



Terms and Conditions

1. DEFINITIONS

In these Conditions, the following definitions apply:

Company	means Beck & Pollitzer Polska Spółka z ograniczoną odpowiedzialnością (limited liability company) with its registered office in Sosnowiec, address: ul. Wopistów 13D, 41-215 Sosnowiec, entered in the Register of Entrepreneurs kept by the District Court Katowice-Wschód in Katowice, 8th Commercial Division of the National Court Register under the KRS No. 000009494, NIP No. (Tax Identification Number): 6443032611.
Company Personnel	means all employees, staff, officers, individual contractors and sub-contractors, other workers, agents and consultants, of the Company who are engaged in the provision of the Services, from time to time;
Conditions	means these terms and conditions;
Contract	means the agreement for the supply of Services, comprising these Conditions, the relevant Quotation and (if applicable) the relevant Order and Order acknowledgement;
Customer	means the person who purchases the Services from the Company, unless otherwise stated in the Contract;
Customer Personnel	means all employees, staff, officers, individual contractors, other workers, agents and consultants, of the Customer who are engaged in the receipt of or otherwise connected with, the Services, from time to time;
Default	means any breach of the obligations of the Customer under the Contract or any other default, act, omission, negligence or statement of the Customer or Customer Personnel, in connection with or in relation to the subject-matter of the Contract;
Employment Regulations	means means the Council Directive 2001/23/EC of 12 March 2001 and the regulations implemented to the Labour Code of 26 June 1974, as amended or re-enacted from time to time;
Excused Cause	means: mechanical or electrical breakdown or derangement; wear, tear or gradual deterioration; corrosion, erosion, rust, oxidation, mildew (however the same may arise); disappearance or shortage revealed when a routine inventory is made or is not traceable to an individual event or occurrence; pressure waves caused by aircraft and other aerial devices travelling at sonic or super sonic speeds; the cost of normal upkeep or normal making good; contamination of asbestos or asbestos dust; the wilful, reckless or grossly negligent act of the Customer, ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel; radioactive toxic explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof; any weapon of war employing atomic or nuclear fission or fusion or like reaction or radioactive force or matter; war, invasion, acts of foreign enemies, hostilities (whether war be declared or not) civil war, rebellion, revolution, insurrection, military or usurped power, confiscation, commandeering, nationalisation or requisition or destruction of or damage by or under the order of any government de jure or de facto or public or local authority; any act of terrorism or any action taken in controlling preventing or suppressing or in any way related to any act of terrorism; the failure of any electronic systems, loss or damage to data, virus, unauthorised access to electronic systems, interruption or interference with any electronic means of communication arising if the Machinery: is in transit by sea or air; due to the Machinery being in a defective condition or any defect in design, plan, specification, materials or workmanship after the Machinery has been handed over to or taken into use by the Customer; which contains refractory linings; or any other cause whatsoever which is excluded by insurance policy or policies covering the Company and other insured parties as an insured entity
Losses	means any damages, liabilities, claims, demands, proceedings, actions, costs, charges, losses and/or expenses including legal fees and other professional costs;
Machinery	means all machinery or other property handled or dealt with by the Company pursuant to the Contract;
Property and Premises	means all property other than the Machinery
Order	means the Customer's order for Services;
Payment Terms	has the meaning given in the Quotation (as amended in the Contract if applicable);
Price	means the price stated in the Quotation (as amended in the Contract applicable);
Programme of Work	has the meaning given in the Quotation (as amended in the Contract if applicable);
Quotation	means the Company's quotation for the Services;
Scope of Work	has the meaning given in the Quotation (as amended in the Contract if applicable);
Services	means the services (if any) described in the Contract and provision of materials ancillary to the provision of or performance of, the Services;
Site Warranty Period	means the site(s) or location(s) where the services are to be performed; and means the longer of: 6 months from the date of the Company's written acceptance of the Services; or any period implied by law;

2. BASIS OF CONTRACT

- 2.1 Each Quotation constitutes an offer by the Company to provide Services to the Customer on and subject to these Conditions.
- 2.2 The terms and conditions of the Contract will apply to the exclusion of any other terms and conditions the Customer seeks to impose or incorporate, or which are, or may be, implied by trade, custom, practice or course of dealing.

2.3 No variation of the Contract will be effective unless made in writing by duly authorised representatives of both parties, being a being a Member of the Management Board or a Commercial Proxy or General Manager of the Company.

2.4 If these Conditions are inconsistent with any part of the remainder of the Contract, these Conditions will prevail unless the term to be overridden is specifically identified in written form.

3. SUPPLY OF SERVICES

- 3.1 The Company will supply the Services to the Customer in accordance with the Scope of Work in all material respects. The Company warrants that the Services will be provided using reasonable skill and care.
- 3.2 Whilst on Site the Company will ensure that the Company's Personnel comply with all reasonable site rules and policies of the Customer that are notified in writing or sent by the Customer to the Company in advance of the commencement of Service delivery, all relevant laws (including health, safety and environmental laws) and relevant industry standards.

3.3 deleted

3.4 If the Services require goods or components to be purchased for incorporation in any work to be carried out by the Company or Company Personnel, such purchase will be made by the Company as agents of the Customer and subject to the 'Sale Conditions' of the manufacturer or supplier.

3.5 deleted

4. DELIVERY OF SERVICES

- 4.1 The Services will be performed at the Site(s) specified in the Contract, on the date or within the time stated in the Programme of Work.
- 4.2 The Company will use reasonable endeavours to meet any performance dates specified in the Programme of Work, but any such dates are estimates only. The Company may perform the Services in instalments. If Services are to be performed in instalments, each instalment will together be deemed to comprise one single agreement and the Contract will not be severable in respect of each such instalment.

5. MACHINERY

- 5.1 Subject to Clause 5.2 and 5.3, the Company's total liability for loss of or damage to the Machinery will be limited to £500,000 where the loss or damage is attributable to the negligence or failure to exercise reasonable skill or care by the Company. .
- 5.2 The Company will not be liable for loss of or damage to the Machinery caused directly or indirectly by or in consequence of and Excused Cause.
- 5.3 The Company's liability for loss of or damage to the Machinery set out in Clause 5.1 will not exceed £250,000 for any one item and occurrence or if more than one item is lost or damaged by the same occurrence £250,000 any one item but £500,000 in the aggregate.
- 5.4 The Company will be entitled to a general lien on the Machinery for payment of all monies due and outstanding from the Customer on any account.
- 5.5 The Customer warrants that it is either the owner of the Machinery or is authorised by such owner to accept these Conditions on the owner's behalf and that any information it provides in connection with this Contract is accurate and may be relied upon.

6. RISK AND TITLE

- 6.1 Risk in the Services will pass to the Customer upon delivery of the Services in accordance with these Conditions.
- 6.2 Title to any item provided or to be provided by the Company to the Customer in the performance of the Services will not pass to the Customer until the Company receives payment in full (in cash or cleared funds), but the Customer may use the Services in the ordinary course of its business (but not otherwise) before the Company receives payment. If the Customer takes beneficial use of the equipment Machinery (e.g. takes control over the Machinery or starts to use the equipment Machinery before or without formal handover between the Company and the Customer) then handover and acceptance is deemed to have occurred with all consequences arising therefrom and the risk of loss or damage to the Machinery shall be passed on to the Customer.

7. CUSTOMER OBLIGATIONS

- 7.1 The Customer will:
- 7.1.1 ensure that any information provided is complete and accurate;
- 7.1.2 co-operate with the Company and Company Personnel in all matters relating to the Services;
- 7.1.3 provide the Company and Company Personnel, with free and unhindered access to the Site, office accommodation and other facilities as reasonably required by the Company and/or Company Personnel;
- 7.1.4 provide the Company and Company Personnel with such information and materials as the Company and/or Company Personnel may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
- 7.1.5 provide a safe working environment and ensure that all property, facilities, buildings and Machinery relevant to the Contract are and will continue to be safe and without risk to any person connected with the Contract;

- 7.1.6 all known risks will be clearly identified to the Company and marked by the Customer;
- 7.1.7 prepare the Site for the supply of the Services;
- 7.1.8 ensure that, at all times, it has and maintains all licences, permissions, authorisations, consents and permits necessary for it to perform its obligations under the Contract and for the Customer to receive the Services from the Company.
- 7.1.9 inform the Company of all licences, permissions, authorisations, consents and permits necessary for it to provide the Services to the Customer.
- 7.1.10 comply with all applicable laws, including health and safety laws and environmental laws;
- 7.1.11 keep all materials, equipment, documents and other property of the Company and Company Personnel (Company Materials) at the Customer's premises or the Sites in safe custody at its own risk, maintain the Company Materials in good condition until returned to the Company or Company Personnel (as the context requires), and not dispose of or use the Company Materials other than in accordance with the Company's written instructions or authorisation;
- 7.1.12 the Customer will notify the Company immediately should the Customer become aware of any circumstances, that will or may have an adverse impact on the Company's ability to perform the Services, in accordance with the Contract;
- 7.2 If the Company's performance of any of its obligations under the Contract is prevented or delayed by any Default:
- 7.2.1 without limiting or affecting any other right or remedy available to it, the Company will have the right to suspend performance of the Services until the Customer remedies the Default, and to rely on the Default to relieve it from the performance of any of its obligations in each case to the extent the Default prevents or delays the Company's performance of any of its obligations;
- 7.2.2 the Company will not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Company's failure or delay to perform any of its obligations as set out in this Clause 7.2; and
- 7.2.3 the Company is entitled to be paid for the value of all Services carried out and all costs incurred, including cost for demobilisation and remobilisation and the cost of future activities where commitments have been made together with reasonable allowances for overhead and profit and the Customer will reimburse the Company on written demand for any costs or losses sustained or incurred by the Company arising directly or indirectly from the Default.
- 8. PRICE AND PAYMENT**
- 8.1 The price of the Services will be as stated in the Contract. The Price will be invoiced in Polish zloty unless agreed otherwise in the Contract.
- 8.2 The Company may at any time revise the Price to take account of the increase or imposition of any tax, duty or other levy and any variation in exchange rates.
- 8.3 The Price will be exclusive of value added tax and other taxes and duties, unless otherwise agreed in the Contract.
- 8.4 The Company may invoice the Customer for the Services at any time on or after completion of the Services or a part thereof, unless otherwise agreed in the Contract.
- 8.5 Invoices will be paid in full and in cleared funds with no deductions, counterclaims or set-off to a bank account nominated in writing no later than 30 days from the date of issuance of the Company's invoice, unless otherwise agreed in the Contract.
- 8.6 If the Customer fails to pay any amount properly due and payable by it under the Contract, the Company will have the right to charge interest on the overdue amount. This Clause will not apply to payments or amounts that the Customer disputes in good faith.
- 9. LIABILITY**
- 9.1 If any Services are not supplied or do not comply in all material respects with the terms of the Contract, the Customer will be entitled as its sole and exclusive remedy to require (other than where the Customer has accepted the relevant Services) the Company to: (a) repair, replace correct or re-perform the Services, at the Company's cost;
- 9.2 Nothing in the Contract will operate to exclude or restrict the Company's or the Customer's liability:
- 9.2.1 for death or personal injury caused by its (or its employee's, agent's or sub contractor's) negligence or for fraud or fraudulent misrepresentation;
- 9.2.2 for any other liability that cannot, as a matter of law, be limited or excluded.
- 9.3 The liability of the Company for Property and Premises (other than the Machinery) damage will be limited to £1,000,000. The Companies liability for Machinery damage is as detailed in Clause 5.1 – 5.3. The Company's total liability for all other issues, (including costs and expenses) arising under or in connection with the Contract, whether arising in contract, tort (including negligence) or restitution, or for breach of statutory duty or misrepresentation, for all defaults (when taken together and not for each and every default) will in all circumstances unless excluded and/or limited elsewhere be limited to the lesser of £500,000 or the original Contract value.
- 9.4 Subject to Clause 9.2 above, the Company will not be liable to the Customer for any indirect loss or for (in each case whether direct or indirect) any loss of profits, loss of sales or business, loss of agreements or contracts, loss of anticipated savings, loss of use of corruption to data or information, loss of or damage to goodwill.
- 9.5 It is agreed that neither the Company nor the Customer believes that the Employment Regulations will apply. The Customer will indemnify and keep indemnified the Company against any liabilities incurred by the Company arising from the actual or alleged application of the Employment Regulations.
- 9.6 The Customer will indemnify the Company against all claims or demands made in excess of the Company's liability under this Contract.
- 10. INTELLECTUAL PROPERTY RIGHTS**
- 10.1 All intellectual property rights in or arising out of or in connection with the Services (other than intellectual property rights in any materials provided by the Customer or Customer Personnel) will be owned by the Company.
- 10.2 The Company grants to the Customer, or will procure the direct grant to the Customer of, a fully paid-up, worldwide, non-exclusive, royalty-free licence during the term of the Contract to copy and use any materials provided by the Company or Company Personnel for the purpose of receiving and using the Services and the Deliverables.
- 10.3 The Customer will not sub-license, assign or otherwise transfer the rights granted in Clause 10.2.
- 10.4 The Customer grants the Company a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify any materials provided by the Customer and Customer Personnel to the Company and/or Company Personnel for the term of the Contract for providing the Services to the Customer.
- 11. INSURANCE**
- 11.1 The Company will be liable for and maintain appropriate public liability insurance in respect of damage to the Customer's premises and/or the Location in which the Company is providing the Services and the contents thereof, other than Machinery where liability is governed by Clause 5. The Company will not be liable unless such loss or damage is caused by a negligent act or omission by the Company or by failure on the part of the Company to exercise reasonable skill or care.
- 11.2 The Customer will be liable for and maintain insurance of Company Materials against all risk of loss or damage. The Company will not be liable for any loss of or damage to the Company Materials whilst at the Customer's premises or the Location, however caused.
- 12. CONFIDENTIALITY**
- 12.1 Each party to the Contract undertakes that it will not at any time either during the Contract or after its termination disclose to any person any confidential information concerning the business affairs, customers, clients, suppliers or product formulations and processes of the other party (Confidential Information) (or any members of its group) save:
- 12.1.1 to its employees, officers or contractors who need to know such information for the purposes of carrying out the party's obligations under the Contract; or
- 12.1.2 as may be required by law, court order or any legal or regulatory authority.
- 13. TERMINATION**
- 13.1 The Company may rescind the Contract by written notice to the Customer at any time prior to the commencement of performance of the Services.
- 13.2 The Company may immediately terminate the Contract at any time if: (i) the Customer is in breach of any of its obligations (other than immaterial obligations) under the Contract; (ii) the Customer becomes insolvent, is unable to pay its debts, ceases to trade or has an administrator appointed or has a receiver appointed over the whole or any part of its assets or enters into any arrangements with its creditors for the rescheduling of its debts or a petition is filed or a resolution is passed for winding up, or there is the occurrence of any event in respect of the Customer that is analogous to any of the preceding events, in any jurisdiction.
- 13.3 The provisions that relate to termination or cancellation will apply to a termination or cancellation of all or any part of the Contract or Order.
- 13.4 Upon termination or cancellation of the Contract:
- 13.4.1 the Customer will immediately return all specifications supplied by the Company or Company Personnel and any other information or materials which belong to or were supplied by the Company or Company Personnel, including any Confidential Information of the Company;
- 13.4.2 Clauses 5, 9 and 11 of these Conditions and any other Clauses which expressly or by implication have effect after termination or cancellation, will continue in full force and effect; and
- 13.4.3 the Company is entitled to be paid for the value of all Services carried out to the date of termination or cancellation and all costs incurred, including cost for demobilisation and the cost of future activities where commitments have been made together with reasonable allowances for overhead and profit and the Customer will reimburse the Company on written demand for any costs or losses sustained or incurred by the Company arising directly or indirectly from the termination or cancellation; and
- 13.4.4 the accrued rights, remedies, obligations and liabilities of the parties as at termination or cancellation, will not be affected, including the right to claim damages in respect of any breach of the Contract, which existed at or before the date of termination or cancellation.
- 14. FORCE MAJEURE**
- If the Company is prevented, hindered or delayed in or from performing any of its obligations under the Contract by any circumstance not within the Company's

control, the Company will not be in breach of the Contract or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations will be extended accordingly. The corresponding obligations of the Customer will be suspended, and the Customer's time for performance of such obligations extended, to the same extent as those of the Company.

15. NON-SOLICITATION

The Customer will not employ nor seek to employ employees or self-employed workers of the Company, but if any such employee or self-employed worker accepts employment with the Customer, directly or indirectly and whether under a contract of service or contract for services or otherwise, during the period of the Contract or within 6 months thereafter, the Customer will pay to the Company an amount equal to 40% of the employee's or self-employed worker's gross annual remuneration in recognition of the disruption that such employment would cause to the efficient conduct of the Company's business. The Company shall have the right to seek compensation in the excess of stipulated contractual penalty.

16. GENERAL

- 16.1 The Customer will not assign, transfer, charge, hold on trust for another or deal in any other manner with any of its rights or obligations under the Contract, nor purport to do so, nor sub-contract any or all of its obligations under the Contract without the Company's prior written consent.
- 16.2 The Company may from time to time delegate the performance of its obligations to Company Personnel. If Company Personnel performs the Company's obligations under the Contract or if the Company attempts to delegate any of its obligations to Company Personnel, the Company will be liable to the Customer for the acts and defaults of the Company Personnel under or in connection with the Contract, as if such acts and defaults were those of the Company.
- 16.3 The Company may, at any time and without limiting any of its other rights or remedies, set off any liability of the Customer to the Company against any liability of the Company to the Customer, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under the Contract. The Company will inform the Customer in writing of any set-off carried out by the Company pursuant to this Clause 16.2.
- 16.4 Any notice to be given in relation to the Contract will be in writing, and will be sent to the Company at its registered office address or via electronic communication such as E-mail.
- 16.5 Any failure to exercise or delay by a party in exercising a right or remedy arising in connection with the Contract will not constitute a waiver of such right or remedy or of any other rights or remedies.
- 16.6 Any modification to or deletion of a provision or part-provision under the Contract due to it being invalid, illegal or unenforceable will not affect the validity and enforceability of the rest of the Contract.
- 16.7 The Customer will comply with all policies and procedures of the Company notified by the Company to the Customer from time to time, including the Company's Anti Bribery & Corruption and Anti-Slavery and Human Trafficking policies. The Company's policies are available on request and on the Company's website (<http://www.beck-pollitzer.com>).
- 16.8 These terms and conditions, together with those set out in the Contract, constitute the entire agreement and supersede all previous agreements between the parties in respect of the subject matter of the Contract.
- 16.9 The Customer will, promptly at the Company's request, do (or procure to be done) all such further acts and things and the execution of all such other documents as the Company may from time to time require for the purpose of securing for the Company the full benefit of the Contract.
- 16.10 deleted
- 16.11 Without prejudice to Clause 16.12, should the parties to the Contract have a dispute the parties will first attempt to resolve the dispute informally in good faith referring the dispute to authorised representatives who are suitably experienced to resolve the dispute.
- 16.12 These terms and conditions and each Contract will be governed by and construed in accordance with the Polish laws with the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (Vienna, 1980) (CISG) and the parties irrevocably submit to the exclusive jurisdiction of the relevant Polish common court in Katowice.

VERSION JUNE 2020