



## **BSPiR ENERGOPROJEKT-KATOWICE SA**

### **GENERAL COMMERCIAL TERMS AND CONDITIONS - Version as of 11 April 2022**

#### **§ 1 DEFINITIONS**

The terms used in these General Terms and Conditions (hereinafter referred to as "GTC") mean:

1. **EPK: Engineering, Procurement and Construction Office "ENERGOPROJEKT-KATOWICE" Joint-Stock Company** with its registered office in Katowice, address: 15, Jesionowa St., 40-159 Katowice, entered into the Register of Entrepreneurs of the National Court Register kept by the District Court Katowice-Wschód in Katowice, VIII Commercial Department of the National Court Register under the number KRS: 0000052247, Tax Identification Number: 6340019846, REGON: 271905107, with share capital of 503.937, 00 PLN, paid in full;
2. **Ordering Party:** a natural person not conducting business activity, a natural person conducting business activity, a legal person, an organizational unit without legal personality, whose separate provisions grant legal capacity intending or purchasing EPK Services with which EPK intends or has concluded a Contract;
3. **Offer:** a written EPK statement addressed to the Ordering Party via e-mail, mail or submitted in person, in response to an Inquiry (including a request for a price) or without such a request, containing the date, details of the Parties, information about the Services, including the price, deadline and principles of implementation of the subject of the contract and payment rules, together with the GTC, if they were made available to the Ordering Party before the conclusion of the Contract;
4. **Parties:** the Ordering Party and EPK;
5. **Agreement:** an agreement concluded between EPK and the Ordering Party based on the Offer and/or Order;
6. **Services:** services offered and provided by EPK;
7. **Order:** a written statement of the Ordering Party addressed to EPK regarding the provision of Services. It specifies the Service ordered by the Ordering Party, the price, payment terms, delivery terms and deadline, the Order completion date and other important details related to its implementation. In addition, if the Order was placed in response to the Offer, it also contains the Offer number;
8. **Inquiry:** a written statement of the Ordering Party addressed to EPK via e-mail, mail, or submitted in person at the EPK headquarters, including the necessary data for the preparation of the Offer by EPK, as well as the expected date and possible place of providing Services;
9. **Documentation:** means the EPK work product created as part of the implementation of a given Contract or Order, including 1 set of documentation consisting of an original document in electronic version and 2 copies in a paper version (according to the EPK standard), constituting a copy of the document. The electronic version of the documentation in \*pdf format will be provided with a qualified electronic signature, which, according to art. 18 clause 1 of the Act of 29 September 2016 on trust and electronic identification services (Journal of Laws of 2016, item 1579, as amended), verified by means of a certificate, has legal effects if it was submitted within the validity of this certificate. The paper version will only bear the annotation 'electronically signed'.

#### **§ 2 GENERAL PROVISIONS**

1. The GTC set out the rules for the provision of Services by EPK.
2. No information contained in catalogs, folders, leaflets and advertisements of EPK does not constitute an offer within the meaning of the Civil Code. Information contained or attached to EPK's commercial materials is for information purposes only, unless expressly provided otherwise in writing.
3. The GTC are an integral part of all agreements concluded between EPK and the Ordering Parties and determine their mutual relations, provided they were made available to the Ordering Party prior to the conclusion of the Contract. To all Offers submitted by EPK, to which the document GTC is attached, these GTC shall apply exclusively, unless the Parties agree otherwise in writing.
4. The GTC apply to the Ordering Party at the moment of their delivery or at the moment they are made available to the Ordering Party unless the Agreement or the Offer provides otherwise.
5. The GTC are available on the EPK website: <https://www.epk.com.pl/pl/epk/pobierz>.
6. In the event of any discrepancy between the EPK's Agreement and the GTC, the Parties shall be bound by the Agreement.
7. All arrangements, especially oral or telephone arrangements, are binding on the Parties only

if confirmed in writing by EPK.

8. Acceptance of the Offer or submission of the Order is tantamount to acceptance by the Ordering Party of these GTC, unless the Parties agree otherwise in writing.

### **§ 3 BASIS FOR THE OFFER PREPARATION**

1. The offer was prepared on the basis of Information provided by the Ordering Party in the request for quotation.
2. The bid price was calculated assuming the execution of 1 set of Documentation.
3. Additional copies of the Documentation in paper version or other formats of the electronic version are available for an additional fee in accordance with the EPK price list.
4. The documentation will be delivered on time to the Ordering Party at the EPK headquarters or sent to its or other address agreed by the Parties in writing.

### **§ 4 DISCLOSURE OR USE OF THE OFFER CONTENT AND DESIGN DOCUMENTATION**

1. The Offer is a work within the meaning of the Act of 4 February 1994 on Copyright and Related Rights (Journal of Laws of 1994, no 24, item 83, as amended) and is therefore subject to legal protection.
2. The contents contained in the Offer are confidential and constitute the secret of EPK.
3. Disclosure or use of the content of the Offer in whole or in any part without the consent of EPK for purposes other than evaluation and acceptance of the Offer or preparation and conclusion of the Agreement on its basis is prohibited.
4. Unauthorized disclosure or use of the content of the Offer will result in the liability of the entity disclosing or using the content of the Offer, in particular the obligation to repair damage caused to EPK.
5. The Ordering Party is entitled to use the Documentation only to achieve the purpose set out in the Offer or in the Agreement and on the principles specified therein.
6. The Ordering Party may not offer, sell or grant permission to third parties for any form of use of the Documentation without prior consent of EPK, expressed in writing under pain of nullity.
7. Disclosure or use of the content of the Documentation in whole or in any part without the consent of EPK for a purpose other than specified in the Agreement is prohibited, and its unauthorized disclosure or use will result in the liability of the entity disclosing or using the content of the Documentation, in particular the obligation to repair damage caused to EPK.

### **§ 5 INPUT DATA FOR DESIGN AND ADDITIONAL WORKS**

1. After selecting the Offer for implementation, for the proper performance of the subject of the offer, the Employer should provide all necessary input data or assumptions, the scope and schedule of which will be determined at the stage of signing the Agreement/Order, taking into account the detailed provisions contained in the content of the Offer.
2. If during the performance of the works - after their commissioning by the Ordering Party - a need arises to provide additional input data, the Parties shall agree on the mode and conditions for their delivery by the Ordering Party.
3. In the event of delay by the Ordering Party in providing data/input assumptions for design or other data necessary for the proper performance of the works indicated in the Offer or in the Agreement, EPK has the right to postpone the deadlines for performance the Agreement or the Order.
4. If, after receiving the order and commencing design works, the Ordering Party introduces changes to the input data or there is a delay in the submission of input data/assumptions for design, the Parties shall agree on the mode and conditions for their delivery by the Ordering Party, taking into account EPK's right to postpone the dates of design works and calculation of costs of additional works.
5. Unless the Agreement provides otherwise, the Ordering Party grants EPK for the time necessary for the performance of the Agreement or the Order, including the warranty period, unlimited in time and space, with the right to grant further permission to possess, use and modify works derived from any of the input data or any other assumptions provided to EPK by the Ordering Party in all fields of exploitation specified in § 8 art. 4 below in the scope and for purposes of proper performance of the Agreement or the Order. In the event the input data or the other assumptions provided to EPK by the Ordering Party are a property of a third party, Ordering Party guarantees that the authorized entity will grant EPK appropriate permission to use the input data or other assumptions in the scope and for the purpose mentioned above.
6. Unless the Agreement provides otherwise, in the event of the necessity to perform additional works, exceeding the scope of works indicated in the Offer or in the Agreement, EPK shall submit to the Ordering Party an offer for this additional scope of works, stating the value of remuneration and the date of their implementation. EPK will start performing additional works, for which the offer has been submitted, not earlier than after receiving from the Ordering Party a written Order issued within the validity period of the offer, after concluding an annex to the Agreement or concluding a separate

Agreement for the implementation of additional works.

7. Additional works are, in particular, all works not listed exhaustively in the Offer or in the Agreement and which should be performed, among others:
  - a) in connection with a change in the input data or in the assumptions provided to the EPK by the Ordering Party, including a change resulting from changes in legal provisions after the date of conclusion of the Agreement or issuance of the Order;
  - b) in connection with new input data or assumptions provided to the Contractor by the Ordering Party;
  - c) in connection with a change or increasing the scope of designing or other services indicated in the Offer.

#### **§ 6 CONCLUSION OF THE CONTRACT**

1. After the Parties have agreed all the data enabling the preparation of the Agreement, the Parties shall conclude an Agreement determining the principles of their cooperation taking into account the commercial conditions contained in these GCC.
2. Unless the Offer provides otherwise, implementation of works contained in this Offer may be performed pursuant to the Ordering Party's Order made in writing and signed in accordance with the manner of representation of the Ordering Party's company, on terms and conditions specified in the Offer with no reservations. The Ordering Party shall make the Order available to EPK in such a manner as to let persons indicated in the Offer as entitled to contact with the Ordering Party become acquainted with the Order within the Offer validity period/date.

#### **§ 7 SUBJECT OF THE CONTRACT**

The subject of the Agreement is the performance by EPK of Documentation based on input data/assumptions provided by the Ordering Party or provision other services indicated in the Offer. If the implementation consists of several stages (e.g. under one contract several projects are carried out or the contract includes design and other activities or services), the individual items constituting the Subject of the Agreement or the Order are considered to be completed upon delivery to the Ordering Party, which will be confirmed by the Parties by signing the acceptance protocol. Unless the Agreement provides otherwise the warranty period and the limitation period for claims begin upon the performance of individual items of the Subject of the Agreement or the Order.

#### **§ 8 PROPERTY COPYRIGHT**

1. EPK declares that he will have the property copyrights to the Documentation created during and as a result of the performance of the Agreement.
2. EPK shall transfer to the Ordering Party property copyrights to the Documentation under the conditions specified in the Agreement, in particular in the fields of exploitation indicated in the Agreement.
3. EPK is entitled - for archiving for its own needs, without having to obtain the consent of the Ordering Party - to record and multiply a copy of the Documentation.
4. Unless the Agreement provides otherwise, the transfer of property copyrights to Documentation to the Ordering Party shall take place upon payment made to EPK of all agreed remuneration in the following fields of exploitation:
  - a) with respect to fixing and reproducing a work - using a specific technique to make copies of the work, including printing, reprographic, magnetic recording and digital technique;
  - b) with respect to trading in an original or copies of the object on which a work is fixed - marketing, lending or rental of the original or copies;
  - c) with respect to other forms of distribution of a work than that referred to above - public performance, display, screening, replaying and broadcasting and rebroadcasting as well as communicating a work to the public in such a way that each person may access the work from a place and at a time individually chosen by him.
5. Unless the Agreement provides otherwise, EPK grants the Ordering Party a non-exclusive license to use the Documentation for the time from the submission of the Documentation to the Ordering Party until the Ordering Party has paid the entire agreed remuneration.
6. Unless the Agreement provides otherwise, the Documentation created during and as a result of the performance of the Agreement or the Order is the property of the Ordering Party who will not use them as repeatable documentation for objects other than those specified in the Agreement or the Offer.

#### **§ 9 COLLECTION AND TERMS OF PAYMENT**

1. Unless the Parties agreed otherwise in the Agreement, the basis for issuing an invoice by EPK will be an acceptance protocol or a letter of delivery.
2. Unless the Parties agreed otherwise in the Agreement, the Documentation will be submitted to the

Ordering Party for remarks. The Ordering Party is obliged to make remarks to handed over documentation and sign an acceptance protocol within 5 business days from the date of receipt the documentation. In the event of the Ordering Party fails to sign the acceptance protocol in the above mentioned deadline and in case of lack of written remarks to the submitted works, the acceptance protocol unilaterally signed by EPK or a letter of delivery shall be the basis for issuing the invoices.

3. Unless the Agreement provides otherwise, if the Ordering Party reasonably recognize that the performed Documentation requires amendments or additions, the Parties will agree the deadline necessary to make changes. Possible re-verification of EPK works by the Ordering Party may only be referred to remarks previously submitted to EPK.
4. Unless the Parties agreed otherwise, the date of handing over the Documentation to the Ordering Party shall be considered as the date of performance the Subject of the Contract or the Order.
5. The Ordering Party shall pay for a given VAT invoice in the form of a transfer to the bank account provided on the invoice, within 30 days from the date of receipt of a VAT invoice correctly issued by EPK. If the payment falls on a Saturday or a public holiday, the payment day shall be the first business day after that day. If the delay in payments is longer than 15 days from the due date, EPK has the right to suspend the provision of services with the right to extend the deadline for their completion, until payment is made (right to suspend the implementation of the Agreement). If the delay in payment is longer than 30 days from the due date, EPK has the right after prior written request of the Ordering Party to make the payment within no more than 5 days from the date of receipt of the request, to terminate the Agreement with immediate effect for a reason attributable to the Ordering Party.
6. Unless the Agreement provides otherwise in case the performance period of the Agreement or the Order is longer than 1 year, EPK reserves the right to valorize the remuneration on the basis of the average annual consumer price index, announced by the President of the Central Statistical Office for the previous calendar year as related to the year in which the valorization takes place.
7. Unless the Parties have agreed otherwise in the Agreement, the valorization of the remuneration will take place after each year of performing the Agreement or the Order and for its validity it does not require an annex to the Agreement or the Order, but only a written or electronic notification to the other Party.
8. The Ordering Party covers all banking costs of its bank and the costs of the crediting institutions of the Ordering Party and the costs of institutions transferring funds on its behalf for the payment of the price of the Agreement.
9. If it is necessary to register for VAT purposes, the Ordering Party will be required to cover the costs of registration, costs of consulting services regarding registration (e.g. a tax office) costs of settlements during the implementation of the Contract and deregistration of the Contractor in the country where the facility is located. If it is necessary to open a foreign establishment, the Ordering Party covers all costs related to its operations.
10. EPK declares that it is a VAT payer with the tax identification number NIP: 634-00-19-846. The remuneration indicated in the Offer is a net remuneration and does not include value added tax (VAT), which will be added to the remuneration at the rate applicable on the day of issuing the VAT invoice.
11. EPK declares that it has the status of a large entrepreneur within the meaning of Art. 4 item 6 of the Act of 8<sup>th</sup> March, 2013 on counteracting excessive delays in commercial transactions.
12. The date of payment of the remuneration is the day on which the EPK's bank account is credited. Filing a complaint does not entitle the Ordering Party to withhold payment of due payments to EPK.

#### **§ 10 GUARANTEE AND LIMITS OF LIABILITY**

1. EPK is insured against professional civil liability of the designer for practicing the profession.
2. EPK reserves the right to change the price indicated in the Offer if, as a result of final negotiations, the Ordering Party requires the issue of a dedicated policy.
3. Possible claims for improper performance of works which are the subject of the Agreement, shall be notified immediately to the insurer and their consideration in terms of coverage from the insurance policy held will be based on the damage documentation provided by the Ordering Party. The detailed procedure for reporting possible claims as well as the list and form of necessary documents will be included in the Annex to the Agreement.
4. EPK employs designers and specialists having the required licenses.
5. EPK has 70 years of experience in carrying out study, design and implementation works for the needs of professional, industrial and municipal power industry as well as pro-ecological projects for industry and the field economy.
6. EPK has introduced and applies the Integrated Quality Management System according to the requirements of the PN-EN ISO 9001: 2015 and PN-ISO 45001:2018 in the field of design and consulting services for power and industrial equipment and facilities as well as accompanying

installations.

7. EPK provides a 24-month warranty for the design works carried out and other services. EPK's liability under the warranty is excluded.
8. The Ordering Party is obliged to file complaints about incomplete or defective designs in writing no later than within 7 days of its disclosure. Defects found in the study will be removed within 14 days from the date of notification, unless the Parties, taking into account the technical possibilities of removing the defects, set a longer period.
9. EPK is liable to the Ordering Party for non-performance or improper performance of the Agreement and for damage caused otherwise, on the principles set out in the Civil Code. EPK's liability for non-performance or improper performance of the Agreement covers only losses incurred by the Contractor, but does not include lost profits.
10. The EPK's total liability for all events in connection with the performance of the works specified in the Offer or the Contract concluded on its basis, regardless of the legal basis sought, is limited to 100% of the price of the Documentation or Service which is the subject of the contract.

#### **§ 11 RESERVATION OF OWNERSHIP OF DESIGN DOCUMENTATION**

1. The Documentation provided remains the property of EPK until the Ordering Party pays the total remuneration, unless the Parties agree otherwise in writing. For the period from the publication of a given work to the moment of payment of the remuneration, EPK will grant the Ordering Party an unlimited non-exclusive license as part of the remuneration in the fields of exploitation specified in the agreement.
2. In the event of a delay in payment of the price by 30 days from the date on which payment of remuneration becomes due, EPK may revoke the Ordering Party the unlimited non-exclusive license referred to above.
3. In the event of a delay in payment of the price, EPK may demand immediate return of the Documentation. The Ordering Party is then obliged at his own expense to return the Documentation to EPK and to repair damage caused to EPK in connection with non-performance of the Agreement.

#### **§ 12 CONTRACT TERMINATION DATE**

The date of termination of the Agreement means the date of fulfillment of all obligations of the Parties arising from the agreement, in particular:

- on the part of the Ordering Party: payment of all remuneration due to EPK and return of the guarantee deposit or any other kind of performance bond, if it was provided for in the Agreement;
- on the part of the Contractor: end of the period of all guarantees.

#### **§ 13 CONFIDENTIALITY, PROTECTION OF THE BUSINESS SECRET**

1. The parties irrevocably and unconditionally undertake to keep confidential Secret Information within the meaning of this paragraph and undertake to treat it and protect it as a business secret.
2. Confidential Information means any information or data related to EPK, not disclosed to the public, about which it has taken necessary actions to keep it confidential, in particular information about the content of the concluded agreement and EPK's trade secrets, regardless of the form in which they have become available to the Ordering Party as well as information covered by trade secrets within the meaning of the Act of 16 April 1993 on combating unfair competition (Journal of Laws of 1993, no 47, item 211, as amendments).
3. By the obligation to keep confidential Secret Information, the Parties understand the prohibition of using, disclosing and transferring it in any way to any entities for a purpose other than the purpose specified in the Agreement, except when:
  - a) the Ordering Party has obtained prior, expressed in writing under pain of nullity, EPK consent to disclose Confidential Information;
  - b) Disclosure of Confidential Information is required on the basis of mandatory legal provisions or on the request of a court or other authorized body;
  - c) Confidential Information at the time of disclosure is publicly known information.
4. During the term of the Agreement or within a period of 12 months from the date of termination of the Agreement without the prior written consent of EPK, the Ordering Party shall not employ, pursuant to a contract of employment, a mandate contract or any other contract, whether paid or unpaid, directly or indirectly any of the employees, EPK managers, associates or consultants, nor will he persuade or attempt to persuade any of the EPK employees, managers, consultants or other collaborators to terminate the EPK agreement or otherwise interfere with the relationship between EPK and any of its employees, managers, consultants or other EPK contributors.
5. In case of any doubts whether a given person is an EPK employee, manager, co-worker or consultant

within the meaning of para. 4 above, the Ordering Party is obliged to ask EPK in writing for information in this regard. EPK is obliged to answer the Ordering Party's question promptly, but not later than within 14 days of receiving the question. Failure to reply within the above deadline is considered as the response that the person is an employee, manager, associate or consultant of EPK.

#### **§ 14 PERSONAL DATA PROTECTION**

1. Personal data is protected in accordance with the Personal Data Protection Act of 10 May 2018 (Journal of Laws of 2018, item 1000, as amended), Regulation of the European Parliament and of the Council (EU) 2016/679 of 27 April 2016 on the protection of individuals with regard to the processing of personal data and on the free movement of such data and repealing Directive 95/46/EC and the Act of 18 July 2002 on the provision of electronic services (Journal of Laws of 2002, no 144, item 1204, as amended) in a way that prevents access by third parties.
2. Personal data provided to EPK in connection with the conclusion of the Agreement may be made available to entities authorized to receive them under applicable law, including relevant judicial authorities.
3. As part of exercising the right to control the processing of own personal data, the person whose data concern, has the right to information about the data being processed, access to the data, rectification, withdrawal of consent to the processing of personal data, requests to delete data, restriction of data processing and objection to processed data.
4. Unless the Agreement provides otherwise, the Ordering Party is obliged to perform the information obligation towards persons, including in particular their employees, whose personal data will be processed by EPK for the purposes indicated in the Agreement or the Offer, and inform them about transferring to EPK the personal data in the scope and for purposes indicated in the Agreement or the Order.

#### **§ 15 TRANSFERABILITY OF CLAIMS**

1. The Ordering Party without the EPK's written consent may not transfer to third parties any rights or obligations arising from the Agreement, or burden them in any way, in particular by establishing a pledge.
2. The Ordering Party may not deduct EPK's claims for the payment of any claims due to EPK without the EPK's consent expressed in writing under pain of nullity.

#### **§ 16 APPLICABLE LAW AND SETTLEMENT OF DISPUTES**

1. The law applicable to the Agreement between the Employer and EPK is Polish law.
2. Any disputes arising from the application of these GTC and in connection with the implementation of the Agreements shall be settled by the court having jurisdiction over the registered office of EPK.

#### **§ 17 FINAL PROVISIONS**

1. In matters not regulated, the provisions of the Civil Code shall apply.
2. All notices and other information that should be delivered to the appropriate Party will be directed to the addresses indicated in the Offer or the Order, respectively.
3. If any of the provisions of these GTC is already or become wholly or partially ineffective or invalid, the validity and effectiveness of the remaining provisions shall not be affected. The ineffective or invalid provision shall be replaced by the corresponding statutory provision.