.4. If any third party imposes an attachment on the Goods covered by the retention of title or wish to establish or assert rights on the same, Buyer is required to inform ITM thereof immediately.
- 11.5. Buyer is required to insure and keep insured the Goods covered by the above retention of title against all risks until the delivered Goods are paid for and become the Buyer's property. Buyer is required to provide ITM with the insurance policy upon ITM's first request. Buyer assigns to ITM all existing and future conditional cash receivables, including claims for damages which have arisen or may arise as a result of an accident under the Goods' insurance policy, the rights against their insurer resulting from each concluded, present and future insurance contract, confirmed by an appropriate insurance document issued by the insurer. ITM accepts the above specified assignment of claims. The transfer of conditional or future claims becomes effective at the moment of their creation - from this moment these claims become the ITM's asset. As a result of the above, ITM is the only party entitled to compensation and other cash benefits on the basis of the claim until the final and full repayment of the Total Contract Value by the Buyer.
- 11.6. In the event ITM wishes to exercise its ownership rights in accordance with the above retention of title, Buyer authorizes ITM (or any third party designated by ITM), now for then, unconditionally and irrevocably, to enter the

locations where ITM's Goods are located and retrieve such Goods there from and to grant all cooperation in this respect.

- 11.7. As long as the retention of title is applicable to the Goods delivered by ITM, Buyer will store the Goods and label them in such a way that they are clearly identifiable as Goods belonging to ITM.

12. ACCEPTANCE OF DELIVERY AND INSPECTION

- 12.1. Buyer is obliged to confirm the delivery of the Goods within 3 Working Days in writing to ITM.
- 12.2. Buyer is obliged to inspect the correctness, quality and the quantity of the Goods delivered by ITM as soon as the Goods are offered for inspection by ITM.
- 12.3. In any event, the Goods consisting of services are deemed to be accepted 3 months after the agreed or actual date of commencement of the services or one month after completion of the services, whichever occurs sooner. The Goods consisting of goods are deemed to be accepted after 1 month after delivery. The Services' completion should be confirmed in the form of a protocol.
- 12.4. Buyer shall cooperate without delay in the acceptance of the Goods delivered as soon as ITM offers these Goods for acceptance. ITM is also entitled to offer the Goods for acceptance in parts. All costs incurred by ITM in relation to the non-acceptance of the Goods delivered are for the account of Buyer including any costs of storage and transport.

13. GUARANTEE

- 13.1. During the Guarantee Period ITM guarantees that:
- a) The Goods supplied by ITM shall be of first class materials and workmanship.
 - b) The quality of the delivered Goods is in all respect in conformity with the conditions agreed upon by the Parties, with the reservation however that only final Specification confirmed by ITM in written form is binding.
 - c) The Goods will be delivered complete in its totality to ensure its normal stable operation.
- 13.2. With respect to noticeable defects of the Goods, Buyer has to submit a claim to ITM in writing within 14 Working Days after Buyer has the Goods in its possession, being the moment on which:
- a) Buyer collects the Goods at a warehouse of ITM or
 - b) ITM or a carrier used by ITM delivers the Goods on the location as agreed between the Parties or
 - c) in case of Goods consisting of Services, after delivery, failing which any claim of Buyer on ITM relating thereto will lapse.

With noticeable defects is also meant, delivery of (a quantity of) Goods that are not in conformity with the Agreement

- 13.3. Claims with respect to other defects must be made in writing within 14 Working Days after their appearance and at the latest prior to the expiration of the Guarantee Period failing which any claim of Buyer on ITM relating thereto will lapse.
- 13.4. ITM will investigate claims under the guarantee as soon as possible after notification thereof by Buyer. Buyer shall provide ITM with the opportunity to do so. On the basis thereof ITM will determine whether Buyer's claim is justified.
- 13.5. In order to establish the cause of such part becoming unusable, ITM has the right to send its own expert within 14 calendar days after receipt of notification. In case the part has become unusable for reasons not caused by the Buyer, ITM shall be bound to replace such part to the Buyer. A defect will be considered to have been caused by the fault of the Buyer if the Buyer fails to run the Goods in accordance with ITM's instructions or modified the Goods without previous consent of ITM. At any case the Buyer is obliged to take all necessary measures to minimize the losses related to the defects.
- 13.6. If stoppage of the equipment is by fault of the ITM, the Guarantee Period shall be extended for as long as the duration of the stoppage.
- 13.7. Notwithstanding fulfilment of certain parameters (as agreed by the Parties in a separate document or specification) upon Goods acceptance, ITM does not guarantee fulfilment of these parameters on the same level during the Goods' operation by the Buyer's employees after the acceptance. This is due to factors which are beyond ITM's control such as (but not limited to): organization of the Buyer's employees' work, personnel

training, processed materials. Consequently, the declared Specification constitutes merely the project objectives and not the guaranteed parameters.

13.8. The Guarantee validity conditions:

- a) The following components are excluded from Guarantee:
 - Consumable parts (e.g. knives, grind stones, diamonds, etc.),
 - V-belts, gaskets, seals
 - Short life wear parts of the life shorter than 2000 working hours.
- b) The Guarantee does not cover the damages resulting from improper use of Goods.
Note: It is assumed that Goods are used properly if:
 - It is used within design process parameters stipulated in the ITM's technical documentation/ ITM's manuals.
 - It is used in accordance with the directions stated in the offer or agreed by the Parties contractually.
 - It is subject to regular maintenance as per Goods' technical documentation. The register or log book should be made available to the ITM's representative for viewing on any request.
- c) The Guarantee does not cover the damages resulting from the Force Majeure Events or from external causes beyond ITM's control such as (rain) water, fire, heating etc.
- d) The Guarantee does not cover the damages resulting from failure of the Buyer to notify ITM of the defects immediately in writing or failure to provide ITM with reasonable assistance to remedy such defects.
- e) the Guarantee does not cover defects caused by Buyer's modifications or repairs without prior written permission of ITM or usage of spares not supplied by ITM.
- f) the Guarantee does not cover defects which occurred after passage of risk, either due to improper storage or transport (in accordance with delivery terms pursuant to the latest version of Incoterms).

13.9. If during the Guarantee Period the Goods prove to be defective in terms of Clause 13.1. above, ITM will as soon as is reasonably practical at its expense remedy the defects. The defects shall be rectified either by making replacement deliveries or by correcting the defects at the place of delivery, at ITM's sole discretion. At the ITM's request the faulty parts will be returned to ITM at its expense after the delivery of the replacement parts.

13.10. Should the elimination of the defects take place, the Guarantee Period for the replaced parts shall be extended with the time of the repair, or, in case of replacement, shall restart in relation to the replaced part.

13.11. ITM agrees and undertakes to supply Buyer with spare parts for the Goods specified hereto during a period of 10 (ten) years as calculated from the date of signing of the Goods' acceptance protocol. This provision shall not apply in any way to the Services.

13.12. The Buyer accepts that any rights to guarantee lapse if the Buyer has not fulfilled any of its obligations towards ITM arising from the GT&C and/or the underlying agreement, or has not fulfilled them adequately or on time. The Guarantee Period stipulated in the Clause 1 hereof (the definition of Guarantee Period) will not be extended for this reason.

14. LIABILITY

14.1. ITM's liability in connection with any defects in Goods it has delivered is limited to the fulfillment of the guarantee described in Article 13.

14.2. ITM shall never be liable for any damages (including, without limitation, loss of profit, loss of opportunity, loss of savings) other than Direct Damages. To the fullest extent permitted under the applicable law, either ITM or its' Affiliates or Related Persons shall not be liable, for any direct, indirect, incidental, special, consequential, punitive, or any other damages relating to or resulting from ITM's actions or negligence in connection with these GT&C e.g. anticipated revenues, pure financial loss, loss of production, loss of profits, loss of business opportunities. ITM shall not be liable for any implied or statutory warranty, any representation, and condition or other term which arises out of or in connection with these GT&C, except as expressly provided herein or in respective written agreement.

14.3. In all cases in which ITM is obliged to pay damages to Buyer, these damages shall never be higher than, at ITM's absolute discretion, either the Total Contract Value whereby or in connection with which the damage was actually caused or, if the damage is covered by an insurance policy of ITM, the amount that is actually paid out by the insurer with respect thereto. Any claim of Buyer towards ITM, except those expressly recognized by ITM in writing, lapses after a period of 12 months as of the time the alleged harmful event underlying the claim arose.

- 14.4. Conditions which limit exclude or determine liability, to which ITM is subjected by its suppliers or subcontractors in connection with the Goods can be imposed on and invoked by ITM against Buyer.
- 14.5. ITM's employees, or independent contractors brought in by ITM for the implementation of the Agreement and these General Conditions, including any and all agreements in connection herewith, can, towards Buyer, invoke all means of defense afforded by the Agreement and these General Conditions as if they themselves were party to the Agreement and these General Conditions.
- 14.6. Buyer will hold harmless and indemnify ITM, its employees and independent contractors brought in for the implementation of the GT&C and/or the Agreement for each claim by third parties in connection with the implementation by ITM of the GT&C and/or the Agreement, insofar as those claims are greater than or different from those to which Buyer is entitled against ITM.
- 14.7. ITM shall be liable for personal injury and damage to property in so far as damages are paid by its' liability insurer within the limits of the sums insured and the terms of its insurance policies. Relevant documents may be provided on Buyer's request.
- 14.8. ITM is not liable for the suitability of the Buyer's premises, building or facilities for the installation and operation of the supplied Goods.

15. FORCE MAJEURE

- 15.1. In the event that ITM breaches or fails to perform any of the terms or conditions of the Agreement due to Force Majeure, ITM's obligations are suspended and ITM shall not be liable for any damages incurred by Buyer as a result of such breach or failure.
- 15.2. In the event that either Party breaches or fails to perform any of the GT&C and/or agreement due to Force Majeure, the Party's obligations are suspended and such Party shall not be liable for any damages incurred by the other Party as a result of such breach or failure. If, however, performance of the GT&C and/or the agreement by the Buyer is hindered by Force Majeure, the Buyer will indemnify ITM for the costs ITM incurred in protecting the ordered goods.
- 15.3. In order to invoke a Force Majeure event, a Party must inform the other Party immediately of the start and end of such circumstances.
- 15.4. In case ITM is unable to perform its obligations as a result of a situation as referred in this Article 15.1 for more than 30 calendar days, Parties shall meet to discuss what measures should be undertaken. However, if Parties cannot reach an agreement within 14 calendar days as from the expiry of the aforementioned period of 30 calendar days, Buyer is authorized to terminate the relevant remaining part of the Agreement by a written declaration.
- 15.5. The provisions of this Force Majeure Clause shall not be applied to the payments to be made by the Buyer to ITM.

16. SUSPENSION AND RESCISSION

- 16.1. If Buyer does not fulfill one or more of its obligations, does not fulfill them on time or adequately, is declared bankrupt, requests (temporary) moratorium, or proceeds with the liquidation of its business, as well as when its assets are attached in whole or in part, ITM has the right to suspend the implementation of the Agreement or to rescind the Agreement in whole or in part by means of written statement, without prior notice of default, at its option and always reserving any rights to which it is entitled with respect to compensation for costs, damage and interest. In such case any claim from ITM is immediately due and payable.
- 16.2. If the agreement terminates pursuant to article 16.1 before the agreed Goods are finished or delivered, ITM is entitled to the full agreed price for those Goods, decreased by the savings arising directly from the termination.
- 16.3. Making use of its right to terminate the Agreement by ITM as described above, shall not hinder the possibility to seek damages in excess of the contractual penalty.

17. INTELLECTUAL PROPERTY RIGHTS

- 17.1. Any Intellectual Property Rights (or the right to apply for registration of such rights) arising pursuant to the performance by either Party of its obligations under this Agreement shall be vested in ITM and such rights are herewith transferred to ITM in advance which transfer ITM herewith accepts. Buyer herewith grants ITM an

irrevocable power of attorney to execute any document necessary to effect the transfer of such rights from Buyer to ITM, should additional requirements be satisfied.

- 17.2. Notwithstanding Article 17.1, all intellectual property rights owned by or vested in Buyer and existing prior to the conclusion of this Agreement, such as trademarks and trade names, logos and design elements, shall remain the property of Buyer. ITM shall not claim any right, title or interest, in or to such intellectual property. The burden of proof with respect to the existence of the intellectual property and/or knowhow prior to this Agreement, lies with Buyer.
- 17.3. Buyer shall only use the Intellectual Property Rights of ITM in so far as necessary for proper use of the Goods and Buyer shall at all times treat the Intellectual Property Rights of ITM as Confidential Information. Reproductions, deconstructions or adaptations of the Goods require ITM's prior written consent.
- 17.4. Buyer shall never register, directly or indirectly, any knowhow, design and/or inventions (whether registered or patentable or not) of ITM, anywhere in the world. If Buyer acts contrary to this obligation, Buyer shall assign any such registration to ITM and Buyer shall co-operate in any manner necessary to transfer and register any such registration to and in the name of ITM.
- 17.5. If Buyer entered into this Agreement with ITM pursuant to a request for proposal or similar process as initiated by Buyer with different third parties and if such third party has applied for or registered for any intellectual property rights or similar process, then Buyer shall inform ITM of such facts and the Buyer shall indemnify ITM for any and all damages (including loss of profits) that may arise as a result of any such application or registration by such third party. For the avoidance of doubt, if the Goods infringe a third party right as aforementioned, that shall be Buyer's responsibility and shall not result in a default of ITM under the Agreement. In that case, ITM will no longer be obliged to continue the development and/or supply of such Goods.
- 17.6. Business or brand names, logos and other identifying marks on the Goods supplied by ITM must not be removed or modified.

18. COMPLIANCE

- 18.1. ITM covenants that all of its activities under or pursuant to this Agreement shall comply with the applicable laws, rules and regulations in Poland.
- 18.2. Buyer covenants that all of its activities under or pursuant to this Agreement shall comply with the applicable laws, rules and regulations in the country wherein Buyer is established and/or where the Goods are delivered or Services provided.
- 18.3. Buyer represents and warrants that it will inform ITM at a reasonable notice of any and all statutory, official or other requirements which are mandatory for implementation of the GT&C and/or the Agreement in Buyer's home country.
- 18.4. Buyer acknowledges and consents to signing appropriate employers' agreement regarding health and safety of employees working at the same place and being employed by different entities and to designating a OHS coordinator in accordance with the Polish Labour Code.

19. CONFIDENTIALITY

- 19.1. Each Party shall maintain strict confidentiality with respect to Confidential Information and shall:
 - i. not distribute, disclose or disseminate Confidential Information to any person other than those of its' employees and persons, who reasonably need to know such information for the purpose of the performance of the obligations under this Agreement;
 - ii. treat Confidential Information with the same degree of care as it itself observes towards its own information of like importance which is to be kept confidential;
 - iii. keep all documents and materials which constitute or contain Confidential Information in safe custody and restrict access to such documentation to employees who reasonably need to have such access for the purpose of the performance of this Agreement;
 - iv. use the Confidential Information solely for the purposes for which such Confidential Information is disclosed to it.
 - v. ensure that each person to whom the Confidential Information is disclosed is fully aware of the Receiving Party's obligations under these GT&C and/or Agreement and procure that each such person complies with such obligations as though such a person were a party to these GT&C and/or Agreement.

- 19.2. Confidential Information of the Disclosing Party is provided to the Receiving Party only in accordance with the General Terms and Conditions unless specified otherwise by the Parties in an agreement.
- 19.3. The Parties shall impose the confidentiality obligations upon their respective employees by written agreement and shall see to it that their employees shall at all times fully comply with such obligations.
- 19.4. The obligations of confidentiality in this Clause 19 shall not preclude disclosure of any information by either Party:
- a) in pursuance of an application to register any IPR ; or
 - b) for the purpose of enabling or facilitating the exercise of any right to use the information granted under these GT&C, an offer and/or Agreement.

The Receiving Party shall immediately inform the Disclosing Party of the full circumstances of any disclosure upon becoming aware that Confidential Information has been disclosed in breach of the terms of these GT&C, an offer and/or Agreement.

- 19.5. The confidentiality obligations shall not apply if and insofar as:
- i. the disclosing Party consents in writing to the receiving Party disclosing such information to a third party or third parties (such consent not to be withheld unreasonably), provided that upon such disclosure the receiving Party shall impose the confidentiality obligations set forth in this Article on such third party or third parties; or
 - ii. the receiving Party is under a statutory obligation to disclose such information to the competent authorities.
- 19.6. Each Party may request the other Party to disclose Confidential Information if such a disclosure is necessary for a justifiable specific purpose. The other Party shall – subject to the nature of the specific purpose – not unreasonably withhold its consent.
- 19.7. This Article 19 (Confidentiality) shall apply to personal data which fall under data protection regulations.
- 19.8. This Article 19 (Confidentiality) shall continue to apply after the Agreement indefinitely from the Effective Date hereof.

20. TAX

- 20.1. If the Goods have a destination that lies outside of Poland, Buyer is obliged to provide ITM with all documents required by the Polish tax authorities to prove that the Goods have such destination and will co-operate with the Polish tax authorities in case the Polish tax authorities want to receive further information in respect thereof. ITM will inform Buyer about the required documents.
- 20.2. If ITM is obliged to pay penalties as a result of Buyer not fulfilling its obligations in this Article 20.1, or if ITM is obliged to pay extra value added taxes or withholding taxes with respect to the Goods, then Buyer shall reimburse ITM for that amount.
- 20.3. Where any sum due to be paid to a Party hereunder is subject to any withholding tax, the Parties shall use commercially reasonable efforts to do all such acts and things and to sign all such documents as will enable them to take advantage of any applicable double taxation avoidance agreement or treaty. Buyer will inform ITM in due time about specific requirements towards ITM in Buyer's country to avoid or limit deduction under double taxation agreement or treaty.

Should the Buyer be required by any law or regulation to make any deduction on account of tax on any sum payable under this contract which is recoverable by ITM, the Buyer shall as soon as possible (but not later than 3 months from deduction) furnish ITM with an official receipt evidencing such payment together with such documentation as ITM may reasonably require in making submission to any revenue or other authority.

In the event relevant double taxation avoidance agreement or treaty doesn't exist and/or the Buyer does not provide documents or take timely action (including timely information to ITM about any requirements in Buyer country applicable to ITM) enabling ITM to take advantage of benefits of any applicable double taxation agreement or treaty and the payment due from the Buyer under this contract is subject to tax which can not be recovered by ITM, then ITM shall be entitled to receive from Buyer such amounts as shall ensure that the net receipt, after tax, to ITM in respect of the payment is the same as it would have been were the payment not subject to tax.

The Parties acknowledge and agree, that deduction of tax at rate greater than 19% or lack of delivery of official receipt evidencing tax deduction or any other documentation as ITM may reasonably require from Buyer should be interpreted as this tax can not be recovered by ITM in Poland and therefore ITM should be entitled to receive from Buyer such amounts as shall ensure that the net receipt, after tax, to ITM in respect of the payment is the same as it would have been were the payment not subject to tax.

21. ASSIGNMENT AND SUBCONTRACTING

- 21.1. These GT&C may be assigned by ITM to its Affiliate and Buyer herewith gives its consent for such an assignment by ITM.
- 21.2. The performance of any of ITM's obligations under these GT&C may be subcontracted to an ITM's Affiliate by ITM and to third party subcontractors.

22. APPLICABLE LAW AND JURISDICTION

- 22.1. These GT&C and any agreements entered into pursuant to or in connection with the GT&C (including, without limitation, claims based on tort) shall be governed by and construed in accordance with the laws of Poland. The application of the Convention on Contracts for the International Sale of Goods (CISG) is explicitly excluded.
- 22.2. All disputes arising out of or in connection with the GT&C (including, without limitation, claims based on tort) or further agreements resulting there from shall be finally settled under the Arbitration Rules of the Court of Arbitration at the Polish Chamber of Commerce in force on the date of commencement of the proceeding by an arbitrator or arbitrators appointed in accordance with the said Rules. The arbitration language shall be English.

23. AMENDMENTS

- 23.1. These GT&C may not be assigned or subcontracted by the Buyer to any Buyer's Affiliate or a third party unless agreed otherwise by the Parties in a written agreement.
- 23.2. Changes in any technical specifications, in order for the changes to be binding and effective, must be followed by appropriate contractual amendment signed by both Parties.