

**GENERAL TERMS OF ORDER**  
**for works performed on the ground**

**1. Introductory provisions.**

- 1.1. The hereby General Terms of Order constitute an integral part of the Order no ..... dated as of ..... presented to a Contracting Party by ZGH "Bolesław" S.A. in Bukowno.
- 1.2. The Contracting Party by accepting the Order agrees to apply to the hereby General Terms and Conditions.
- 1.3. The subject of the Order has been defined in the content of the Order and/or in the appendix to the Order.
- 1.4. The integral part of the Order consists of:
  - main document of Order
  - hereby General Terms of Order
  - appendix to the Order (defining the order's details)
- 1.5. If there is a conflict between the General Terms of Order and the content of Order, the Order shall prevail. It is agreed that the document of Order and the appendix defining the order's details are equally legally valid and shall be jointly interpreted.
- 1.6. Unless the Order requires otherwise, the Contracting Party is obligated to provide all the materials, workforce, tools and equipment, necessary for the execution of the Order.
- 1.7. While executing the Order, the Contracting Party shall use only those sub-contractors that have been accepted by the Ordering Party.

**2. Due dates**

- 2.1. The due dates are determined in the Order.
- 2.2. The Contracting Party is entitled to ask for a change of the due dates in the following cases:
  - a) break in works performance caused due to the fault of the Ordering Party – by the time of break
  - b) implementation of additional works if they influence the due date of basic works
  - c) depending on the type of works, when unfavorable weather conditions prevent the execution of works – by the number of days confirmed by the Ordering Party.

**3. Fees and settlements.**

- 3.1. The fee shall be fixed and unchangeable in the period of execution of the Order unless the scope of the Order is changed.
- 3.2. If the Order allows partial acceptance of works, the settlement will be carried out on the partial-monthly invoicing basis, proportionally to works executed in a given month, after signing the protocol of a partial acceptance without reservations by the Ordering Party. The final invoice will be issued after signing the final protocol without reservations by the Ordering Party.
- 3.3. If the Order does not allow partial acceptance of works, the total amount of the fee will be paid after the final acceptance without reservations.
- 3.4. The Parties agree that the value of works under the partial acceptances will be determined as a percentage share of a given work in the total scope of works. If the Ordering Party approves the cost estimates, the value of the partial works will be determined on the basis of those estimates. The value of the final acceptance will constitute no less than 10% of the agreed fee. Partial acceptances of works exceeding 90% of the value of Order do not entitle to require a payment of more than 90% of the Order value.
- 3.5. The amount due from the invoices will be paid by a bank transfer from the Ordering Party account to the Contracting Party account indicated on the invoice.
- 3.6. Unless otherwise indicated, the invoices due date shall not exceed 30 days from the date of receipt of the invoice by the Ordering Party. The date of Ordering Party's account debiting shall constitute a date of payment.

3.7. In case the Ordering Party fails to pay the fee in the due date, the Contracting Party shall be entitled to charge default interest at the statutory rate.

#### **4. Works acceptance.**

4.1. If the Order is to be executed within 30 days from the start of works performance, the final acceptance shall apply. In case the Order is to be executed in a longer period of time, the Parties shall use partial acceptances. In both cases the acceptances of works covered by subsequent works shall apply. At the Ordering Party request the final acceptance shall take place.

4.2. The acceptances of "covered works" shall be understood as a final quantity and quality assessment of the performed works that in the following stages of the Order completion will be covered by subsequent works. The Ordering Party shall accept the covered works during works performance, at least 2 days after the Contracting Party notification.

4.3. The partial acceptances estimate quantity and quality of the works stages(parts) for which due dates have been settled in the Order. The Ordering Party shall accept the part of works being a separate subject of the acceptance within 3 days from the date of the receipt of information about works completion and a set of required documents from the Contracting Party.

4.4. The final acceptance estimates completeness and quality of the total Order. The Ordering Party shall process the acceptance within 5 days from the date of receipt of information about works completion and a set of required documents from the Contracting Party.

4.5. The final acceptance estimates works connected with the removal of defects detected in the warranty period. The Ordering Party shall do the final acceptance after the warranty period within 14 days from the date of receipt of a written notification from the Contracting Party about the readiness for the final acceptance.

#### **5. Duties and responsibilities of the Parties**

##### Duties and responsibilities of the Contracting Party:

5.1. The Contracting Party is obligated to perform works determined in the Order according to the applicable provisions, technical standards and conditions, rules of technical knowledge and indications given by the supervising body of the Ordering Party.

5.2. The Contracting Party shall provide to the Ordering Party a list of people intended for employment, stating the following:

a) name of a company

b) name and surname

c) position

d) ID number, issuing authority

e) copy of construction permissions, approvals, certificates of professional qualifications

5.3. The above data shall be used by the Ordering Party only for the purposes connected with a proper Order completion under the Act on personal data protection, dated as of 29 August 1997 (i.e. Law Journal No 101, position 926 with changes).

5.4. The Contracting Party shall submit the Contracting Party's employees statements on:

a) appropriate certificates and qualifications resulting from the scope of works

b) valid medical examinations

c) valid training certificates required by the Regulation of Ministry of Economy and Labour, dated as of 27 July, 2004 concerning safety and health provisions and fire regulations (Law Journal 2004, No 180, position 1860 with changes)

5.5. The Contracting Party is obligated to keep the registry of people working at the Order completion - employees of the Contracting Party and subcontractors.

- 5.6. In case the Contracting Party employs subcontractors, it is necessary to get the Ordering Party consent under article 647 of the Civil Code.
- 5.7. The Contracting Party shall not be exempted from execution of works performed by the subcontractor. The Contracting Party bears responsibility for activities and negligence of the subcontractor and his employees as for his own.
- 5.8. Under points 5.6 and 5.7 of the hereby paragraph, signing a protocol of works acceptance will be performed only after written statement of the subcontractor confirming the fulfillment of a financial liability by the Contracting Party.
- 5.9. The Contracting Party shall share working area with other users as well as with other parties employed by the Ordering Party under separate orders.
- 5.10. The Contracting Party shall organize works according to the safety and health conditions as well as fire regulations.
- 5.11. The Contracting Party shall maintain operations in order, store materials and equipment in designated places and remove unnecessary things.
- 5.12. The Contracting party shall organize and clean up working area simultaneously (up to 3 working days) after the Order completion.
- 5.13. The Contracting Party bears responsibility for environment protection at working area and in the region.
- 5.14. The Contracting Party shall remove and recycle waste materials produced during the Order performance under the Act dated as of 27 April, 2001 on waste materials (e.g. Law Journal 2010, No 185, position 1243 with changes).
- 5.15. The Contracting Party shall burn all steel elements into input elements and store them in a place designated by the Ordering Party.
- 5.16. The Contracting Party shall protect roads leading to working area from damage caused by his means of transport.
- 5.17. Unless otherwise agreed in the Order, the Contracting Party shall deliver all materials and prefabricates.
- 5.18. The Contracting Party shall inform the "Main gate" each time he brings in to the territory of plant: tools, equipment and materials necessary for works performance. The information shall include quantity and identification signs under pain of inability to take the tools, equipment and unused quantity of material back from the Ordering Party's plant after works completion. The quantity of unused material shall be confirmed by the supervisor – the confirmation allows the security service for a dispatch of the material from the Ordering Party's plant.
- 5.19. The Contracting Party shall prepare technology, organisational project and program BIOZ.
- 5.20. The Contracting Party shall notify the Ordering Party about the readiness of works for acceptance.
- 5.21. The Contracting Party shall employ management staff for a period of works performance and for a period after completion of works - as long as the Ordering Party finds it necessary for a proper fulfillment of liabilities under the Order.
- 5.22. The Contracting Party shall employ people with proper professional qualifications who comply with the safety and health regulations for works performed at construction area.
- 5.23. The Contracting Party shall appoint a certified construction manager.
- 5.24. The Contracting Party confirms that before submitting the offer and entering into hereby agreement he made himself accustomed with the local conditions for works performance, particularly the possibilities of technical organization, supply of energy, steam, water and other media, condition of roads, communication facilities, etc. as well as took into account all of that in his costs estimation. The Contracting Party states that the fee determined in the Order includes all the factors necessary for the Order completion.
- 5.25. The Contracting Party is obligated to provide to construction supervising authorities, Supervising Inspector and all authorized people an access to construction area where all works are or are to be performed.
- 5.26. The Contracting Party shall apply to all decisions and instructions of the Supervising Inspector.

5.27. The Contracting Party shall inform the Supervising Inspector about problems or circumstances that may influence the quality of works, fee increase or delay in works completion.

5.28. The Supervising Inspector may require from the Contracting Party an estimated valuation of these cases as well as the assessment of their influence on the deadline.

5.29. The Contracting Party shall cooperate with the Supervising Inspector to avoid or to reduce the effects of expected changes.

5.30. The Contracting Party shall use materials complying with current standards, decisions of the Supervising Inspector and examined at the place of production or at the construction area, at the expense of the Contracting Party.

#### Duties and responsibilities of the Ordering Party:

5.31. The Ordering Party is obligated to submit the Contracting Party a set of works after signing the Order by both of the Parties.

5.32. The Ordering Party shall provide to the Contracting Party:

a) free of charge – area for a technical and social camp

b) for a charge – media necessary for works performance

5.33. The charge for the media used by the Contracting Party is settled in the amount of 0,15% of the value of the Order.

5.34. The Ordering Party shall provide, on the Contracting Party request, a location plan including underground facilities indications and an arrangement card.

5.35. The Ordering Party shall issue entrance tickets for the Contracting Party's employees according to the received data and provide training refereeing to the profile of works that are to be performed as well as possible threats, particularly:

a) work order and discipline

b) safety and health provisions and fire regulations

c) natural and technical threats

d) rules of communication and alarms

e) working area investigation

f) accidents and threats notification

g) behavior in case of detection of a threat dangerous for people or property

5.36. The Ordering Party shall determine fixed points of a geodetic control network, if applicable.

5.37. The Ordering Party shall provide investment supervision.

#### **6. Warranty of quality**

6.1. The Contracting Party shall provide a quality warranty to the Ordering Party and guarantee that the subject of Order has been performed according to the received Order, current provisions and technical conditions of performance and acceptance of works.

6.2. Unless otherwise agreed in the Order or in the appendix to the Order (defining the order's details), the warranty period expires after 12 months.

6.3. The warranty period starts on the date of the final protocol acceptance without reservation.

6.4. The Contracting Party shall be liable under the warranty for:

a) physical defects that reduce the utility, technical and esthetic value of the performed works

b) removal of defects detected during the warranty period

6.5. The Contracting Party shall remove the defects detected during the warranty period free of charge.

6.6. The Contracting Party shall remove the defects within 14 days from the date of receipt of the written notification about the defect or in other period agreed with the Ordering Party.

6.7. In case the Contracting Party has not removed the defect in the period determined above, the Ordering Party shall, independently from a contractual penalty under point 7, ask a third person for removal of the defect and charge the Contracting Party with the costs he bears in this situation.

6.8. The Ordering Party shall not be deprived of rights resulting from the warranty in case of removal of the defect determined in point 6.7.

## **7. Warranty and compensation**

7.1. The Contracting Party shall be liable to the Ordering Party if the subject of Order has defects reducing its value or utility in terms of its purpose determined in the Order.

7.2. The Contracting Party shall be liable under the warranty for the physical defects detected while the acceptance of works, unless the Ordering Party refuses the acceptance if the defects appear to be impossible for removal, as well as for the defects arose after the acceptance but existing at the time of acceptance.

7.3. The Contracting Party shall be released from the liability under the warranty for the physical defects because of the defects of machines, equipment, constructions or materials provided by the Ordering Party or because of instructions and particularly project documentations of the Ordering Party. The release from the liability shall take place if the Contracting Party informs the Ordering Party about the existing possibility of defects.

7.4. If during the acceptance of works the detected defects are:

- a) possible to remove – the Ordering Party shall refuse to accept works until their removal
- b) impossible to remove – the Ordering Party uses the right determined in point 7.5.

7.5. If during the acceptance of works or in the warranty period the defects impossible to be removed are detected, the Ordering Party shall:

- a) if the defects allow the usage of the subject of the agreement according to its purpose – decrease the fee for this subject accordingly to the reduced utility value, esthetical and technical value
- b) if the defects do not allow the usage of the subject of the agreement according to its purpose:
  - terminate the agreement and notify proper supervising and inspection authority
  - request from the Contracting Party reperformance of works for the second time, keeping the right for removal of the defects because of delay

7.6. In case the defects possible to remove are detected and the agreement is accepted with reservations either during acceptance or during the warranty period, the Ordering Party shall:

- a) request removal of the defects and determine deadline for the Contracting Party
- b) decrease the fee for the Contracting Party accordingly to the reduced utility value, technical and esthetical value

7.7. The Ordering Party shall notify the Contracting Party about the defect within 7 days from the date of detection.

7.8. If the Ordering Party does not notify about the defect detection within 7 days and the delay extends the defects of the subject of the agreement, the Ordering Party shall bear the costs of the removal of the extended defects.

7.9. The existence of defects shall be confirmed by protocol. Unless Parties agree otherwise, the Contracting Party shall be informed in writing about the exact date and place 7 days before the inspection. The Ordering Party shall set a deadline for the defects removal taking into account technical and organisational capabilities of the Contracting Party.

7.10. The Parties may agree that the defects are removed by the Ordering Party instead of the Contracting Party but at his expense.

7.11. The removal of defects shall be confirmed by protocol.

7.12. The Contracting Party shall not refuse to remove the defect regardless of the costs scale. If the cost of defects removal is incomparable to the effects obtained as a result of the removal of the defects, the defects shall be treated as impossible to remove. In that case provision 7.5.a) applies.

7.13. The Ordering Party may remove the defects that have not been removed in a designated time instead of the Contracting Party and at his expense.

7.14. The warranty for the physical defects expires:

- a) after 3 years – in terms of the construction works, and if the utility period or its part is shorter than 3 year – after half of the period

b) after 1 year – in terms of repairs, and if the repair concerns replacement of the load-bearing structure – after 3 years in relation to whole repair

c) after 1 year – in terms of machines, equipment and industrial installations, electrical installations (equipment), gas and sanitary installations, unless the supplier's warranty is longer

d) the warranty period for the physical defects cannot expire quicker than 3 months before the guarantee period

7.15. If the period of a preventive repair of a given investment or its part is shorter than the warranty period, the warranty rights expire on a date when the repair shall start.

7.16. The start of the period after which the warranty rights expire shall apply to the Contracting Party on a date when the Ordering Party finally accepts the investment or its part. If the Ordering Party used the subject of Order before the acceptance, the start of the period after which the warranty rights expire shall take place on a date when the Ordering Party took the subject of Order for exploitation.

7.17. If the Ordering Party detects the defects during the performance of works, he shall request the Contracting Party to remove the defects as well as the causes of their appearance in a determined period of time. The Contracting Party may require the subcontracting Party to remove the defects detected even after works have already been taken over.

7.18. The Ordering Party shall assert claims under the warranty also after expiry of the periods defined in point 7.14., if he notifies the defects before expiry of the periods. In this case the Ordering Party claims expire within one year from a date of the defects detection.

7.19. The hereby provisions shall not apply to the liability for the defects in experimental and prototypic works, if the experimental or prototypic character is settled in the agreement with the indication of reasons for qualification of works as experimental or prototypic.

7.20. The Parties agree that for non-performance and improper performance of works, the contractual penalties shall be enforced in situations and amounts referred to in points 7.21 and 7.22.

7.21. It is agreed that:

a) the Contracting Party shall pay the contractual penalty to the Ordering Party:

- for a delay in completion of works due to the fault of the Contracting Party – in the amount of 0,3% of the agreed net fee for each day of the delay

- for a delay in removal of the defects detected during acceptance of works or in the warranty period - in the amount of 0,3% of the agreed net fee for each day of the delay from the date designated as the defect removal day.

b) the Ordering Party shall pay the Contracting Party the contractual penalty:

- for a delay in providing the construction area for use (startup of works) or a break in the performance of works due to the fault of the Ordering Party - in the amount of 0,3% of the agreed net fee for each day of the delay

- for a delay in the acceptance of works - in the amount of 0,3% of the agreed net fee for each day of the delay from the date following the date when the acceptance shall be completed

c) for a delay in the removal of the defects – in the additional period the penalty increases by 50% from the date of expiry of the additional period

7.22. In case one of the Parties terminates the agreement due to the fault of the other Party, the Party terminating the agreement shall enforce the penalty in the amount of 10% of the net fee of the part of the agreement which has been terminated.

7.23. The claim under the contractual penalty enforcement, settled for each day of delay, becomes due:

a) for a first started day of delay – on this day

b) for a following day of delay – respectively on each of these days

7.24. If the contractual penalty does not cover the sustained defects the Parties shall claim additional compensation.

**8. Final provisions**

8.1. To all matter not settled herein the proper provisions of the Civil Code and Geological and Mining Law shall apply.

8.2. Any disputes failed to be amicably settled shall be settled by the proper Commercial Court.

8.3. The content of the General Terms of Order is available on the Ordering Party website: [zghboleslaw.org](http://zghboleslaw.org)