

## **General Terms and Conditions of Delivery and Performance of Services for Marcin Werner, a sole trader under the name MARCIN WERNER VORSTER**

### **I. DEFINITIONS:**

1. Supplier - any entity being the Seller or Supplier of products for the Purchaser and any entity performing Services for the Purchaser;
2. Confidential Information - all information of the Purchaser of technical, technological and organizational nature, made available to the Supplier in any form, regardless of whether it has been marked as "confidential" or not, especially ideas, techniques, technologies, diagrams, drawings, the subject of copyrights, models, inventions, know-how, devices, applied software and security systems, information concerning tests and their results, experience, projects and specifications, financial information, commercial and production requirements, lists of contractors, investors and employees and their contact details, business and contractual relations, business forecasts, marketing plans, confidential information of third parties (to the extent permitted), or other information presenting economic value, the use, transfer or disclosure of which to an unauthorized person may infringe the interests of the Purchaser.
3. Purchaser - Marcin Werner, a sole trader under the name Marcin Werner Vorster, ul. Andrzeja Struga 9-11, 98-220 Zduńska Wola, NIP: 8291588716, REGON: 101060923.
4. GTC - these General Terms and Conditions of Sale and Delivery and Performance of Services.
5. Product - any movable items which the Purchaser has ordered from the Seller or the Supplier in order to make and/or purchase them in accordance with the type, quantity and quality specifications.
6. Service - all works ordered by the Purchaser from the Seller, Supplier or Contractor, according to the generic specification of quantity and quality.

### **II. GENERAL PROVISIONS**

1. These Terms and Conditions shall apply to the sale and supply of Products and Services provided to the Purchaser excluding any Supplier's general terms and conditions of purchase/delivery, even if their validity has not been expressly challenged.
2. The GTC are communicated to the Supplier through the relevant information on the order document and made available on the [vorster.pl](http://vorster.pl) website. If the Supplier is in permanent business relations with the Purchaser, the acceptance of the GTC by the Supplier for one order is accepted for all other orders and contracts of sale, delivery or order (performing services).
3. The Purchaser reserves the right to make changes to the GTC. Any changes introduced to the GTC shall be considered as confirmed if the Supplier does not deliver the written objection within 5 working days since receiving the GTC or placing them on the Purchaser - [vorster.pl](http://vorster.pl) website.
4. The GTC constitute an integral part of the contract concluded between the Purchaser and the Supplier. If the Parties have agreed on their rights and obligations in the form of a separate written agreement, the provisions of the written agreement shall apply in the first place and the provisions of the GTC shall apply to the extent not covered by the agreement.
5. The provisions of these GTC do not exclude or limit in any way the rights and claims of the Purchaser against the Supplier, which result from the mandatory law.

### **III. ORDERING**

1. Delivery of Products or performance of Services to the Purchaser may only take place as a result of an order placed by the Purchaser, via e-mail or by placing an order in writing.
2. The Supplier shall confirm the acceptance of the order by a statement expressing its consent to the conclusion of a contract under the conditions specified in the order. The Supplier's accession to the Purchaser's order means acceptance of the order under the terms and conditions specified therein and the provisions contained in these GTC.
3. The Supplier is obliged to place the order number on all documents and correspondence related to the order execution.

### **IV. DELIVERY**

1. The ordered Products will be delivered according to the Purchaser's order. Unless agreed otherwise, the Supplier is obliged to deliver the Products at its cost to the Buyer's registered office, i.e. ul. Andrzeja Struga 9-11, 98-220 Zduńska Wola.
2. Together with delivery of the Product to the Purchaser's address, the Supplier is obliged to provide the Purchaser with all documents required under the Agreement or applicable law, in particular:
  - a) specification of the Products supplied in the form of a GM or a copy of the VAT invoice,
  - b) a quality control certificate, if required.
3. The Supplier is obliged, at the moment of performing the Service, to provide the Purchaser with the required technical documentation.
4. Lack of documents referred to in points 2(a) and (b) and 3 above shall be considered by the parties as non-performance of the agreement and shall entitle the Purchaser to pursue any claims arising from non-performance or improper performance of the obligation or to do so:
  - a) return the delivery to complete the missing documents at the Supplier's expense,
  - b) failure to accept the delivery and place the delivery at the disposal of the Supplier and setting a time limit for the removal of defects,
  - c) postponement of the payment deadline, to be recalculated once the deficiencies have been remedied.
5. The specification attached to the shipment must absolutely match the type and quantity of Products delivered to the Purchaser. Otherwise, the Purchaser reserves the right to send back the whole consignment to the Supplier at his expense in order to remove the inconsistencies.
6. During transport the products must be protected against corrosion if required and against mechanical damage. Lack of appropriate marking or packaging may be considered a defect of the Product. The delivery should be made in full, without being divided into parts, unless the Purchaser agrees to it in writing in advance or it results from an order placed by the Purchaser.
7. The cost of transporting the returned Products as well as the cost of re-shipping the Products for replacement is always borne solely by the Supplier, unless the Parties agree otherwise.
8. The transfer of the ownership of the Products, the danger of their loss or damage and the weights and benefits to the Purchaser takes place upon receipt of the Products (in terms of quantity and quality) at the place of their destination and at the same time the Supplier provides material certificates, warranty cards or other documents specified in the Purchaser's order regarding the type and dates of their delivery.

## **V. DELIVERY DATE**

1. The delivery dates of the Products specified in the order may be changed only with prior written consent of the Purchaser.
2. The delivery date for one-time delivery of the Products shall mean the date of its receipt by the Purchaser at the place indicated in the order.
3. Possible delivery of the Products before the agreed date may take place only with the prior written consent of the Purchaser, provided that payment for these deliveries will take place on the due date indicated in the order.
4. If the Supplier delays in delivery of the ordered Products or performance of the ordered Services in relation to the dates specified by the Purchaser in the order, the Purchaser may withdraw from the contract in whole or in part without setting an additional date. In case of the Supplier's delay in execution of the contract, the Purchaser shall be entitled to charge contractual penalties amounting to 0,5% of the order value for each started calendar day of delay, however not more than 20%. The parties consider the delivery of Products or performance of Services free from defects as the performance of the contract.
5. If the Purchaser withdraws from the contract for reasons attributable to the Supplier, the Purchaser shall be entitled to charge a contractual penalty of 20% of the value of the ordered Products or Services, regardless of the contractual penalties for delay in the performance of the contract calculated until the moment of withdrawal from the contract.
6. Regardless of the contractual penalties, the Purchaser has the right to claim damages in excess of the contractual penalties on general principles.

## **VI. COMPLAINTS**

1. The Purchaser shall check the quality and quantity of the Products delivered, as well as their acceptance or refusal without undue delay, but not later than 21 days from the date of delivery. The Purchaser shall immediately notify the Supplier of the fact of non-acceptance of the Products, indicating the reasons. Within 7 days from the date of notification about the refusal to accept the Products the Supplier shall respond to the Purchaser's decision. Products not accepted by the Purchaser, unless the parties agree otherwise, shall be collected by the Supplier within 7 days from the date of the Purchaser's refusal to accept them, and the products delivered in their place shall be free of any defects. Any costs associated with this shall be borne by the Supplier. The above provision does not prejudice the Purchaser's claims resulting from the provisions of the statutory warranty.
2. In the event of failure to perform the agreement on time or failure to deliver defect-free products on time, the Buyer has the right to entrust the delivery of Products or the performance of Services to a third party at the expense and risk of the Supplier without court approval.
3. If the delivered Products or performed Services become part of machine elements, works, products or systems subsequently delivered to the Purchaser's customer, the Purchaser reserves the right to replace the defective product or perform repairs, including disassembly and reassembly and charge them to the Supplier regardless of the amount of these costs, without the need to obtain court approval.

## **VII. WARRANTY**

1. The Supplier declares that the Products are its property, free from physical and legal defects, and in particular are not subject to lien, free from the rights and claims of third parties, and no enforcement proceedings are pending against them.
2. The Supplier guarantees that the Product delivered to the Purchaser will be in accordance with the specification, drawings and any other requirements of the Purchaser and that it will be new, unused, of good quality, suitable and suitable for its intended use by the Purchaser, properly designed, made of suitable material, free from defects, and that it will satisfactorily meet the technological requirements specified by the Purchaser.
3. The Supplier guarantees that the Product/Service will be made in accordance with the legal regulations in force in the Republic of Poland, health and safety regulations and the Polish Code of Civil Procedure. Polish Standards and Regulations of the UDT/PED and standards in force in the European Union.
4. The Supplier hereby grants the Purchaser a warranty of proper functioning of the purchased Products.
5. Unless the parties have agreed otherwise and unless the Manufacturer has provided a different warranty period, the warranty for the purchased Products shall be valid for a period of 24 months from the date of delivery of the Product.
6. The Supplier acknowledges that the Products/services will be used by the Purchaser as part of machines, works, products or systems sent to customers located in different countries and factories, and the Supplier is fully liable for damages resulting from defects in the Products/services, which will also be revealed after the installed Products are sent to the Purchaser's customer or after machines, works, systems or installed products are made to the Purchaser's customer.
7. If the Supplier, being informed about the defect occurrence, does not take immediate steps to remove it within the time limit set by the Purchaser, the Purchaser has the right to take all necessary actions to remove the damage at the Supplier's expense and risk. However, this will not release the Supplier from its contractual obligations.
8. The Supplier's warranty for a Product or part thereof that has been repaired or replaced is extended by a further 24 months from the date of repair / replacement.
9. The warranty does not exclude the Buyer's rights under the statutory warranty for physical or legal defects of the Product/Service.

## **VIII. PRICE AND PAYMENT CONDITIONS**

1. The Purchaser is obliged to pay in the manner and under the conditions specified in the order accepted by the Supplier.
2. Unless the parties agree otherwise, the agreed price is a fixed and lump sum price, including in particular the costs of delivery to the place indicated in the order, documentation and packaging of the Products.

3. Unless the parties agree otherwise, the payment period is 60 days and runs from the date of delivery of a correctly issued VAT invoice to the Purchaser.
4. The condition for payment is the delivery of Products or performance of Services free from defects and the correct issue of an invoice, as ordered.
5. The date of payment shall be the date of debiting the Purchaser's bank account.
6. The Purchaser shall be entitled to set off payments made by the Supplier, against the debt due first and, in the case of several debts, against the debt due the longest.

## **IX. CONFIDENTIALITY**

1. The Supplier undertakes to keep the received Confidential Information strictly confidential and not to disclose it to third parties, and undertakes not to use the Confidential Information for purposes other than the execution of the order.
2. The supplier may make confidential information available to its sub-contractors only to the extent that the need to make it available results from the performance of the contract, subject to a confidentiality obligation in accordance with the provisions of these Conditions.
3. The obligation of confidentiality shall be binding on the Supplier indefinitely.
4. The confidentiality obligations set out in this paragraph shall not apply to information:
  - a) which are generally known or have been made public without prejudice to the obligation to keep them confidential;
  - b) in cases where the Purchaser has consented to their disclosure in writing;
  - c) to information, which is required to be disclosed to public authorities, either under common law or by a final court decision.
5. On request submitted by the Purchaser, and in case of withdrawal from the contract immediately after receiving the declaration of withdrawal from the contract, the Supplier shall return to the Purchaser all documents, materials and other information carriers containing Confidential Information.
6. If the Supplier discloses Confidential Information to other parties (third parties), the Supplier shall be fully responsible for the actions and omissions of those parties as for its own.
7. Violation of any of the obligations or prohibitions specified in these Terms and Conditions by the Supplier shall entitle the Purchaser to demand from the Supplier compensation for damage for any breach revealed.

## **X. INTELLECTUAL PROPERTY**

1. The Supplier guarantees that there are no valid patents or other industrial property rights, copyrights and other related rights and know-how of third parties that could be infringed by the Purchaser as a result of using or disposing of the purchased Product/Service.
2. The Supplier hereby undertakes to indemnify the Purchaser in case of presenting to the Purchaser any accusations or objections of third parties in connection with the infringement of the above mentioned rights and to pay any possible costs (including for legal services) and damages awarded to the Purchaser's disadvantage.
3. Unless the Parties have agreed otherwise, the Supplier shall transfer to the Purchaser, within the framework of the remuneration, all property rights to the documentation (if such documentation is prepared) in the following fields of exploitation:
  - a) in the scope of recording and multiplication of a work - production of copies of a work by a specific technique, including printing, reprography, magnetic recording and digital technique;
  - b) as regards circulation of the original or copies on which the work has been recorded - marketing, lending or rental of the original or copies;
  - c) for the distribution of a work other than that referred to in paragraph 3(b), to the public performance, exhibition, display, reproduction, broadcasting and rebroadcasting, and to the public making the work available to the public in such a way that everyone can access it from a place and at a time individually chosen by them.
4. Unless the Parties have agreed otherwise, the Supplier grants the Purchaser a non-transferable, nonexclusive, time- and territorially unlimited license to use the software necessary to use the Product as remuneration.

5. The license includes, in particular, the right to use the software:
  - a) multiplying with digital technology, backing up and storing it on an unlimited number of Purchaser's servers;
  - b) modify the source code of the software for own use without the right to make the results of these works available to third parties, free of charge or commercially,
  - c) adapt, alter, decompile, extract or disconnect parts of the Software
6. The license to use the software is granted to the Purchaser free of charge and unconditionally. The license to use the update is granted to the Purchaser no later than when the update is installed.
7. Upon granting the license to use the software, the ownership of the media on which the copies of this software have been fixed passes to the Purchaser. At the moment of transferring the update to the software, ownership of the media on which the update has been recorded is transferred to the Purchaser.
8. The license entitles to free upgrades of the software.
9. The Purchaser may authorize other persons/entities to use the software, within the limits of its license and provided that such authorization does not involve the transfer of the license.
10. As part of the remuneration, the Supplier undertakes to provide service care for the software throughout the warranty period.
11. The Supplier declares and warrants that the software will not infringe any third party's intellectual property rights, including copyrights, patents, or database rights.
12. Products produced by the Supplier for the Purchaser on the basis of the Purchaser's documentation or using it may not be offered or sold by the Supplier to third parties or used by the Supplier for its own purposes.

## **XI. FINAL PROVISIONS**

1. The Supplier may not assign the rights and obligations under the contract without prior written consent of the Purchaser to a third party.
2. In matters not regulated in these GTC, the provisions of generally applicable law shall apply, in particular the provisions of the Polish Civil Code
3. In the event that individual provisions of the GTC are found to be invalid or not to have the intended legal effect, this will not affect the validity or effectiveness of the remaining provisions of the GTC.
4. This GTC has been prepared and executed in the Polish and English language. In case of any conflict or inconsistency between the Polish language version and any translation hereof made for any purpose, the Polish language shall govern the interpretation and construction hereof, and for any and all other purposes, except as may be required by applicable law.
5. In the event that individual provisions of the GTC are found to be invalid or not to have the intended legal effect, this will not affect the validity or effectiveness of the remaining provisions of the GTC.
6. This GTC shall be governed by and construed in accordance with the laws of Poland and without regard to the conflicts law principles thereof.
7. The Supplier hereby irrevocably submits to the jurisdiction of court sitting in Poland – accordingly to the address of the Purchaser - over any action or proceeding arising out of or relating to this agreement and irrevocably agrees that all claims in respect of such action or proceeding may be heard or determined in such court.
8. These GTC shall apply from **10 July 2019**.
9. Except as otherwise provided in this GTC, any amendment or modification to this agreement or its schedules must be in writing signed by both parties.