

**TERMS AND CONDITIONS OF PURCHASE**  
**Sumika Polymer Compounds (Poland) sp. z o.o. ("SPCPL")**

**1) INTERPRETATION.**

a) In the Conditions, unless the context otherwise requires:

- i) "**Act**" means any act for any purpose and in any field whatsoever including, but not limited to, use, storage, repair, manufacture, assembly, incorporation in other goods or products, development, sale, re-sale, disposal, supply, import, re-import, export, re-export and reproduction;
- ii) "**Background IPR**" means any existing or future IPR (excluding Foreground IPR) owned by or licensed to Supplier (or its Representatives) and which are used in the performance of the Services; and/or are capable of being used in order to perform any Act in relation to the Goods and/or Deliverables;
- iii) "**Business Day**" means a day other than a Saturday, Sunday or public holiday when banks in Warsaw are open for business;
- iv) "**Civil Code**" means the Polish Civil Code dated 23 April 1964
- v) "**Conditions**" means these terms and conditions and any special conditions expressly set out in the PO;
- vi) "**Contract**" means the contract between the Parties for the supply of Goods and/or Services which contract includes the Conditions;
- vii) "**Data Protection Legislation**" means any applicable laws and regulations from time to time relating to privacy or the use or processing of Personal Data including, but not limited to, the GDPR (and any legislation transposing the provision of the GDPR or broadly similar provisions into Polish law), the Polish Act on the protection of personal data dated 10 May 2018, the UK Data Protection Act 2018, the Telecommunications Law dated 16 July 2004, Act on provision of services by electronic means dated 18 July 2002, and any guidance or codes of practice issued by the President of the Personal Data Protection Office from time to time (all as amended, extended, re-enacted or replaced from time to time);
- viii) "**Deliverables**" means all documents, products and materials developed by Supplier or its Representatives during the course of, for purposes of, as part of, and/or in relation to, the supply of Services or Goods (as applicable), in any form or media including, without limitation, drawings, plans, diagrams, designs, pictures, computer programs, data, specifications and reports (including, but not limited to, drafts);
- ix) "**Delivery Location**" means the location set out in the PO or as instructed in writing by SPCPL subsequent to the issue of the PO;
- x) "**Economic Sanctions Programme**" means any programme relating to economic sanctions;
- xi) "**Export Regulations**" means all laws and regulations concerning the import, export, reimport or re-export of goods, software or technology (or their direct product);
- xii) "**Foreground IPR**" means all and any IPR generated or arising directly out of, or in connection with, the Services undertaken by, or on behalf of, Supplier or otherwise during the course of the Contract, including, but not limited to, all IPR in Goods and/or Deliverables supplied by Supplier in pursuance of the Contract;
- xiii) "**GDPR**" means the General Data Protection Regulation (EU) 2016/679;
- xiv) "**Goods**" means the goods (or any part of them) to be supplied by Supplier as identified in the PO;
- xv) "**Group**" means the relevant Party and any holding company (*spółka dominująca*) or subsidiary company (*spółka zależna*) from time to time and any subsidiary of any such holding company from time to time where "holding company" and "subsidiary company" have the meanings set out in article 4 § 1 item 4 of the Polish Commercial Companies Code dated 15 September 2000;
- xvi) "**IPR**" means intellectual property rights including all patents, rights to inventions, utility models, copyright, neighbouring and related rights, trademarks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill and/or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, rights to use and protect the confidentiality of confidential information (including know-how and trade secrets) and/or any other intellectual property rights, (whether registered or unregistered) and including all applications for and rights to apply for and be granted, renewals and/or extensions of such rights and rights to claim priority from such rights, and/or all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world or equivalent rights granted under licence from one or more third parties;
- xvii) "**Parties**" means together SPCPL and Supplier and "Party" shall be construed accordingly;
- xviii) "**Personal Data**" shall have the same meaning as in the Data Protection Legislation;
- xix) "**PO**" means SPCPL's purchase order for the purchase of Goods and/or Services;
- xx) "**Representative**" means any member of the relevant Party's Group, and any employee, consultant, subcontractor and/or any other third party acting on its, or their, behalf;
- xxi) "**Services**" means the services, including without limitation any Deliverables, to be provided by, or on behalf of, Supplier under the Contract as identified in the PO;
- xxii) "**SPCPL Materials**" means any materials, equipment, tools, drawings, specifications and/or data supplied to Supplier by SPCPL;
- xxiii) "**Specification**" means any and all written description of, and specification for, the Goods and/or Services detailing its (or their) features, functionality and/or performance characteristics (including any related plans and drawings), as provided by, or on behalf of, Supplier together with any additional features, functionality and performance characteristics set out, or referenced, in the PO; and
- xxiv) "**Supplier**" means the person from whom SPCPL is purchasing the Goods and/or Services.

- b) Headings are for convenience only and do not affect the construction of the Conditions.
- c) References to any statute, statutory provision or statutory instrument is a reference to such statute, statutory provision or statutory instrument as from time to time amended, extended, re-enacted or replaced and includes any subordinate legislation made under the same in each case as amended, extended, re-enacted or replaced.
- d) References to “**written**” or “**in writing**” include email except where expressly stated otherwise, unless specific form (including written form) is required by law.
- e) Wherever used herein, to “**indemnify**” means to pay the guaranteed amount, redress damage (*naprawić szkodę*) and/or release from liability (*zwolnić z odpowiedzialności*) and an “**indemnity**” shall be understood accordingly.
- f) No Supplier’s general terms and conditions or any similar document shall be applicable to any Contract.

## **2) BASIS OF CONTRACT**

- a) The PO constitutes an offer (or a counteroffer, as the case may be) by SPCPL to purchase the Goods and/or Services from Supplier subject to the Conditions. The Conditions are the only conditions upon which SPCPL deals with Supplier and shall govern the Contract to the exclusion of all other terms and conditions including, without limitation, any in any quotation, acknowledgement, offer by Supplier, invoice or other document issued by Supplier or which may be implied by custom, practice or course of dealing unless otherwise expressly agreed in writing by SPCPL.
- b) The PO shall be deemed accepted subject to the Conditions (and the Contract shall come into existence) on the earlier of (i) Supplier issuing written acceptance of the PO; and (ii) any act of Supplier consistent with fulfilling the PO. The Supplier may not modify or supplement the PO.
- c) The Conditions apply to the supply of both Goods and Services.

## **3) SUPPLY AND DELIVERY OF GOODS**

- a) Supplier shall properly pack and secure the Goods so as to reach SPCPL in good condition. SPCPL may reject Goods damaged in transit or that are inadequately packaged or labelled. Unless otherwise agreed in writing by SPCPL, packaging is non-returnable. All Goods supplied shall, to the extent relevant, be accompanied by complete, accurate and up to date product safety data sheets.
- b) Supplier shall ensure that each delivery is accompanied by a delivery note showing the date of the PO; the PO number; the type and quantity of Goods; any applicable storage instructions; and, where delivery is by instalments, the balance of Goods yet to be delivered.
- c) Supplier shall deliver the Goods to, and unload them at, the Delivery Location during SPCPL’s normal hours of business (or as otherwise instructed by SPCPL in writing) on the date specified in the PO. Delivery shall be deemed completed on completion of such unloading. Supplier acknowledges that time of delivery is of the essence for SPCPL and any delay may lead to substantial damage on the part of SPCPL.
- d) If Supplier delivers (i) less than 95%; or (ii) more than 105% of the quantity of Goods ordered SPCPL may reject the Goods or, in the case of excess quantity, the excess Goods. Rejected Goods shall be returnable at Supplier’s risk and expense. If SPCPL accepts a delivery of more or less than the quantity of Goods ordered, a pro rata adjustment shall be made to the relevant invoice.
- e) Supplier shall not deliver Goods in instalments without SPCPL’s prior written consent. If SPCPL agrees to delivery by instalments, the Goods may be invoiced and paid for separately. Failure by Supplier to deliver any instalment on time or at all or any defect in any instalment shall entitle SPCPL to the remedies set out in **clause 6a**.
- f) Title and risk in the Goods shall pass to SPCPL on completion of delivery at the Delivery Location.
- g) SPCPL may (but is not obliged to) inspect/test the Goods prior to delivery. If, following any such inspection/testing, SPCPL considers that the Goods do not conform, or are unlikely to conform, with the Contract, SPCPL shall inform Supplier and Supplier shall immediately take such action as is necessary to ensure compliance. Notwithstanding any such inspection or testing, Supplier shall remain fully responsible for the Goods and the same shall not reduce or otherwise affect SPCPL’s rights and Supplier’s obligations under the Contract and SPCPL shall have the right to conduct further inspections/tests after delivery and/or after Supplier has carried out any remedial action. The provisions of Article 563 of the Civil Code are hereby excluded to the fullest extent permitted by law.

## **4) SUPPLY OF SERVICES**

- a) Supplier shall provide the Services to SPCPL in accordance with the Contract and shall meet any performance dates specified in the PO or notified to it by SPCPL.
- b) In providing the Services, Supplier acknowledges that SPCPL may rely or act on the Services and Supplier shall:
  - i) co-operate with SPCPL in all matters relating to the Services and comply with all SPCPL’s instructions;
  - ii) provide all equipment, tools and vehicles and other items required;
  - iii) obtain, and at all times maintain, all necessary licences or consents, comply with all applicable laws and regulations, and observe all health and safety and security policies, rules, regulations and requirements applicable at SPCPL’s premises; and
  - iv) not do, or omit to do, anything which may cause SPCPL to lose any ownership, licence, authority, consent or permission required for its business or which may prejudice the value of any IPR that is the subject of the Contract.

## **5) WARRANTIES ON GOODS AND SERVICES**

- a) In relation to the supply of Goods, Supplier warrants that:
  - i) it has full, clear and unencumbered title to the Goods and that, as at the date of delivery, it will have full and unrestricted rights to sell and transfer the same to SPCPL;
  - ii) the Goods shall correspond with the description and any applicable Specification;

- iii) the Goods are of satisfactory quality and comply with the relevant provisions of Polish law, Polish Norms, highest standards applied by the suppliers of similar goods and relevant trade practice applicable in the Poland and fit for any purpose held out by Supplier or made known to Supplier by SPCPL, expressly or by implication, and in this respect SPCPL relies on Supplier's skill and judgment;
  - iv) the Goods are free from defects in design, materials, workmanship and installation and will remain so for at least 12 months after delivery (or any longer period agreed);
  - v) the Goods comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling (including labelling of hazardous substances), packaging, storage, handling, transportation and delivery of the Goods;
  - vi) at all times it has and maintains all licences, permissions, authorisations, consents and permits required to carry out its obligations; and
  - vii) it shall provide all necessary product safety data sheets, instructions and all necessary written instructions as to safety precautions relevant to the use, application and disposal of the Goods.
- b) In relation to the supply of Services, Supplier warrants that:
- i) it has full, clear and unencumbered title to any Goods transferred to SPCPL as part of the Services and that, as at the date of delivery, it will have full and unrestricted rights to sell and transfer the same to SPCPL;
  - ii) the Services shall correspond with the description and any applicable Specification;
  - iii) the Services are of satisfactory quality and comply with the relevant provisions of Polish law, Polish Norms, highest standards applied by the suppliers of similar goods and relevant trade practice applicable in the Poland and fit for any purpose held out by Supplier or made known to Supplier by SPCPL, expressly or by implication, and in this respect SPCPL relies on Supplier's skill and judgment;
  - iv) the Deliverables and all Goods and materials supplied, used or transferred to SPCPL are free from defects in design, materials, workmanship and installation and will remain so for at least 12 months after supply (or any longer period agreed);
  - v) it shall perform the Services with the best care, skill and diligence in accordance with best practice in Supplier's industry, profession or trade using suitably skilled, competent and experienced personnel in sufficient number to ensure compliance with the Contract and using the best quality goods, materials, standards and techniques;
  - vi) at all times it has and maintains all licences, permissions, authorisations, consents and permits required to carry out its obligations; and
  - vii) it shall provide all necessary product safety data sheets, instructions and all necessary written instructions as to safety precautions relevant to the use, application and disposal of any Goods supplied, used or transferred to SPCPL as part of the provision of the Services.
- c) SPCPL's rights under the Contract (including, but not limited to, the warranties in this **clause 5**) are cumulative and in addition to all other rights provided by law, including the manufacturer's warranty specified in **clause 5e.**, and shall survive any delivery, inspection, acceptance or payment pursuant to the Contract. Notwithstanding **clause 17d**, it is agreed that all such warranties shall apply and extend to, and be enforceable by, any of SPCPL's Representatives, any customers of SPCPL and/or SPCPL's Representatives and any third party with whom SPCPL agrees to share the Goods and/or Deliverables.
- d) Supplier shall give to SPCPL not less than 12 months' notice in writing of any intention to cease, or reduce, production and/or supply of goods of the description and specification of the Goods. Such notification shall not affect Supplier's obligation to supply any Goods and/or Services pursuant to the Contract.
- e) Without prejudice to the foregoing provisions of this **clause 5**, Supplier shall procure that all Goods supplied carry the warranty of the original manufacturer and that SPCPL is given the benefit of the same.
- f) Nothing in this Conditions limits in any way the rights of the SPCPL under the statutory guarantee (*rękojmia*) as provided for by the Civil Code with the warranty period being equal to the ones specified in clauses 5.a.iv and 5.b.iv above.

## 6) SPCPL'S REMEDIES

- a) If Supplier fails to deliver the Goods and/or perform the Services by the agreed date(s), SPCPL may, without prejudice to its other statutory or contractual rights or remedies:
  - i) terminate or rescind the Contract with immediate effect by notice in writing to Supplier;
  - ii) refuse to accept any subsequent delivery of the Goods and/or performance of the Services which Supplier may attempt;
  - iii) recover from Supplier any costs incurred by SPCPL in obtaining substitute goods and/or services from a third party;
  - iv) require the refund of any sums already paid with any additional expenditure incurred by the SPCPL in connection with rescission or termination.; and/or
  - v) claim damages for any additional costs, losses or expenses suffered or incurred by SPCPL which are in any way attributable to such failure.
- b) If the Goods and/or Services do not comply with the Contract, SPCPL may, without prejudice to its other statutory or contractual rights or remedies, (regardless of any acceptance of the same):
  - i) in the case of Goods, reject the Goods (in whole or part) whether or not title has passed and return them to Supplier at Supplier's own risk and expense;
  - ii) in the case of Services, reject the Services (in whole or in part) and return any Deliverables to Supplier at Supplier's own risk and expense;

- iii) terminate or rescind the Contract with immediate effect by notice in writing to Supplier. The Supplier shall reimburse the SPCPL for any monies paid by such Services together with any additional expenditure incurred by the SPCPL in connection with rescission or termination;
  - iv) in the case of Goods, require Supplier to repair or replace the rejected Goods, or to provide a full refund of the price of the same (if already paid);
  - v) in the case of Services, require Supplier to re-perform the non-conforming Services or to provide a full refund of the price of the same (if already paid);
  - vi) refuse to accept any subsequent delivery of the Goods or supply of the Services which Supplier attempts;
  - vii) recover from Supplier any costs incurred by SPCPL in obtaining substitute goods and/or services from a third party; and/or
  - viii) claim damages for any additional costs, losses or expenses suffered or incurred by SPCPL which are in any way attributable to such non-compliance.
- c) The remedies set out above, together with all rights and obligations under the Contract, shall extend to any substituted or remedial services and/or repaired or replacement goods supplied by Supplier.
- d) SPCPL's rights under the Conditions are in addition to its rights and remedies implied by statute and common law.

## **7) SPCPL'S OBLIGATIONS.**

SPCPL shall provide Supplier with such access to SPCPL's premises as the Parties agree is required for the provision of the Services and shall provide such information as Supplier may reasonably request and which SPCPL considers reasonably necessary for the provision of the Services.

## **8) PRICE AND PAYMENT**

- a) The price for the Goods shall be as set out in the PO or as otherwise agreed in writing by the Parties. Unless otherwise stated in the PO, the price is Supplier's total remuneration for the Goods and is inclusive of every cost/expense of Supplier directly or indirectly incurred in connection with the same including, but not limited to, packaging, insurance and carriage costs but exclusive of value added tax.
- b) The price for the Services shall be as set out in the PO or as otherwise agreed in writing by the Parties. Unless otherwise stated in the PO, the price is Supplier's total remuneration for the Services and is inclusive of every cost/expense of Supplier directly or indirectly incurred in connection with the same but exclusive of value added tax.
- c) Supplier shall submit a valid invoice (together with such supporting documentation as SPCPL may reasonably require) on or after completion of delivery of the Goods and/or Services. In consideration for the supply of the Goods and/or Services, SPCPL shall pay each valid invoice by the end of the month following the month of receipt of the invoice.
- d) Payment by SPCPL of any invoice shall not constitute an admission as to the performance by Supplier of any of its obligations; or constitute a waiver of any of its rights under the Contract; or terminate any of Supplier's warranties.
- e) If SPCPL fails to pay when due any valid invoice, Supplier may charge interest on the overdue amount at the rate of 0.5 (a half of one) per cent per annum above the base rate for the time being of HSBC Continental Europe (Spółka Akcyjna) Oddział w Polsce (not more than the maximum interest according to Art. 359 § 2<sup>1</sup> of the Civil Code) accruing on a daily basis from the due date up to the date of payment, whether before or after judgment. This shall not apply to payments disputed in good faith by SPCPL.
- f) SPCPL may, at any time without notice to Supplier (and without prejudice to its other rights or remedies), set off any receivable of Supplier towards SPCPL against any receivable of SPCPL towards Supplier, whether either receivable is present or future, liquidated or unliquidated, whether under the Contract or not and irrespective of its currency or denomination.

## **9) IPR**

- a) Supplier warrants that:
  - i) it has not used, and will not use, the confidential information of any third party in connection with the supply of the Goods, the Services and/or any other item supplied by Supplier in connection with the PO;
  - ii) the development, creation, design, manufacture and/or supply of the Goods and/or Deliverables by or on behalf of Supplier will not in any way infringe the IPR of any third party;
  - iii) the Services and their performance by or on behalf of Supplier and/or their acceptance by SPCPL will not in any way infringe the IPR of any third party;
  - iv) it has full right and power to assign all IPR, in particular all economic copyrights to the Goods and/or Deliverables without limitation as to the manner of use thereof by the SPCPL, and to grant license to use the Goods and/or Deliverables in the scope specified below.
  - v) the performance by or on behalf of SPCPL or any of its Representatives or customers of any Act in relation to any the Goods and/or Deliverables will not in any way infringe the IPR of any third party.
- b) Supplier assigns to SPCPL, with full title guarantee and free from all third party rights, all Foreground IPR in the Goods and/or Deliverables (including Foreground IP created by a Representative (which should be included in contracts between the Supplier and Representative)). Supplier assigns and (i) shall ensure that it acquire from its Representative all Foreground IP to enable SPCPL to acquire Foreground IPR from the Supplier and/or (ii) and shall procure the signature of any written assignment of any such Foreground IPR from any Representative as is necessary to vest in SPCPL full and unencumbered ownership of all Foreground IPR. The above assignment of Foreground IPR covers i.a. right to obtain a patent for an invention, a protection right for a utility design and a right under registration of an industrial design, created, made and/or developed by Supplier and the above rights shall belong to the SPCPL throughout the entire world.

- c) The Supplier assigns to SPCPL and SPCPL acquires at the date of delivery, from the Supplier all Foreground IPR, which includes i.a. economic copyrights to copyrightable work contained in Goods and/or Deliverables throughout the entire world, on all fields of exploitation known by the Parties on the date hereof, in particular, on the following fields of exploitation specified in Art. 50 and Art. 74 Sec. 4 of Act on Copyright and Related Rights dated 4 February 1994:
- with respect to copyrightable works, which are not computer programs:
    - i) within the scope of fixing and reproduction of works - production of copies of a work with the use of specific technology, including printing, reprographics, magnetic fixing and digital technology;
    - ii) within the scope of trading the original or the copies on which the work was fixed - introduction to trade, lending for use or rental of the original or copies;
    - iii) within the scope of dissemination of works in a manner different from defined in point ii) - public performance, exhibition, screening, presentation and broadcasting as well as retransmission, and making the work publicly available in such a manner that anyone could access it at a place and time selected thereby.
  - with respect to copyrightable works, which are computer programs:
    - iv) the permanent or temporary reproduction of a computer programs in full or in part, by any means and in any form; where it is necessary to reproduce a computer program for its loading, displaying, running, transmitting and storing, consent of the right holder shall not be required for such acts;
    - v) the translation, adaptation, arrangement or any other alteration of a computer program, providing for the rights of the person who made such alterations;
    - vi) dissemination, including lending for use or rental, of a computer program or a copy thereof.
- d) Not later than at the time of delivery of the Goods and/or Deliverables which is a computer program, the Supplier is obliged to provide SPCPL with the source code of each computer program (or any change of computer program) created as a result of or in connection with execution by the Supplier of its obligations under Contract and any PO.
- e) At the moment of assignment of Foreground IPR including copyrightable works, the Supplier: (i) grants to SPCPL irrevocable consent for making modifications of copyrightable works (as a whole or in any part), (ii) grants to SPCPL irrevocable consent to exercise derivative rights tied with any modified copyrightable work; (iii) transfers on SPCPL the exclusive right to give its consent for exercising derivative rights (as regards use and disposal) tied with modified copyrightable works, (iv) transfer ownership of any copyrightable works carrier.
- f) Supplier:
- i) hereby grants to SPCPL a perpetual, worldwide, irrevocable, royalty-free, non-exclusive licence to use and sublicense others to use, and sub-license the use of, the Background IPR for the purposes of performing any Act in relation to the Goods and/or Deliverables. on all fields of exploitation specified in clause (c) above along with all rights and consents specified in clause (c) above. The license and above mentioned rights and consents are granted for the period of 5 years and after the lapse of this period prolong automatically for unspecified period of time (perpetually).
  - ii) shall promptly notify SPCPL of any Background IPR (including without limitation patents and registered designs, and applications for the same) when (i) it is used in the performance of the Services; and/or (ii) it comes into existence; and/or (iii) Supplier becomes aware the use of which is or may be necessary in order to perform any Act in relation to the Goods and/or Deliverables;
  - iii) shall promptly provide SPCPL with any information requested by SPCPL from time to time in relation to any Background IPR;
  - iv) shall give to SPCPL not less than 30 Business Days' notice of any of the following:
    - v) any proposed assignment by Supplier to any third party of any Background IPR;
    - vi) any proposed license by Supplier to any third party of any Background IPR, or termination or threatened or likely termination or amendment of any licence to Supplier of any Background IPR, which may restrict or otherwise adversely affect (A) Supplier's ability to perform any of its obligations under the Contract (including, but not limited to, the supply of any of the Goods and/or Deliverables to SPCPL and the performance of any of the Services); or (B) the exercise of any of the rights licensed under clause 9f.i;
  - vii) shall promptly provide SPCPL with any assistance reasonably requested by SPCPL (including, without limitation, executing formal licences) in relation to recording in the relevant registries the licence granted under clause 9c.i against any registered Background IPR;
  - viii) shall procure that any assignment or licence by Supplier to any third party of any Background IPR is expressly subject to the licence under clause 9c; and
  - ix) shall promptly give SPCPL written notice of any third party IPR (including, without limitation, patents and registered designs, and applications for the same) of which Supplier is aware, or becomes aware, which will or may be infringed by the performance of the Services or of any Act in relation to any Goods and/or Deliverables.
  - g) Supplier shall obtain non-performance obligation of all moral rights in any Deliverables to which any individual is now, or may in the future be, entitled under Chapter III of the Copyright and Related Rights Law dated 4 February 1994 or any similar provisions of law in any jurisdiction.
- h) At SPCPL's request, Supplier shall promptly do (or procure to be done) all such further acts and things and execute all such documents as SPCPL may from time to time require to secure for SPCPL the full benefit of the Contract, including all right, title and interest in and to any IPR assigned or licensed to SPCPL pursuant to **clause 9**.
- i) Supplier shall pay to the SPCPL, upon its first demand, on basis of a guarantee liability (*na zasadach odpowiedzialności gwarancyjnej*), the amount equal to any and all damage (including lost profits), costs, expenses,

including any interest, fines, legal and other fees and expenses awarded against, or incurred or paid by, SPCPL as a result of, or in connection with

- i) any breach of any of the warranties set out in this clause 9 or of any of clause 9b-k (inclusive); or
  - ii) without limitation to clause 9f.i any claim made against SPCPL for actual or alleged infringement of a third party's IPR arising out of, or in connection with, any Act in relation to any Goods and/or Deliverables; and/or the performance, acceptance, receipt or use of the Services.
- j) Parties hereby agree and confirm that the remuneration specified in clause 8 includes remuneration for transfer of rights, grant of the license and performance of other obligations referred to in clause 9, including for the transfer of economic copyrights, grant license in all fields of exploitation and for the ownership of the media on which the Goods and/or Deliverables will be fixed.
- k) The Parties agree that after 5 years of the duration of the license, it may be terminated with a 5-year notice period, with effect at the end of the calendar year. Nevertheless, the Supplier hereby agrees not to terminate, withdraw or otherwise cause the license to expire in whole or in any part.

#### **10) SPCPL MATERIALS/EQUIPMENT.**

All SPCPL Materials are and shall remain the exclusive property of SPCPL, and Supplier shall hold them in safe custody at its own risk, maintain the same in good condition pending SPCPL's instructions and not dispose of or use the same other than in accordance with SPCPL's instructions or authorisation.

#### **11) INDEMNITY AND INSURANCE**

- a) Supplier shall pay to SPCPL, upon its first demand, on basis of a guarantee liability (*na zasadach odpowiedzialności gwarancyjnej*), the amount equal to any and all damage (including lost profits), costs, expenses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis and all other professional costs and expenses), suffered or incurred by SPCPL as a result of, or in connection with (i) any defect in the Goods and/or Services (including but not limited to any claim made against SPCPL by a third party arising out of or in connection with the same); (ii) any claim made against SPCPL by a third party arising out of or in connection with the supply of the Goods or the Services, to the extent that such claim arises out of the breach, non-performance or improper performance of the Contract by Supplier, its employees, agents or subcontractors; and (iii) any breach by Supplier of any of the Conditions or Contract.
- b) During the term of the Contract and for a period of twelve months thereafter, Supplier shall maintain in force, with a reputable insurance company, professional indemnity insurance, product liability insurance and public liability insurance to cover the liabilities that may arise under, or in connection with, the Contract and shall, on SPCPL's request, produce the insurance certificate or insurance policy giving details of cover and the receipt for the current year's premium for the same.
- c) This **clause 11** shall survive the expiry or termination of the Contract.

#### **12) CONFIDENTIALITY.**

Each Party shall keep confidential all information of a secret or confidential nature (including technical or commercial know-how, specifications, inventions or processes or information concerning the other Party's business, products or services) disclosed to it by the other Party or its Representatives or of which it becomes aware and each Party shall restrict disclosure of such confidential information to those of its officers or employees who need to know it for the purpose of the Contract and shall ensure that each such officer or employee is bound by obligations of confidentiality at least as onerous as those which bind it. If the Parties enter a separate confidentiality agreement, the provisions of that agreement shall also apply to protect the Parties' confidential information and shall supersede the Conditions in the case of any conflict. Notwithstanding the foregoing, each Party may disclose such of the other Party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction and SPCPL may disclose confidential information of Supplier to any of SPCPL's Representatives at any time. This **clause 12** shall survive 5 years after the expiry or termination of the Contract.

#### **13) TERMINATION (RESCISSION)**

- a) Without prejudice to its other rights or remedies, either Party may terminate or rescind the Contract with immediate effect by notice in writing to the other if:
- i) the other Party commits a material breach of the Contract which is not remediable or, if remediable, fails to remedy the same within 30 days' of receipt of notice in writing from the non-defaulting Party notifying it of the breach and requiring it to remedy it;
  - ii) the other Party repeatedly breaches any of the terms of the Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of the Contract;
  - iii) the other Party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or ceases, or threatens to cease, carrying on all or a substantial part of its business;
  - iv) the other Party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts or makes a proposal for, or enters into, a compromise or arrangement with its creditors;
  - v) a petition is filed, notice given, resolution passed or order made for, or in connection with, the other Party's winding up;
  - vi) the other Party becomes insolvent, threatened by insolvency, liquidation has been initiated or any of other Party's creditors has filed for enforcement from its assets

- vii) a creditor or encumbrancer of the other Party attaches or takes possession of, or a distress, execution, sequestration or other process is levied, enforced on or sued against, the whole or part of its assets and is not discharged within 14 days;
  - viii) a court application or order is made for the appointment of an administrator or notice of intention to appoint an administrator is given or an administrator is appointed over the other Party or a person becomes entitled to appoint or appoints an administrative receiver/receiver in respect of the other Party; or
  - ix) an event analogous to any of the foregoing occurs in any jurisdiction.
- b) Without prejudice to its other rights or remedies, SPCPL may rescind the Contract with immediate effect by notice in writing to Supplier, in which case SPCPL shall pay Supplier fair and reasonable compensation for work completed as at the date of rescission (which shall not include loss of anticipated profits or any consequential loss) but shall otherwise have no liability to Supplier. The rescission right may be exercised within 3 years from the execution of the Contract, not after its due performance.
- c) If the Contract is for the supply of both Goods and Services, SPCPL may rescind the Contract in respect of the Goods or in respect of the Services and the Contract shall continue in respect of the remaining supply.
- d) On the expiry or termination or rescission of the Contract (in whole or part) for any reason:
- i) in the case of a Contract for Services, Supplier shall immediately deliver to SPCPL all Deliverables, whether or not complete, and promptly return all SPCPL Materials to SPCPL. If Supplier fails to do so, SPCPL may enter Supplier's premises and take possession of them. Until they have been returned or delivered, Supplier shall be solely responsible for the safe keeping of all Deliverables and SPCPL Materials in its possession and will not use them for any purpose not connected with this Contract;
  - ii) the Parties' accrued rights and remedies as at expiry or termination shall not be affected including the right to claim damages in respect of any breach of the Contract in existence at or before the date of expiry or termination; and
  - iii) any Conditions which, expressly or by implication, have effect after expiry or termination or rescission shall continue in full force and effect.

#### **14) FORCE MAJEURE.**

Neither Party shall be in breach of the Contract nor liable to the other for any delay in performing, or failure to perform, any of its obligations under it to the extent such delay or failure is caused by an event or circumstance beyond its reasonable control which was unforeseeable or, if foreseeable, unavoidable. Supplier shall use all reasonable endeavours to mitigate the effect of any such event or circumstance on the performance of its obligations. If such event or circumstance prevents Supplier from supplying the Goods and/or Services for a continuous period of more than 30 days, SPCPL may, without prejudice to its other rights or remedies, terminate the Contract immediately by notice in writing to Supplier.

#### **15) ASSIGNMENT AND SUBCONTRACTING.**

Supplier shall not assign or otherwise transfer any of its rights under these Conditions or any Contract nor subcontract or delegate in any manner any or all of its obligations to a third party without SPCPL's prior written consent.

#### **16) NOTICES.**

Any notice or other communication given to a Party under or in connection with the Contract shall be in writing (excluding email) in either English or Polish and delivered personally or by courier or sent by first class or recorded post to the other Party's registered office (or principal place of business if not a company). Any notice shall be deemed served (i) if delivered personally or by courier, when left at the correct address; and (ii) if sent by first class or recorded post at 9.00 am on the second Business Day after posting (for a Polish Supplier) or on the fifth Business Day after posting (for an international Supplier). In proving service it shall be sufficient to prove that the notice or communication was properly addressed and delivered or posted (as the case may be). Notices may not be sent by email.

#### **17) GENERAL**

- a) A waiver of any right under the Contract is only effective if in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a Party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
- b) If any provision (or part provision) of the Conditions is found to be wholly or partly illegal, invalid or unenforceable, that provision (or part) shall, to the extent required, be deemed deleted and the validity and enforceability of the other provisions shall not be affected.
- c) Nothing in the Conditions is intended, or shall be deemed, to constitute a partnership or joint venture between the Parties, nor constitute a Party as agent of the other. No Party has authority to act as agent for, or bind, the other.
- d) Except as stated otherwise in this **clause 17d** and **clause 5c**. Notwithstanding the foregoing, any of SPCPL's Representatives may enforce any term of the Contract as though it were a party to the same including, but not limited to, the warranties contained in **clause 5**.
- e) Nothing in the Conditions is intended to exclude or limit either Party's liability for (i) fraud or fraudulent misrepresentation; or (ii) death or personal injury caused by its negligence.
- f) Any variation to the Contract (including additional terms and/or conditions) shall only be binding if expressly agreed in writing by both Parties and signed by SPCPL.

## **18) ETHICAL STANDARDS.**

- a) Each Party shall hold itself and its affiliates to the highest performance, ethical and compliance standards, including (i) basic human rights, (ii) not engaging in any activity, practice or conduct which would constitute an offence under anti-slavery legislation in the United Kingdom (in particular the UK Modern Slavery Act 2015) or the U.S. (in particular the California Transparency in Supply Chains Act of 2010), (iii) encouraging fair and equal treatment for all persons, including paying fair wages, (iv) the provision of safe and healthy working conditions, (v) respect for the environment, (vi) the adoption of appropriate management systems and (vii) the conduct of business in an ethical manner.
- b) Each Party shall comply with all applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption. Each Party shall not offer, pay, promise to pay, or authorise the giving of any financial or other benefit to any person for the purpose of obtaining an improper advantage, or otherwise conduct itself in a manner contrary to the UK Bribery Act 2010, the Polish Criminal Code dated 6 June 1997, or any other applicable anti-bribery law. Each Party shall promptly report to the other Party any request or demand for any undue or suspicious financial or other advantage of any kind received by it in connection with the sales contemplated under these Conditions.
- c) Each Party warrants that it has and will continue to have monitoring, financial recordkeeping and reporting systems in compliance with, and each Party shall strictly observe the requirements of, the UK Proceeds of Crime Act 2002, the UK Terrorism Act 2000, the UK Fraud Act 2006, the US Patriot Act, and that it complies with the laws, regulations and lists administered by HM Office of Financial Sanctions Implementation (“**OFSI**”) in the UK or the US Department of Treasury’s Office of Foreign Assets Control (“**OFAC**”), the Polish Criminal Code dated 6 June 1997, the Polish Fiscal Penal Code dated 10 September 1999 and the applicable anti-money laundering statutes of jurisdictions where it (and its affiliates) conduct business, and that it strictly observes the rules and regulations (and any related or similar rules, regulations or guidelines), issued, administered or enforced by any governmental agency thereunder (together, the “**AML Legislation**”), and that no action, suit or proceeding by or before any court or governmental agency, authority or body or any arbitrator involving that Party (or any of its affiliates) with respect to the AML Legislation is pending or, to the best knowledge of the Party, threatened.
- d) Supplier shall not engage in any activity, practice or conduct which would constitute either a UK tax evasion facilitation offence under section 45(1) of the UK Criminal Finances Act 2017 or a foreign tax evasion facilitation offence under section 46(1) of the Criminal Finances Act 2017, article 54 of the Polish Fiscal Penal Code dated 10 September 1999, article 119a of the Polish Tax Ordinance dated 29 August 1998. Supplier shall promptly report to SPCPL any request or demand from a third party to facilitate the evasion of tax or any suspected tax evasion offences or facilitation of tax evasion offences, whether under Polish law, or under the law of any foreign country, in connection with the performance of this Contract.

## **19) DATA PROTECTION.**

- a) Each Party shall comply with the Data Protection Legislation.
- b) Each Party shall, in particular:
  - i) process any Personal Data received from each other only to the extent, and in such manner, as is necessary for the purposes of complying with the data recipient’s obligations under the Conditions and in accordance with the data owner’s instructions;
  - ii) take appropriate technical and organisational measures to ensure a level of security appropriate to the risks that are presented by such processing, in particular from unlawful or unauthorised processing, accidental loss, destruction, damage, alteration, disclosure of or access to such Personal Data, taking into account the state of the art, the costs of implementation, the nature, scope, context and purposes of processing and the likelihood and severity of risk in relation to the rights and freedoms of the data subjects;
  - iii) ensure that any employees or other persons the data recipient authorise to process the Personal Data on its behalf are subject to appropriate obligations of confidentiality and process the Personal Data in accordance with the data controller’s instructions;
  - iv) treat such Personal Data as confidential information;
  - v) not process or transfer such Personal Data outside the EEA without the data controller’s prior written consent;
  - vi) not engage any third party to carry out processing obligations under these Conditions without obtaining the data controller’s prior written consent and, where such consent is given, procuring by way of a written contract that such third party will, at all times during the engagement, be subject to data processing obligations equivalent to those set out in this clause;
  - vii) notify the data controller, as soon as reasonably practicable, about any request or complaint received from data subjects without responding to that request (unless authorised to do so by the data controller) and assist the data controller by technical and organisational measures, insofar as possible, for the fulfilment of the data controller’s obligations in respect of such requests and complaints;
  - viii) on the data controller’s request and taking into account the nature of the processing and the information available to the data recipient, assist the data controller in ensuring compliance with its obligations under arts. 32 to 36 of the GDPR (where applicable);
  - ix) on request by the data controller, make available all reasonable information necessary to demonstrate its compliance with these obligations and otherwise permit, and contribute to, audits carried out by the data controller; and promptly delete or destroy all Personal Data and delete all existing copies of such Personal Data (in each case unless otherwise agreed in writing by the data controller), as soon as reasonably possible.

## **20) IMPORT AND EXPORT CONTROLS.**

- a) Supplier shall comply with all applicable Export Regulations and Economic Sanctions Programmes.



- b) Supplier is responsible for obtaining, at its own cost, such import and/or export licences and other consents in relation to the provision of the Goods and/or Services as are required from time to time and shall make the same available to SPCPL immediately on request.
- c) Supplier shall pay to the SPCPL, upon its first demand, on basis of a guarantee liability (*na zasadach odpowiedzialności gwarancyjnej*), the amount equal to any and all damage (including lost profits), liability, loss, damage, claims, costs or expense of any kind suffered or incurred by SPCPL as a result of, or in connection with, any failure by Supplier, its employees, agents or subcontractors to comply with any applicable Export Regulations and Economic Sanctions Programmes and/or any part of this **clause 20**.

**21) GOVERNING LAW AND JURISDICTION.**

Each Party irrevocably accepts that these Conditions and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), are governed exclusively by and construed in accordance with, Polish law with exclusion of the provisions of the United Nations Convention on Contract for the International Sale of Goods (CISG). Each Party irrevocably accepts the exclusive jurisdiction of the courts of Poland with venue jurisdiction for SPCPL to resolve any dispute arising from or connected to these Conditions or the commercial transaction contemplated by it.