

General Terms and Conditions of Purchase & Payment (GT CPP) 03/2009

1. Applicability/Conclusion of Contract

Contracts, Framework Contracts, and individual Orders concerning the rendering of services or deliveries, where to RWE Polska S.A. (hereinafter referred to as „RWE Polska S.A." or the „Orderer") is a Party, are concluded and performed in accordance with these General Terms and Conditions of Purchase and Payment (hereinafter referred to as „GT CPP") as well as additional terms and conditions possibly indicated in the Order.

The commercial conditions proposed by the Mandatory, other than set forth in GT CPP, a Contract, Framework Contract or Order, should be subject to additional negotiations and should be approved by RWE Polska S.A. as well as taken into account in a relevant amendment to the Contract, the Framework Contract or to the Order.

Contracts, Framework Contracts, Orders as well as agreements and amendments connected with them, are binding for RWE Polska S.A. only in the event of concluding them in writing.

2. Subcontractors

If the Mandatory intends to commission third parties to perform the whole or part of an Order, it shall require a prior written consent of RWE Polska S.A. This applies accordingly in the event of a change of the subcontractor during the performance of an Order and the commissioning of another subcontractor. The Mandatory bears full responsibility for the action or omission of action by such subcontractors.

3. Shipment

The Mandatory is obliged to comply absolutely with the principles and regulations of RWE Polska S.A. concerning commodity deliveries, and in particular shipment addresses. All costs incurred as a result of and in connection with non-compliance with the principles and regulations of RWE Polska S.A. shall encumber the Mandatory, unless It proves in an undisputable way that It does not bear responsibility for them.

The Mandatory is obliged to an immediate delivery to RWE Polska S.A. of a notification concerning the shipment to the shipment address, stating the data of the Order indicated by RWE Polska S.A. in the Order. The performed Order shall be sent by the Mandatory to the shipment address indicated in the Order or possibly to other recipients' addresses indicated in the Order.

4. Deadlines/Acceptance

The times/deadlines of performances indicated in the Order are binding for the Mandatory. The Mandatory is obliged to immediately inform RWE Polska S.A. about any circumstances or a possibility of circumstances which indicate that the deadline of the Order will not be met. If the delay occurs for

reasons for which the Mandatory or Its subcontractors are responsible, RWE Polska S.A. shall be entitled to calculate interest for the delay in the amount of [0.05%] for each started day of the delay. If the delay exceeds [14] days, RWE Polska S.A. shall have the right to cancel the Order and demand additional payment of contractual penalty in an amount not smaller than 25 % of the value of the Order. In the event of a delay for which the Mandatory is not responsible, RWE Polska S.A. and the Mandatory will agree a change of the deadline for the realization of the performance.

The Mandatory is obliged to inform RWE Polska S.A. in writing about completion of the Order. Every performance realized under a Contract for a Specific Task or a contract with similar legal character, requires acceptance, and a protocol thereof. The Acceptance Protocol should contain agreements made during the acceptance, as well as deadlines set for the elimination of defects or faults, if found. The signed Protocol shall be the basis for issuing an invoice by the Mandatory. The sending of the final invoice or written information about completion shall not be considered as acceptance.

The above-mentioned reservation does not concern Orders in the event of which acceptance from the substantive and technical perspectives is excluded.

5. Prices/ Mandatory's Remuneration

The prices stated in the Contract or in the Order are fixed net prices which are not subject to negotiations. The Mandatory's Remuneration set forth in the Contract or in the Order is a lump sum remuneration not subject to change. If the Contract or the Order does not state the price or the amount of the Mandatory's Remuneration, RWE Polska

5. A. reserves the right to recognition of the prices or remuneration calculated subsequently on the basis of the current market situation for similar Orders.

Unless agreed otherwise in writing, the price shall include the costs of packaging, taxes, custom duties and insurance, until delivery to the indicated shipment address/ place of use, as well as installation and commissioning (if relevant).

If, in accordance with the agreements, RWE Polska S.A. does not keep the packaging, it will be sent back at the cost of the Mandatory, and the calculated costs of the packaging relevantly reduce the price. The above regulations also concern all types of pallets, including replacement.

6. Security/Guarantees

The Mandatory is obliged to establish the following security or guarantees on the demand of RWE Polska S.A.:

a) Security recognised as advance payment: if advance payments are set forth in a Contract, Framework Contract or in an Order, the Mandatory shall establish a security in the form of a guarantee corresponding in amount to the advance payments subsequently due for individual performances within the scope of realizing the Order. This guarantee is to secure the payments to which the mutual performance of the Mandatory does not correspond to the full amount.

The term of validity of such a guarantee shall be set as longer than the planned deadline of the performance of a contract (delivery/rendering of service deadline) by minimum 30 days. Return of the guarantee document will take place when all performances secured with such a guarantee are realized by the Mandatory in accordance with the Contract (Order), as well as when the paid advance payment is settled with the payment due or also after the lapse of the term of validity of this guarantee document.

b) Security for due performance of the contract: shall be submitted 7 (seven) days prior to the signing of the Contract by RWE Polska S.A. to secure the claim of RWE Polska S.A. concerning the appropriate and compliant with the Contract realization of all performances. Such a security shall be set in the amount of 10% of the gross amount of the Order (including all annexes). This security secures in particular the timely, ready to be accepted, performance together with claims concerning the damage resulting from delay or elimination of defects existing before the acceptance. This security covers also possible claims concerning the repayment of overestimated advance payments. If the Mandatory does not submit the full security of performance on the above-mentioned dates, RWE Polska S.A. shall be entitled to withhold the payment of advance payments until the full amount of the security is made. The term of validity of the security shall be determined as minimum 30 days longer than the date of the expiry of the Contract, as set forth in the Order. Return of the security document will take place after the Mandatory realizes all due performances, including their settlement, fully and in accordance with the Contract (Order), or after the lapse of the term of validity of this security document.

c) Security of fulfilling obligations as warranty and guarantee: should be submitted in order to secure the warranty or guarantee claims of RWE Polska S.A. in the amount of 5 % of the Gross value of the Order (together with all annexes), 30 days before the deadline for the performance of the Contract set forth in the Order, but not later than 30 days before the lapse of the term of validity of the security mentioned in b) above. The term of validity of the security is set for longer by minimum 30 days from the planned date of expiry of the guarantee period. Return of the security document will take place immediately after the lapse of the warranty period or quality guarantee and satisfying all claims filed until that moment by RWE Polska S.A. or after the lapse of the term of validity of this security document.

All securities should be made according to the templates sent by RWE Polska S.A., and they should be established as unconditional and irrevocable. All securities should be issued by a credible bank, another financial institution, or another entity (i) selected from a list sent by RWE Polska S.A. or (ii) accepted by RWE Polska S.A. The securities should be governed by Polish laws only and, at the discretion of RWE Polska S.A., indicate as competent the court competent for the place of realizing the performance or the court competent for the registered office of RWE Polska S.A. The costs of issuing the security shall be paid by the Mandatory.

7. Payments

Payments for realized performances shall be made against a VAT invoice or another account document permitted by adequate legal regulations. If the Mandatory is a VAT payer, It issues and sends a VAT invoice, or an account document if It is not a VAT payer. Unless otherwise agreed, an

original copy of the VAT invoice (account document) , should be sent to the address indicated on the Order in one copy. If, because of the VAT invoice (account document), RWE Polska S.A. has future financial consequences, the Mandatory undertakes to return the value of these consequences. In particular, if for reasons attributable to the Mandatory, RWE Polska S.A. will not be entitled to deduct VAT from the invoice issued by the Mandatory or, if the right to deduct will be questioned by tax authorities, the Mandatory will pay to RWE Polska S.A. compensation corresponding to the value of the damage incurred in connection therewith. The Mandatory is obliged to detail on the invoice prepayments made. The VAT invoice (account document) should be issued in accordance with the legal regulations applicable in this respect, and in particular, it should contain proper names and addresses of both the issuer and the addressee, and their tax identification numbers. In order to assure a timely payment, the invoice should show the Order number or the number of the Contract concluded between the Orderer and the Mandatory.

8. Payment deadline

- a) The remuneration of the Mandatory shall be paid by a transfer made by RWE Polska S.A. within 30 days from the date of delivery of a VAT invoice (account document). If the payment deadline falls on a Saturday or another day off work, the payment shall be made on the first business day after the date of the payment deadline.
- b) If the Mandatory is obliged to establish the security mentioned in 6 c) above, the final invoice shall be paid with observance of the date mentioned in a) above and after a prior receipt of the document of the above-mentioned security.
- c) Unless the Parties agree otherwise, if RWE Polska S.A. makes the payment before the date mentioned in a) above, the following amount of discount shall be accepted:

- 1.0% - if the payment is made within 21 days;
- 1.5% - if the payment is made within 14 days;
- 2.0% - if the payment is made within 7 days.

- d) If RWE Polska S.A. makes a payment with the discount set forth in c) above taken into account, the Mandatory shall be obliged to deliver the correcting invoice (adjusted account document) no later than within 7 days from the date of making the payment.

The payments are made subject to corrections in the event of later complaints.

9. Assignment of receivables / setoff

Without a prior written consent of RWE Polska S.A., the Mandatory is not entitled to transfer its receivables with regard to RWE Polska S.A. to any third parties, or to commission their recovery by third parties. RWE Polska S.A. is entitled to offset mutual receivables and liabilities resulting from the Contracts/Orders concluded on the basis of these General Terms and Conditions of Purchase & Payment.

RWE Polska S.A. is entitled to offset the Mandatory's receivables with regard to RWE Polska S.A. with the receivables of other companies of the RWE Group. Moreover, RWE Polska S.A. is entitled to offset the receivables that are due to the Mandatory with regard to the companies belonging to the RWE Group with its own receivables due to the Mandatory.

10. Title/Provision of Materials/Processing

Upon its acceptance, the performance becomes the property of RWE Polska S.A. The Mandatory is obliged to separate the material provided by RWE Polska S.A. from other materials, mark it as property of RWE Polska S.A., and store it with due diligence of a fair entrepreneur. The Mandatory is obliged to secure such materials against illegal access of third parties, and to immediately inform RWE Polska S.A., at its request, about any changes in quantity (such as theft, damage, or depletion) as well as about the condition (e.g. limited application) of the materials provided.

Any processing or transformation of materials shall be carried out by the Mandatory for RWE Polska S.A. If the material, to which RWE Polska S.A. has reserved a title, is processed with other materials not belonging to RWE Polska S.A., then RWE Polska S.A. shall acquire the title to the new object pro rata the purchase price (including VAT) of the material belonging to RWE Polska S.A. relative to other objects processed at the time of the processing. The above regulation is valid accordingly at mixing or combining, unless the other thing, not belonging to RWE Polska S.A., is considered to be the principal thing.

11. Guarantee/Warranty

The Mandatory is responsible under the warranty for lack of defects, including legal defects, of the performance. If it results from the nature of the Order, the Mandatory shall be obliged to provide RWE Polska S.A. a guarantee of quality of delivery. The period of the guarantee may not be shorter than 2 (two) years. In accordance with the decision of RWE Polska S.A., the Mandatory shall be obliged to eliminate at its own expense all faults and defects occurring during the guarantee period – e.g. resulting from non-compliance with the Order or Contract as far as performance is concerned, or from using substandard material, or from non-compliance with the rules of law or acknowledged technical standards - or fulfil the conditions in accordance with Order/Contract as a new delivery pursuant to the provisions of Articles 556 - 576 of the Civil Code.

If the Mandatory does not eliminate the faults and defects in response to the first RWE Polska S.A.'s complaint within the appropriate dates set, RWE Polska S.A. shall be entitled to, without the necessity of further call and without setting an additional deadline, eliminate the faults and defects by itself or to commission them to third parties, and to deduct the incurred costs from the amount on the Mandatory's invoice, or to charge these costs directly to the Mandatory.

If the appropriate performance of the Contract (Order) in accordance with the above-defined provisions fails, RWE Polska S.A. has the right to renounce the Contract or reduce the scope of the Mandatory's performance, which does not breach RWE Polska S.A.'s compensation claim, in particular, also compensation claims instead of Contract performance claims.

RWE Polska S.A. shall be obligated to immediately check the object of the performance paying special attention to faults and defects during the appropriate period of maximum 5 (five) business days after the delivery of the goods, and to lodge a complaint within 3 (three) subsequent business days.

12. Liability

The Mandatory shall bear liability for any breach of obligations and the resulting damage, unless It proves that It is not responsible for a given breach. Moreover, the Mandatory shall relieve RWE Polska S.A. of any and all compensation claims from third parties who make claims to RWE Polska S.A. for reasons resulting from faults of the performance of the Mandatory, unless RWE Polska S.A. proves that It is not liable for the event resulting in damage.

13. Termination

In the event of a Contract for a Specified Task or a Contract of a similar character, RWE Polska S.A. may terminate the Contract/renounce the Order at any time. In such an event, the Mandatory, taking into account the saved outlays, shall receive part of the remuneration corresponding to the proportion of part of performance conducted hitherto to the whole Order, unless the Mandatory proves that Its Outlays saved as a result of non-performance are lower. In the event of termination of the Contract/renouncement of the Order by RWE Polska S.A. for an important reason for which the Mandatory is responsible, the Mandatory shall receive part of remuneration corresponding to the proportion of performance conducted hitherto in relation to the whole Order. The Mandatory shall not be entitled to further claims concerning the payment of remuneration.

The Mandatory may only demand remuneration due for performing part of the Order (Contract), according to the progress of work as at the day of service of the termination/renouncement, less contractual penalties. The Mandatory, immediately after receipt of a written notice about the above mentioned fact, shall refrain from performing any works connected with the performance of the Order, as well as, together with the Orderer, shall prepare an inventory of work in progress recorded by a protocol according to the progress of work as at the day of the termination/renouncement.

RWE Polska S.A. may terminate the Contract immediately only if the Mandatory withholds Its payments, is threatened with insolvency, or an insolvency or arrangement petition has been filed as regards Its assets.

14. Safety stipulations

When performing the Contract or individual Orders, the Mandatory is obliged to comply with legal regulations, technical standards, and acknowledged technical principles, including Health and Safety regulations, construction law regulations, business activity law, as well as regulations concerning road traffic (in particular obligations concerning supervision and traffic safety at construction sites as well as other work places); this also applies to observing the applicable regulations concerning environmental protection and waste removal issues. The object of performance, at the time of performance, should be in accordance with the currently applicable provisions of law.

When delivering hazardous substances to RWE Polska S.A., the Mandatory shall be obliged to check the updated hazardous substance data sheet and ensure that, if needed (e.g. change of recipe, change of categorization or classification of hazardous materials), an updated hazardous substance data sheet be sent, containing the number of the Order, item in the Order, and, if relevant, material number to the address: RWE Polska S.A., 00-347 Warszawa, ul. Wybrzeże Kościuszkowskie 41. Delivery of the hazardous substance data sheet shall belong to the fixed scope of performances – the costs incurred by the Mandatory shall be included in the Mandatory's prices/remuneration.

15. Data Protection

RWE Polska S.A. is entitled to collect, process and use personal data obtained in connection with the performance of the Contract/Framework Contract or Order within the meaning of the Data Protection Law, as well as to pass these data to companies belonging to the RWE Group. In connection with cooperation of the Parties under the Contract/Order, RWE Polska S.A. provides the Mandatory with all justified and required information and materials necessary for a proper performance of the Order. Correspondence between RWE Polska S.A. and the Mandatory, related to the performance of the Order, as well as any information and materials obtained by the Mandatory from RWE Polska S.A. may be used exclusively for the purpose of performing the Order. The Mandatory shall keep confidential all documents, materials and studies made for RWE Polska S.A. and on Its Order, within the scope of the Order, and will not make them available to third parties in any way during the term of the Contract or Framework Contract, nor after its termination. If the information provided by RWE Polska S.A. constitute state or professional secrecy, prior to obtaining the information, the Mandatory cooperating with RWE Polska S.A. will undergo procedures set forth in the Law on Confidential Information Protection and will obtain a certificate of personal and industrial safety relevant to the Confidentiality Clause.

16. Code of Ethics

The Mandatory is obliged to familiarize itself and comply with the Code of Ethics of the RWE Group, available in the section „Dostawcy/Przetargi” (Suppliers/Tenders) at the following web page: www.rwe.pl.

17. Visit at the Mandatory's

RWE Polska S.A. is entitled to carry out inspections, tests, and examinations of materials and foods used in the production of the object of performance of the Mandatory, after a prior written notice sent to the Mandatory. The Mandatory is obliged to take into account all remarks or reservations reported by RWE Polska S.A. resulting from such visits, unless they lead to a fundamental change of the object of performance.



18. Force Majeure

RWE Polska S.A. reserves the right to withhold the acceptance of the whole or of part of the Order together with the resulting payments in the event of any circumstances beyond Its control, which RWE Polska S.A. was not able to foresee, and which hinder the acceptance of the whole or of part of the Order, or make it impossible. In such cases, the realization of the whole or part of the Order together with the resulting payments shall be suspended until RWE Polska S.A. calls the Mandatory to restart the performance of the Order. RWE Polska S.A. shall not be responsible towards the Mandatory for losses resulting from such a suspension of the Order.

19. References / Advertising

Without RWE Polska S.A.'s prior written consent, the Mandatory is not entitled to use information concerning the intended or existing cooperation for reference or marketing purposes. Also, it is prohibited to take photographs on the land or construction sites of RWE Polska S.A. or the addressee of a service, or to publish any material concerning this topic without a prior written consent of RWE Polska S.A.

20. Place of Performance of the Order/ Competence of a Court/Jurisdiction

The place of performance of the Order by the Mandatory is the shipment address/place of performance indicated by RWE Polska S.A., or an agreed place of rendering a service.

The court competent for all disputes arising from or connected with the Contract, Framework Contract, or Order is the court competent for the registered office of RWE Polska S.A., unless otherwise stated by the law.

The laws of the Republic of Poland shall apply exclusively. Application of the UN Convention on Contracts for the International Sale of Goods shall be excluded.