

Stalowa Wola, 16/07/2018

## General Delivery Terms

The following General Delivery Terms (hereinafter referred to as: the GDT) are binding for all suppliers carrying out orders for deliveries of goods or provision of services for Thoni Alutec Sp. z o.o. with its registered office in Stalowa Wola. All interested Parties must give their prior written consent for any exceptions from the terms contained herein.

The current version of the GDT is available at the Thoni Alutec Sp. z o.o. following website [http://www.thoni-alutec.pl/TA\\_OWD\\_towary\\_dla\\_klientów\\_19\\_10\\_2017.pdf](http://www.thoni-alutec.pl/TA_OWD_towary_dla_klientów_19_10_2017.pdf)

It is in suppliers' interests to get to know the current version of the GDT and to carry out orders pursuant to terms determined herein.

### 1. Definitions and interpretations:

- 1.1. GDT – mean these General Delivery Terms.
- 1.2. TA – means Thoni Alutec Sp. z o.o. with its registered office in Stalowa Wola, at ul. Przyszowska 1, KRS no. 0000133975, business id. no. (REGON) 830392380, tax id. no. (NIP) 865206718
- 1.3. Supplier – means an entity carrying out an order for delivery of goods or provision of services for TA.
- 1.4. Goods – mean both movable objects (goods) delivered and services provided by the Supplier for TA or for the entity indicated by TA.
- 1.5. Services – mean services provided by the Supplier pursuant to the GDT.
- 1.6. Party – means the Supplier or TA.
- 1.7. Agreement – means a written agreement, understanding or Order / Offer accepted for the purchase of goods / Services, taking into account conditions included in the GDT by referring to them as applicable conditions adopted by the Supplier (both expressly by way of a written declaration, and implied by way of the implementation of the Agreement in whole or in part).
- 1.8. Words in the singular also mean the plural and vice versa.
- 1.9. PO – means a purchase order
- 1.10. RFQ – means a request for quote
- 1.11. Client – means the party ordering Goods and / or Services from TA
- 1.12. FAI – means the first article inspection, the aim of which is to approve the production process
- 1.13. LAI – means the last article inspection, the aim of which is to document the process of production, inspections and tests of the last article
- 1.14. Written or equivalent form – means the obligation to apply a written form for the validity.
- 1.15. KPI – Key performance indicators.

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## 2. General provisions

2.1. The GDT constitute the only conditions on the basis of which TA is willing to cooperate with the Supplier in the scope of deliveries of Goods and govern conditions of Agreements and orders between TA and the Supplier, with the exclusion of any other conditions unless TA and the Supplier determine in writing different clear arrangements in this scope. This document applies to Suppliers carrying out deliveries of Goods intended for the TA's Client as well as materials and other resources for production, unless decided otherwise.

2.2. The GDT apply as of the submission by TA of the first order and are an integral part of business correspondence between TA and the Supplier.

2.3. No conditions adopted by the Supplier, submitted or included in its offer, confirmation, document confirming the acceptance of the Order, specifications or similar document irrespective of its publication will not constitute part of the Agreement, and the Supplier waives its rights to which it could be entitled on the basis of the above mentioned conditions.

2.4. The TA's order determines the limited time for its acceptance (unless agreed otherwise, this time covers 2 working days as of the submission of the Order). If the Supplier does not confirm the acceptance of the order for implementation within the above mentioned time limit, it will mean that the Order ceases to be binding.

2.5. Any amendments to the Agreement, including the GDT, will be effective if they are determined clearly in writing and such a document is signed by dully authorised representatives of TA and the Supplier.

## 3. Requirements concerning Suppliers' certifications

3.1 Throughout the cooperation with TA, Suppliers are obliged to have a certified quality system at the level of at least ISO9001, compliant with the current revision, unless agreed otherwise.

3.2 Throughout the cooperation with TA, Suppliers of special processes are obliged to ensure certified staff, e.g. NDT pursuant to ISO9712/ EN4179/SNT-TC-1A, and welders pursuant to ISO 9606-2.

3.3 Suppliers are obliged to immediately inform TA about important changes in the scope of:

- certification, loss of certificate,
- quality systems implemented,
- production places,
- loss of production capacity,
- planned relocation of production or tests,
- planned relocation of production from one Supplier to another,
- changes in the management.

3.4 In the case of a planned change in the Supplier's company or production method in the scope referred to in point 3.3 above, the Supplier is obliged to obtain TA's prior written consent for the implementation thereof.

#### **4. Supplier assessment**

4.1 Before the submission of the first order by TA, the Supplier is obliged to complete and send the questionnaire of supplier assessment and its certificates.

4.2 Suppliers who have certified quality assurance systems may be accepted by TA as Approved Suppliers on the basis of a certificate of an external certification body and the assessment of the questionnaire submitted.

4.3 Suppliers are assessed once a year in the scope of:

- price,
- quality,
- timeliness of deliveries,
- delivery method,
- communication with TA,
- other applicable KPI.

4.4 Deletion or suspension of the Approved Supplier may take place in the case of:

- delays in deliveries,
- deliveries non-compliant with the Order,
- negative results of the audit carried out by TA,
- Other circumstance on the part of the Supplier having important impact on the cooperation with TA (e.g. loss of certificate).

4.5 TA informs the Supplier about the deletion or suspension, indicating reasons for this decision.

4.6 In the case of suspension or deletion from the list of the Approved Suppliers, the Supplier is obliged to immediately submit to TA a recovery plan and to implement corrective measures aimed at the removal of reasons for non-compliance. Moreover, the Supplier is obliged to inform TA about the implemented corrective measures. On the basis of the analysis of information submitted about the implemented measures and after a potential audit, TA may return the Supplier to first deliveries, and then, after their positive assessment, reenter the Supplier into the list of Approved Suppliers.

4.7 The Supplier agrees to have audits carried out by TA, representative of TA's Clients or supervisory authority within the premises of the Supplier's plant in the scope in which the Goods are produced as well as within the premises of plants belonging to the Supplier's Subcontractors. In such a case, the Supplier is obliged to provide auditors with technical assistance, a room with a desk, access to the Internet or fax etc.

#### **5. Assessment of the request for quote (RFQ)**

5.1. The Supplier is obliged to assess the request for quote, taking into account:

- feasibility,
- delivery time,
- price,
- delivery conditions,
- other, if applicable.

5.1.1. All necessary information connected with the request for quote will be submitted to the Supplier in writing (in this case, an e-mail is considered as a written form).

5.1.2. At the stage of the preparation of the request for quote for TA, the Supplier is obliged to obtain all information (e.g. concerning the product, tolerance, dimensions, number of parts, time of the order implementation, etc.) even if they have not been submitted by TA in RFQ, but are missing according to the Supplier for the appropriate implementation of the order, or otherwise the Supplier will lose its right to modify the offer at the later stage.

5.2. The risk analysis and the project management lie with the Supplier.

5.2.1. If the Supplier identifies difficulties in on-time delivery or order performance, the Supplier must analyse the risk connected therewith and implement mitigation measures in order to minimise the risk, i.e. to ensure the compliance of Goods with the order and the timeliness of deliveries.

5.2.2. In the case where the Supplier identify difficulty in the delivery, it is obliged to immediately inform TA thereabout.

5.3. At the TA's request, the Supplier is obliged to establish in its plant a project reviewed and updated on a current basis. This project should, in particular, include:

- the project owner,
- the project schedule,
- the assessment of chances and risks connected with the project,
- necessary human and infrastructural resources.

5.3.1. The project is subject to an agreement, review and update with the participation of TA or the TA's Client.

## **6. Order acceptance (PO)**

6.1. The Supplier is obliged to confirm the order within two working days as of the receipt of the order.

6.2. Any changes in the order may be introduced only after both Parties give their prior written consent.

## **7. Production / implementation of services**

7.1. The Supplier is obliged to implement the object of the order pursuant to the Agreement.

7.2. The Supplier is obliged to inform TA on an ongoing basis about any difficulties in meeting any requirements determined in the Agreement. Such information must be submitted to TA in a written form (an e-mail is considered as a written form), immediately after their notification.

7.3. If the order covers part of FAI / LAI acceptance, the Supplier is obliged to agree in advance with TA the date of the performance of both Parties' test aimed at this part authorisation.

7.4. The FAI / LAI assessment if performed by the Supplier, TA, TA's Clients or representative of the external entity.

7.5. The FAI / LAI final acceptance is performed at the place indicated by TA (in the registered office of TA or TA's Client).

7.6. All Goods must be produced and stored in a way ensuring cleanliness and product safety.

## 8. Inspection

- 8.1. The Goods are inspected / examined pursuant to the agreed inspection plan with the use of calibrated tools and at agreed intervals / determined frequency (including the inspection of Goods / semi-finished product delivered by other TA's supplier / client directly to the Supplier).
- 8.2. The Supplier must ensure the Goods identification and traceability.
- 8.3. The Supplier is obliged to ensure the possibility to perform the inspection by TA and deliver the first part from the production batch.
- 8.4. Series production may be performed only after TA approves the process in writing (an e-mail is considered as a written form).
- 8.5. If TA cannot perform the inspection due to lack of appropriate measuring method or equipment, it will authorise the Supplier's inspectors to perform the inspection on behalf of TA.
- 8.6. Suppliers are liable for the maintenance of authorised staff and submission to TA of information in the case of any changes in this scope.

## 9. Documents

- 9.1. The Supplier is obliged to sign the Confidentiality Agreement before the receipt of documents connected with the order.
- 9.2. TA ensures appropriate documents and specifications which are necessary for the valuation and production.
- 9.3. The Supplier is obliged to have on its own current national and international standards, e.g. DIN, BS, PN and others.
- 9.4. All documents submitted to the Supplier by TA in connection with the performance of the order must be identifiable, reviewed, supervised and archived in a way ensuring their legibility for the period of **40** **years** unless **agreed** otherwise.

## 10. Records

- 10.1. Suppliers are obliged to maintain records in order to document the process of production, inspection and tests and to confirm the compliance with the order.
- 10.2. The Supplier is obliged to archive records pursuant to point 9.4. above.
- 10.3. The Supplier is obliged to submit archived documents and records within 24 hours as of receiving the TA's request.

## **11. Tooling**

11.1. If the Agreement provides for it, TA ensures the Supplier necessary tooling for the production and inspection.

11.2. The Supplier is obliged to maintain and care for the entrusted tooling. Unless it is requirement, the Supplier is also liable for the planned calibration. The Supplier is liable for the loss of or possible damage to the above mentioned tooling.

11.3. The Supplier is obliged to insure the tooling entrusted thereto, unless decided otherwise.

11.4. At the stage of valuation, TA and the Supplier will determine the lifespan of tooling.

11.5. The Supplier is obliged to inform TA about each loss of tooling and to obtain TA's consent for its repair or changes.

11.6. If the agreement covers the preparation of tooling by the Supplier, the ownership right is transferred to TA upon the payment of remuneration, unless decided otherwise.

11.7. Tooling for the implementation of TA's orders cannot be used by the Supplier in order to provide services other than those covered by the order.

## **12. Commission of the delivery and quality certificates**

12.1. All necessary certificates and quality / test reports must be submitted together with the delivery or in a different agreed way and within the agreed time limit.

12.2. If the Agreement provides for it, the Supplier is obliged to obtain the TA's consent for the dispatch. The Supplier's request must be prepared in a written form and must be accompanied by necessary certificates and measurement reports.

12.3. If the delivery address is different from the TA's address, the Supplier is obliged to submit to TA necessary documents to the specified address. After they are checked and approved, TA commissions the performance of the delivery.

12.4. In the case referred to in point 12.2, the Supplier is obliged to send the Goods to the addressee together with the TA's written consent for the dispatch.

12.5. If the Agreement provides for it, the Supplier is obliged to deliver the Goods directly to the TA's Client and to inform TA about the delivery.

## **13. Delivery**

13.1. The Supplier is obliged to deliver the Goods in condition ensuring good quality of the Goods at the place of destination.

13.2. If there are special requirements concerning the protection of the delivery (e.g. in the scope of packaging), the Supplier is obliged to fulfil them.

13.3. Together with the delivery, the Supplier is obliged to submit information about any limitations concerning the delivery (e.g. information about the limited period of the Goods maintenance /

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lifespan).

13.4. All delivered Goods must be identifiable.

13.5. If the order covers FAI / LAI parts, the dispatch may take place after obtaining the TA's prior written consent.

13.6. The Supplier is obliged to deliver the Goods to the specified place and within the determined time limit, pursuant to the description included in the Agreement. It is strictly forbidden to delay or interrupt deliberately the deliveries or otherwise the Supplier will bear civil law liability for damage incurred by TA.

13.7. The Supplier is obliged to immediately inform TA about any problems with on-time deliveries.

13.8. In the case of delay, TA has the right to request the payment of liquidated damages in the amount of 0.5% of the order value for each day of delay. The request for the compensation exceeding the value of liquidated damages referred to above is admissible.

13.9. In any case, the TA's inspection, approval, training, assistance or advice does not affect in any way or scope on the Supplier's liability for non-performance or improper performance of the Agreement.

13.10. The Goods are delivered pursuant to Incoterms 2010 based on ....., unless decided otherwise.

#### **14. Suppliers' obligations:**

All TA's Suppliers are obliged to comply with the Code of Ethical Conduct applicable at TA.

#### **15. Non-compliances**

15.1. The Supplier must immediately (not later than within 24 hours from detection) inform in writing TA (in this case, an e-mail is considered as a written form) about all non-compliances:

- a) concerning current orders,
- b) concerning completed orders,
- c) concerning orders being delivered,
- d) detected during the delivery inspection.

15.2. If the Supplier does not inform TA about non-compliances (see point 15.1.), it loses its right to refer to such a non-compliance at a later date.

15.3. The Supplier must request TA for the determination how to deal with the Non-compliant Goods on the FJ/04/06 form or other form agreed with TA.

15.4. In the case of the consent for the delivery of the Non-compliant Goods in "as is" condition or the consent for repair, the Supplier is obliged to attach to the dispatch the TA's consent and appropriately marked the Goods by the system of tags, i.e.:

- a) In the case of scrap – marking with a red tag
- b) In the case of Non-compliant Goods – marking with a yellow tag.

15.5. The time of the Supplier's reaction to the information submitted by TA or the TA's Client about non-compliance is 24 hours from the date of the information submission.

#### **16. Repair**

16.1. Repairs are allowed only upon obtaining the TA's prior written consent.

16.2. Cosmetic welding is allowed before heat treatment only upon obtaining the TA's prior

written consent.

16.3. The repair or replacement of the Goods must be performed immediately.

## **17. Force majeure**

17.1. The given Party is not liable for lack of possibility to fulfil its obligations included herein and is entitled to suspend the performance of obligations included herein in whole or in part unless it proves the following:

- a. the above lack of possibility resulted from an obstacle beyond this Party's control and this obstacle is not an event which, pursuant to generally accepted practice, is considered as an event resulted from risk taken by this Party and therefore assigned thereto, and
- b. the given Party may not have been required to take into account the above obstacle and its impact on this Party's capacity to perform its activities during the term of this Agreement, and
- c. the given Party could not have reasonably avoided or overcome the above obstacle or its results.

17.2. As soon as it becomes feasible after the situation caused by force majeure events and the impact of force majeure on the capacity of the given Party to perform its obligations becomes known to TA or the Supplier, as the case may be, the given Party must inform the other Party about the above situation and its impact on the given Party's capacity to perform its obligations. The other Party should be also informed about the end of the force majeure event. Lack of submission of any of the above notifications will cause that the Party not submitting notifications is liable for damage which, otherwise, could have been avoided. TA and the Supplier respectively will use their best efforts to mitigate effects of the situation resulting from the occurrence of force majeure event. Force majeure on the part of the Supplier cannot include: lack of staff, strikes, infringement the agreement terms by third parties connected with the Supplier, defects and failures of ancillary materials and the Supplier's problems with financial liquidity or insolvency.

17.3. According to this article, the situation resulting from the force majeure occurrence relieves the party unable to perform its obligations of the liability for damages, penalties and other contract sanctions, except for the obligation to pay back interest on the amount, until the end of the force majeure occurrence and in its scope.

17.4. If the force majeure event persists, TA is entitled to terminate this agreement and any order without initiating court proceedings and TA's liability for damages, with immediate effect.

## **18. Guarantee**



18.1. Unless agreed otherwise, the Supplier will grant a 24 month guarantee for the Goods delivered. The guarantee period begins on the delivery date or the date of the first installation by the end client, depending on which event is the last (the "Guarantee Period"). Complained Goods repaired or replaced within the guarantee in the Guarantee Period must be covered by the guarantee for 24 months from the return or the remaining time of the original Guarantee Period – depending on which event is longer. The remaining time of the original Guarantee Period is defined by the remaining time of the Guarantee Period at the time of the failure detection by TA.

18.2. If Regulation (EC) no. 1907/2006 of the European Parliament and of the Council of 18 December 2006 (the "REACH Regulation") in the current version applies to the goods delivered, the Supplier guarantee that the goods delivered are compliant with requirements included in the REACH Regulation (together with the registration). The Supplier releases TA from any liability in the scope of claims raised against TA by third parties (including public authorities) due to non-compliance with the requirements of the REACH Regulations. The Supplier is obliged to inform TA about any changes in REACH standards concerning the objects of the delivery (i.e. modified safety data sheets), immediately and without the TA's prior request.

## **19. Liability for the product**

19.1. The Supplier is liable for damage resulting from non-performance or improper performance of the Agreement.

19.2. The Supplier undertakes to hold harmless and indemnify TA against direct and indirect damage (including legal fees and other expenses connected with plea) incurred or imposed or allocated against TA in connection with or as a result of the use by TA or TA's final clients if it is possible to assign in part or in whole to the fact that TA holds liable for injuries and death as well as damage to personal property caused by or in connection with the defect in any Goods delivered to TA pursuant to the provisions of this agreement or order.

19.3. At the TA's request, the Supplier is obliged to immediately present the insurance policy. The Supplier acknowledges and confirms that this insurance is an additional protective measures and does not relieve the Supplier of its own obligations resulting from the liability.

19.4. The compensation and payment of penalty fees provided for in the agreement do not release the Parties from the performance of other obligations resulting from this agreement unless the provisions of this agreement say otherwise.

## **20. Intellectual Property Rights**

20.1. The Supplier must deliver the Goods free from third parties' rights and claims on the basis of the industrial property or other intellectual property rights or similar rights and guarantees TA that the performance of this Agreement does not infringe no of the above types of rights.

20.2. TA is entitled, but not obliged to suspend the performance of this Agreement until the irrevocable determination that the Supplier does not infringe third parties' rights referred to in point 20.1, appropriately until do moment in which the Supplier undertakes and protects TA in a way acceptable to this company against any consequence of such infringement.

20.3. If TA contributes to the proper research and development process, it will acquire exclusive intellectual property rights which may be generated in the course of the performance of this Agreement by the Supplier.

20.4. TA will remain the only owner of all intellectual property rights or similar rights to know-how, specifications and other data which TA will make available to the Supplier.

## **21. Governing Law**

21.1. The governing law will be the law of Poland.

21.2. All disputes resulting from or connected with this Agreement and all Orders are reported and subject to the exclusive jurisdiction of courts competent for the TA's registered office.

## **22. Miscellaneous provisions**

22.1. These GDT replaces all previous written or oral arrangements between the Parties concerning issues discussed herein.

22.2. Any amendments to this Agreement will not be binding unless they are determined in a written form and mutually agreed and signed by authorised representative of TA and the Supplier.

22.3. The inconsistency with law, invalidity or unenforceability of one or more provisions hereof does not affect the legality, validity or enforceability of the remaining provisions hereof. If any provision hereof is considered as invalid, inconsistent with law or unenforceable, the Parties will undertake reasonable efforts to agree a replacement provision which is legal, valid and enforceable in order to achieve to the greatest possible extent the intended effect of the above inconsistent with law, invalid or unenforceable provision.

22.4. TA has the right to assign or transfer in other way all or part of rights and obligations resulting from this Agreement. The Supplier cannot assign or otherwise transfer all or part of rights and obligations resulting from this Agreement to third parties without the TA's written consent.

22.5. No waiver of any provisions of this Agreement is valid unless such a waiver is written and signed by or on behalf of the Party authorised to perform this waiver.

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### 23 Preventive measures against counterfeit parts

Suppliers are obliged to implement at their plants processes aimed at preventing the use of counterfeit parts and parts which are suspected to be counterfeited or to come from illegal distribution. It is forbidden to deliver counterfeit parts, elements from uncertain sources, goods without legible identification marking or required labels.

Prepared by the team:

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TA - GDT goods for TA's clients 16/07/2018 (point 4.7 was modified, point 23 was added)