

COMMERCIAL TERMS AND CONDITIONS OF PURCHASE

No. 02/2017/SoD

CONTRACT CONCLUSION

1. A draft contract for work (hereinafter also the „Purchase Order“ („PO“)) submitted by the Customer in writing, shall be accepted by the Contractor also in writing in the period of 10 days from the PO delivery, however not later than within 15 business days from the PO sending by the Customer. The Contractor may confirm the PO acceptance to the Customer also by facsimile or an e-mail, whereat the Contractor shall be obliged to send also the original written PO acceptance signed by the Contractor to the address of the Customer's registered office within 3 business days from the facsimile or e-mail sending.
2. A Contract for Work (hereinafter only the „Contract“) shall be concluded on the day of the written PO acceptance, signed by the Contractor, delivery to the address of the Customer's registered office not later than on the last day of the period specified in the PO for its acceptance. Any late receipt shall have the effect of the acceptance if such a fact is confirmed by the Customer to the Contractor in writing.
3. Acceptance of a PO containing any addenda or variations, even if not significantly changing the terms and conditions of the PO, shall not lead to the Contract conclusion. In such a case the Contract shall be concluded only if such a new draft is accepted by the Customer and delivered back to the Contractor.
4. Any changes, amendments or cancellations of Contracts concluded by the Customer and the Contractor (hereinafter jointly also the „Contracting Parties“) are possible exclusively in writing. Any amendment to the Contract becomes effective for the Contracting Parties on the day of its signing by the Customer and the Contractor, otherwise as of the day of the Addendum signed by the last Party delivery to the address of the registered office of the other Party.
5. Any deviating provisions of the Contract shall prevail over the wording of these Commercial Terms and Conditions of Purchase (hereinafter only the „Terms and Conditions“).

WORK PERFORMANCE

6. The Contractor undertakes to perform the Work for the Customer, on the Contractor's own costs and risk, and the Customer undertakes to take over the duly and in a timely manner completed Work and to pay for it the agreed upon Contract Price to the Contractor.
7. The Work per these Terms and Conditions shall be activities leading to creation of an object (unless covered by a purchase contract) and also any corrections, maintenance or service of an object or activities which generate other results (hereinafter only the “Work”). The completed Work, in its tangible and intangible form (hereinafter also the “Subject of Work”) shall be the particular result of activities.
8. The Contractor shall perform the Work and hand the completed Work to the Customer in the scope and the quality agreed upon in the Contract. If the quality is not stipulated in the Contract, the Contractor is obliged to complete the Work and hand it over to the Customer in the quality and design in accordance with the technical standard or in the quality fit for the agreed upon purpose or the purpose resulting from the Contract and/or the purpose, for which such Work is usually used and at the same time in compliance with all generally binding legal, technical, safety, including the Customer's internal regulations regarding the occupational health and safety and fire protection, and other regulations applicable to the agreed upon type of the Work.
9. If the Work is being performed in the Customer's premises, the Contractor shall be obliged to follow the “Binding Conditions for Activities of External Persons from the Viewpoint of Occupational Health and Safety, Fire Protection and Environmental Protection for Companies within VÍTKOVICE Group” These conditions are provided in detail at the Customer's internet pages www.vitkovice.com and the Parties deem such form of a reference to the conditions to be sufficiently detail.

10. The Contractor is obliged to hand over the Work to the Customer, on the Contractor's own costs and risk, with all documents related to the Work, in the time and place agreed upon in the Contract. Unless agreed upon otherwise in the Contract, the place of delivery shall be the Customer's registered office.
11. In the event of transport the Work must be packed in a manner suitable for the agreed upon type of the Work and the agreed upon type of transport, to prevent occurrence of any damage to the Work during its transportation to the agreed upon place of hand over, to secure safe handling and storing of the Work. The used packing and fastening materials shall be returned only if agreed upon in the Contract. In such case the packing must be marked as returnable, with the packing number, the packing owner and a legible packing returnability character, otherwise it shall be deemed non-returnable. All packing must be environment friendly and must comply with the legal requirements of the generally binding legal regulations.
12. All costs associated with the Work transportation and handing over in the place of performance, including the packing material, packing and the Work securing for transport, the packing returning respectively, shall be borne by the Contractor.
13. In a timely manner, not later than at the Work hand over, the Contractor is obliged to hand over to the Customer the documents stipulated in the Contract, certificates and instruments necessary for the Work take over and free handling, customs clearance and use, and namely also the documents governing the conditions of the Work installation, operation, storing and maintaining. The documents must be well legible, clear, free of any mistakes and must bear the Contract number. Unless requested otherwise by the Customer, the documents must be elaborated in Czech language.
14. The Report on the complete Work hand over by the Contractor and take over by the Customer shall be drawn and signed by the authorized representatives of both Parties. Should the completed Work be an object, the proof of the Work hand over and take over shall be the delivery note confirmed by the Customer's representative.
15. The Work completion and hand over in parts shall be permissible only in cases expressly agreed upon by the Parties in the Contract.
16. Should the Contractor perform the Work within the Customer's premises or in places secured by the Customer for the Work performance, the Customer shall be the owner of the object intended for the Work performance and shall carry the risk of damages to the object. In all other cases the title to the object and the risk of damages to the object passes from the Contractor to the Customer as of the Work take over by signing the Hand Over and Take Over Report /Acceptance Report/ by the Customer's representative. Should the subject of the work be repairs, maintenance or adjustment of an object, the title to the object shall not pass to the Contractor.
17. The Contractor acknowledges the potential risk of significant changes in the circumstances based on origination of disproportional increase of the costs of performance and hereby adopts such a risk of changes in the circumstances on itself.
18. The Contractor undertakes to secure that the complete Work shall be free of any liens, legal defects or third person's rights.
19. Any time during business days the Customer shall be entitled to inspect the course of the Work, or part thereof, performance in the Contractor's or its sub-contractor's premises and also directly in the place of the Work performance. Within the warranty period the Contractor shall be obliged to maintain the quality management system for the Work performance in the scope and quality equal to that valid in the time of the Contract signing or higher.

QUALITY WARRANTY, RIGHTS ARISING FROM DEFECTIVE PERFORMANCE

20. The Contractor provides the Customer with the quality warranty for the completed and handed over Work in the period individually agreed upon in the Contract, otherwise in the period of 36 months from the duly hand over and take over of the Work by the Customer. Should any of the Work properties not be expressly stipulated in the Contract, the Contractor warranties to the Customer that

during the warranty period the Work shall maintain the properties adequate to the purpose, for which the Work is usually used.

21. Should the warranty period provided in the Contract and in the Warranty Certificate differ, the longer warranty period shall prevail. The warranty period shall be extended by the period, during which the Work cannot be used due to defects within the Contractor's responsibility.
22. Should the Customer discover any defects of the taken over Work, the Customer shall inform the Contractor on such a fact without any undue delay upon its discovering. The defect claim shall be timely, if sent by the Customer on the last day of the warranty period.
23. The Customer shall be obliged to notify/claim the defects in writing, by a letter, fax or e-mail. The Customer shall describe the discovered defect or state, how it is demonstrated, and notify the Contractor on its chosen right arising from defective performance, as well as on the lead-time, by which such defect shall be removed. The manner chosen by the Customer shall be binding for the Contractor.
24. The Contractor shall be obliged to commence with removal of the claimed defects not later than within 3 days from the claim receipt, unless another lead-time is stipulated in the claim. The Contractor shall be obliged to remove the defects of the Work within the period stipulated by the Customer, otherwise in the period adequate to the scope and nature of the claimed defect, however not later than within 10 days from the claim receipt, unless agreed upon otherwise by the Contracting Parties in writing. Should the defect be of an emergency nature or threatening the Work's operation or safety, the defect removal period shall be 24 hours from such defect announcement, unless agreed upon otherwise by the Contracting Parties. Should the Customer require it, the Contractor shall be obliged to send its representative to without any undue delay inspect and evaluate the defect within 48 hours from the defect announcement.
25. Should the Contractor be in a delay with removal of the claimed defect in the period stipulated by the Customer or agreed upon by the Contracting Parties, the Customer shall be entitled to remove the defect on its own or by a third person on the Contractor's costs, which the Contractor shall be obliged to pay to the Customer within 30 days from their invoicing. Should the defect be of an irremovable nature or should disproportional costs be associated with its removal, the Customer shall be entitled to withdraw from the Contract, choose another right arising from the defective performance respectively.
26. Until the defect removal the Customer shall not be obliged to pay the part of the Price for the Work (unless paid already), proportionally corresponding to the Customer's right to a discount. The Customer shall withhold such part of the Price until the defect removal.
27. The Contractor shall be obliged to remove all claimed defects of the Work also should the Contractor not accept such defects. In such disputable cases the Contractor shall bear the costs of the claimed defects removal until the court's decision issuance.
28. Exercising the right from defective performance shall have no effect on the Customer's right to claim performance arising from any other legal titles.
29. Besides the rights from defective performance the Customer shall be entitled to claim from the Contractor the damages incurred by the Customer due to any breach of the Contractor's obligations, including the costs of any potential defective Work disassembling, new assembling, potentially any other costs related to the defective Work. The Customer shall be authorized to charge such damages and the Contractor shall be obliged to pay such damages to the Customer within 30 days from the invoice receipt by the Contractor.

PAYMENT CONDITIONS

30. The Customer is obliged to pay the Price for the Work (hereinafter the "Price for the Work") stipulated in the Contract, which shall include all costs associated with the Work, including any potential packing, transport, etc., to the Contractor. The value added tax in the amount corresponding to the provisions of the Act No. 235/2004 Coll., on value added tax (hereinafter the „VAT Act “), as amended, shall be added to the Price for the Work. The Price for the Work shall be paid to the

Contractor by a bank transfer based on an original tax document – an invoice (hereinafter only the „invoice“). The invoice must be delivered to the Customer and must contain namely:

- Customer's Contract number;
 - subject-matter of the Work;
 - CZ-CPA code (in the event of deferred tax obligation (RPDP) per the par. 92e of the VAT Act);
 - the contract price in the agreed upon currency;
 - the account number and bank code, to which the payment shall be sent;
 - the invoice maturity period, which shall commence as of the day of the invoice delivery to the Customer;
 - all details of a tax document per the VAT Act.
31. A document evidencing duly hand over of the Work (the Work Hand Over and Take Over Report or a delivery note) signed by the Customer's representative provided in the Contract must form an attachment to the invoice.
 32. The Customer reserves the right to return the invoice to the Contractor for correction or amendment, should the invoice fail to contain the details stipulated by the law or the above attachment. In such a case the above stipulated maturity period shall commence on the day of the amended invoice delivery to the Customer.
 33. The Customer shall pay the Price for the Work by a bank transfer to the account number provided in the Contractor's invoice and the obligation to pay the Price for the Work shall be fulfilled on the day of the relevant amount deduction from the Customer's bank account for the Contractor's bank account provided in the invoice.
 34. Should an express maturity period of the Price for the Work not be agreed upon in the Contract, the Customer shall be obliged to pay the Price for the Work within 90 days from the duly invoice delivery by the Contractor.
 35. The Contractor's right to receive payment of the Price for the Work arises by duly fulfillment of the Contractor's obligation to hand over the Work to the Customer.
 36. In the event of any delay with payment of the Parties' financial obligations within the maturity period, the Parties agree on a delay payment interest amounting to 0.02% of the due amount for each day of the delay.
 37. If the Customer was repaying the principal sum first, the interest on costs and interests are not charged (under section 1932 subs. 2 of the Civil Code).
 38. Should a tax administrator in compliance with the Art. 106a of the VAT Act decide, that the Contractor is an „unreliable tax payer“ the Contractor shall be obliged to immediately inform the Customer on such a fact in writing, not later than within 48 hours from such decision effectiveness. The written notice must contain namely the tax administrator's decision effectiveness, the bank account name and number, together with the variable symbol of the relevant revenue office. Should a decision on an unreliable tax payer pursuant to the Art. 106a of the VAT Act be issued or should a payment be requested to a bank account provided in the invoice, which the Contractor failed to provide in the list kept by the tax administrator, pursuant to the provisions of the Art. 109a – the Special Manner of Tax Securing per the VAT Act, the Customer shall be entitled to pay the VAT amount provided in the invoice, to the account of the relevant tax administrator.
 39. The Contractor shall not be entitled to unilaterally setoff any of its receivables from the Customer.
 40. The Contractor shall be entitled to pledge the receivables from the Customer for the benefit of any third person, use them to secure transfer of any right or as a guarantee or for assignment, only based on a prior written agreement of the Contracting Parties, based on the Customer's prior express written consent respectively.

PROTECTION OF INDUSTRIAL PROPERTY RIGHTS AND INTELLECTUAL RIGHTS

41. All and any technical documents (drawings, technical documents, calculations, procedures, instructions, etc.), handed over by the Customer to the Contractor as underlying documents for the Work performance (hereinafter only the „Technical Documentation“) shall be the exclusive intellectual property of the Customer. All technical solutions and other solutions, procedures displayed in the Technical Documentation, which are appropriately labeled as such, shall be the Customer's exclusive intellectual property.
42. Without the Customer's express written consent the Contractor shall not be entitled to publish the Technical Documentation or make it available to any third person or use it for its own benefit or for the benefit of any other third person. The Contractor is entitled to use the Technical Documentation only in relation to the Work performance. Such an obligation shall not be applicable to administrative or other public bodies or authorities, if they conduct audits or other supervisions in accordance with the relevant legal regulations. Unless stipulated otherwise in the Contract after the Work completion the Contractor shall be obliged to return the Technical Documentation and the other documentation to the Customer and destroy all copies made by the Contractor for the purposes of the Contract fulfillment.
43. Should the Work delivered based on the Contract be a tangible result of activities (hereinafter only the „Tangible Result“), protected by the industrial property rights or any other intellectual property rights, by the Contract signing the Contractor provides the Customer with a free of charge license to use such Tangible Result also for other purposes than provided in the Contract. Such license shall contain the Customer's right to use the Tangible Result without any time or territorial limitations and also to grant a sub-license for such use to any third person.

CONTRACTUAL PENALTIES

44. In the event of the Contractor's delay with the Work hand over to the Customer in the period stipulated in the Contract, the Customer shall be entitled to charge to the Contractor and the Contractor shall be obliged to pay to the Customer, the contractual penalty amounting to 0.5% of the total Price for the Work (VAT excluded) for each day of the delay.
45. For each discovered and reported defect of the Work, including any defects in documents necessary for the Work using, not remedied by the Contractor within the period stipulated by the Customer, the Customer shall be entitled to claim and the Contractor shall be obliged to pay to the Customer the contractual penalty amounting to 0.5% of the Price for the Work (VAT excluded) for each individual defect and each day of the delay with the defect removal.
46. Should the Contractor incorrectly or incompletely elaborate the documents necessary for the Work take over, the Customer shall be entitled to claim from the Contractor the contractual penalty amounting to CZK 5,000.- for each incomplete or incorrectly filled in document specified in the Contract.
47. In the event of any breach of the obligation provided in the Art. 42 hereof, the Customer shall be entitled to charge to the Contractor the contractual penalty amounting to CZK 100,000.- for each individual breach of the obligations, also repeatedly. The obligations stipulated in the Art. 42 hereof shall not cease to exist by payment of the contractual penalty.
48. In the event of any breach of the obligation to inform provided in the Art. 38 hereof, the Customer shall be entitled to charge to the Contractor the contractual penalty amounting to 20% of the Price for the Work (VAT excluded).
49. The Contractual penalty for any breach of the Contractor's obligations stipulated in the Art. 40 hereof amounts to 20% of the amount of the receivable, which was supposed to be the subject of such breach.
50. The contractual penalty payment or charging shall have no effect on the Customer's right to compensation of damages. The Customer shall be entitled to raise such claims separately, besides each other, regardless to the contractual penalty charging or payment by the Contractor.
51. The invoiced contractual penalties and receivables arising from compensation of damages, shall be mature within 30 days from the invoice or any other notice to pay delivery to the other party.

WITHDRAWAL FROM THE CONTRACT

52. Any of the Contracting Parties shall be entitled to withdraw from the Contract from the reasons provided in the law, the Contract and these Terms and Conditions. Withdrawal from the Contract must be made in writing.
53. Each of the Contracting Parties shall be entitled to withdraw from the Contract should the other Party become bankrupt and should a proposal for voluntary or forced bankruptcy declaration be filed as a result of the Party's payment inability.
54. The reason for withdrawal shall be a serious breach of the Contract by the Contractor, which shall namely be the breach of the Contractor's obligation to complete and hand over the Work to the Customer duly and in timely manner and any delay with removal of defects.
55. Should the title to the duly completed Work pass to the Customer before withdrawal from the Contract:
 - a) after the withdrawal the Work shall remain in the property of the Customer and the Contractor shall be entitled to a substitute performance up to the amount, in which the Customer benefits from the used Work; or
 - b) the Customer shall be entitled to return the Work, if it is possible with regard to the nature of the Work, and at the same time the Contractor shall be obliged to return to the Customer the Price paid for the performed Work.

56. Withdrawal from the Contract shall terminate all rights and obligations of the Parties, except for the contractual penalties, delay payment interests, compensation of damages, rights resulting from defects of the Work, rights resulting from security and other provisions, which shall, from their nature, survive and be of a binding nature also after withdrawal from the Contract (e.g. the confidentiality obligation, rights of industrial and intellectual property, etc.) and other rights stipulated by generally binding legal regulations.

FINAL PROVISIONS

57. Any legal acts between the Customer and the Contractor shall always be done in writing. Any other forms of demonstrations of will shall not be binding for any of the Parties and must not be interpreted in a conflict with the provisions of the Contract or its Addenda.
58. The Contractor and the Customer declare that they shall not infer any rights or obligations in excess of the scope of the concluded Contract and these Terms and Conditions from the current or future practice established between them or from customs followed in general or in the relevant branch, in which the Work are being delivered.
59. No obligation arising from the Contract or these Conditions shall be a fixed obligation, unless stipulated otherwise in the Contract.
60. The rights and obligations of the Contracting Parties, as well as any legal relationships arising from or in relation to the Contract, shall be governed by the concluded Contract, the Customer's instructions issued during the Work performance, these Terms and Conditions, the Civil Code (the Act No. 89/2012 Coll., as amended) and other generally binding legal regulations of the Czech Republic.
61. Any disputes arising from or in relation to the Contract, shall be resolved by a mutual agreement of the Contracting Parties. Should the disputable matters not be resolved amicably, the relevant court of the first degree shall be the local general court per the Customer's registered office.
62. Should any provision of these Terms and Conditions or a particular Contract be or become void or ineffective, it shall be disregarded from the legal viewpoint and it shall have no effect on the validity, effectiveness and legal perfection of the remaining provisions. In such a case the Contracting Parties are without any undue delay obliged to enter into an amendment, the contents of which shall be replacement of such void or invalid provision by a provision reflecting the original purpose and meaning as much as possible.

These Commercial Terms and Conditions of Purchase are valid and effective as of March 2, 2017