

# **Standard Terms and Conditions of Delivery of AŽD Praha s.r.o.**

to Sales Contract No. .... or to Contract for Work No..... dated ...  
(hereinafter referred to as the „Contract“)

## **1. Terms Application**

These Standard Terms and Conditions of Delivery (hereinafter referred to as the “Terms”) govern the delivery of any goods or work (hereinafter referred to as “the Performance”) by AŽD Praha s.r.o., with a seat at Žirovnická 2/3146, 106 17 Praha 10, Czech Republic (hereinafter referred to as “Supplier”) to any buyer, purchaser or customer (hereinafter referred to as “Customer”), unless stipulated otherwise in the Contract entered into in writing by and between Supplier and Customer. General purchasing conditions of Customer are valid only if expressly confirmed in writing by Supplier.

## **2. Validity of Terms**

Terms come into effect and are binding for both contracting parties at the effective date of the relevant Contract.

## **3. Delivery of the Performance**

### **3.1 Terms of Delivery of the Performance**

Supplier is obligated to deliver the Performance under conditions and in periods specified in the Contract and the Terms provided Customer fulfills in time his obligations resulting from the Contract, i.e. that he provides, delivers or handovers in time any and all information, documentation, drawings, plans, instructions, time schedules, financial advances, material and other documents necessary for delivery of the Performance which are not expressly specified in the Contract as the obligation of the Supplier. All authorizations, licenses, clearance, visas, work or other permits from the government authorities at the place of the Performance necessary for performance of Supplier under the Contract shall be ensured by Customer at its own expenses, if it is not determined otherwise in the Contract.

### **3.2 Manner of delivery of the Performance**

Supplier is obligated to deliver the Performance to Customer in compliance with delivery term according to INCOTERMS 2000 specified in the Contract. Partial delivery is allowed if not stipulated otherwise in the Contract. If the manner of delivery is not specified in the Contract or Customer has not issued shipping instructions by the time the Performance are ready for shipment, Supplier is entitled to hand over the Performance to the first carrier for delivery to Customer or may select any other reasonable method of shipment, without liability by reason of its selection, and the costs connected with the transport of the Performance are borne by Customer.

### **3.3 Taking over the Performance**

Customer is obligated to take over the Performance, including partial delivery, as soon as the Performance are delivered or as soon as Customer is called upon to take over the Performance. Should Customer breach his obligation to accept the Performance, including partial delivery, within 10 (ten) days of Supplier’s call or should Customer ask for prolongation of the delivery terms, then delivery is considered as fulfilled by alternate delivery in Supplier’s premises on the 11<sup>th</sup> day of Supplier’s call or of the Customer’s request for prolongation of the term and Supplier is entitled to calculate and charge the costs connected with storage in amount of 10 (ten) CZK/kg/day to Customer. The risk of loss and damage to the Performance is in such case transferred to Customer at the day of the alternate dispatch.

### **3.4 Suspension of Delivery**

Should Customer be delayed with payment for more than 10 (ten) days, Supplier is entitled to suspend the fulfillment of his obligation from the Contract including relevant prolongation of delivery dates till the date of proper payment or till the moment of Customer’s provision of appropriate security of his Contract obligations. Should Supplier find out that doubts about Customers capability to fulfill his due or future obligations arising from the Contract exist or may exist in future, Supplier is entitled to suspend the fulfillment of his obligations from the Contract till the moment of Customer’s provision of appropriate security of his obligations. Supplier is entitled to settlement of any and all costs incurred as a result of suspension of the Contract by Customer.

## **4. Specification of the Performance**

### **4.1 Quantity, Workmanship and Packaging**

Supplier is liable to deliver the Performance in quantity and workmanship specified by the Contract. If the Contract does not stipulate the way of packaging the Performance, Supplier is obligated to provide packaging in the manner usual for such Performance or, if such way cannot be determined, in the manner necessary for preservation and protection of the Performance.

### **4.2 Documents pertaining to the Performance**

Supplier is obliged to hand over to Customer any documentation pertaining to the Performance (certificates, reports, manuals etc.) in the manner and time specified in the Contract. If such manner is not specified in the Contract, Supplier is obliged to send such documents to Customer with the Performance or within 15 (fifteen) days of the delivery date at the latest.

#### 4.3 Changes

Any changes or modifications in the specification of the Performance are allowed only if agreed by both contracting parties and confirmed in writing in form of a written supplement to the relevant Contract. Any change of specification of the Performance leading to additional costs and expenses of Supplier will result in price increase by such costs and expenses and in relevant extension of delivery dates of the Performance. Supplier is not obliged to accept any change leading to reduction of the price by more than 10 (ten) %.

#### 5. Price

The purchase price for the Performance is agreed upon in the Contract. Unless provided otherwise in the Contract, the value added tax (VAT) and other taxes, fees, customs duties and cost of packing, transport, insurance, inspection of third parties and any other costs incurred by Supplier under any existing or future law in connection with the fulfillment of its obligations under the Contract, are not included in the purchase price and Customer is obligated to settle such costs and expenses to Customer at the same time as the purchase price or within 15 (fifteen) days after their separate invoicing by Supplier.

#### 6. Terms of Payment

1. The payments for the Performance shall be effected by bank transfer to Seller's account on the basis of Seller's invoice, which Seller is entitled to issue by the date of the delivery of the Performance according to Contract or by date of its alternate delivery as per Art. 3.3 hereof. The maturity of Seller's invoices is 30 (thirty) days of the issue of the invoice. Invoices are considered to be duly settled by the moment when the invoiced amount is passed to the credit of Seller's account.

#### 7. Transfer of Ownership

Unless otherwise agreed in the Contract, Customer shall acquire the proprietary rights to delivered Performance by moment of full payment of the purchase price. Supplier is therefore entitled to have at his disposal and retain title to the Performance even after the Performance has been delivered until the time Supplier receives evidence of full payment of the purchase price and other payments which Customer owes to Supplier. In the period from delivery of the Performance to the date of transfer of the title to the Performance, Customer is not entitled to dispose of the Performance, pledge or otherwise legally encumber the Performance. Until the transfer of title to the Performance, Customer is obligated to be in possession of the Performance solely as bailee for Supplier, to keep the Performance in good conditions and to protect it against damage, destruction and legal acts of third persons, to store and mark it separately in such way as to enable the Performance to be unambiguously identified as the property of Supplier. In case of any impending damage to the Performance or when any third person enforces its rights to the Performance, then Customer shall be obliged to make all necessary measures for distraction of possible damage and protection of Supplier's rights and inform Supplier without delay. Supplier is entitled to require immediate return of the Performance any time after the maturity of its invoice until the passing of the proprietary right to Customer and if this requirement is not complied with even in the period set by Supplier, then Supplier is entitled, and Customer is obliged to enable, to enter the premises of Customer when the Performance is stored and to repossess and take away the Performance without liability for any resulting damage if the Performance has already been used and it is necessary to sever it from any other property of Customer to which it may be attached.

#### 8. Transfer of Risks

The risk of loss and damage to the Performance shall pass to Customer at the moment of delivery of the Performance to the Customer according to the applicable delivery term of INCOTERMS 2000 as specified in the Contract. If such delivery terms is not specified in the Contract, by the day of delivery of the Performance.

#### 9. Sub-suppliers

Supplier shall have the right to order manufacturing of any part of the Performance under the Contract with any sub-supplier without approval of Customer.

#### 10. Defects of the Performance

##### 10.1 Defect

Should Supplier breach his obligation to deliver the Performance in agreed quantity and workmanship, he is liable for defects of the Performance at the moment of its delivery. Customer is not entitled to refuse the delivery of the Performance with minor defects.

##### 10.2 Claims for defects

If defective Performance is delivered without the Contract being fundamentally breached, then Supplier will remedy such defects at its own discretion by one of the following ways:

- a) delivery of the missing Performance

- b) rectification of legal defects of the Performance
- c) repair of the Performance, if feasible
- d) delivery of substitute Performance.

Upon delivery of substitute Performance, Supplier is entitled to demand that Customer return the substituted Performance in the same condition in which the Performance was delivered to Customer.

### 10.3 Exclusion and limitation of liability

The liability of Supplier for defects ceases to exist if such defects:

- a) are not claimed by Customer in writing within the periods and in the manner specified in Art. 11 hereof
- b) have been caused due to applying or use of manufacturing process, specifications, drawings, technical requirements or material delivered or required by Customer
- c) have been caused owing to or with contribution of Customer due to its faulty or negligent use and handling of the Performance, violation of manuals for use and maintenance of the Performance, repairs or improper modifications of the Performance carried out by Customer or a third party without Supplier's approval or natural wear and tear.

## 11. Complaint Procedure

### 11.1 Deadlines for notification of defects

Customer shall be obliged to inform the Supplier in writing about defects without undue delay after the defects were ascertained, should be ascertained or could be ascertained later at exertion of due diligence; with apparent defects not later than 15 (fifteen) days after the delivery of the Performance, with other defects not later than 1 (one) year from the day of delivery of the Performance. If a defect is not notified in time as specified herein, the Performance is considered to be accepted by Customer without defects. Customer shall bear all costs incurred to Supplier due to false claim.

### 11.2 Manner of notification of defects

The written notification on a defect must contain especially:

- a) detailed description of the defect
- b) whether claim for damages or other recourse are made upon Customer by a third party due to the defect
- c) Customer's ascertaining must be substantiated by relevant documents.

## 12. Warranty

Supplier shall provide the quality warranty for the delivered Performance during the warranty period of 12 (twelve) months which begins to run at the day of the Performance delivery, if not agreed otherwise in the Contract.

## 13. Withdrawal from the Contract

Supplier is entitled to withdraw from any Contract if Customer breaches the Contract fundamentally or if bankruptcy was declared over Supplier's assets, the bankruptcy or settlement proceedings were initiated against Supplier or Supplier is in liquidation.

The contracting parties have further explicitly agreed that the delay of Customer with payment of the purchase price or other of its financial obligations against Supplier resulting from the Contract or the Terms by more than 30 (thirty) days is considered as fundamental breach of the Contract and Seller is entitled in such case to repudiate the Contract and to demand damages. If the Performance or its part has already been delivered to Customer, he is obliged, at Supplier's discretion, either to return without delay the Performance or its part to Seller at its own expense, or to pay the proportional part of purchase price for already delivered part of Performance. Customer is further obliged to settle all costs incurred by Supplier in connection with fulfillment of the Contract till the date of its premature termination increased by 5 (five) %.

## 14. Setting-off Claims

Set-off of the Customer's claims towards the Supplier against the Supplier's claims under the Contract shall be made only by virtue of a written agreement of the parties to the Contract.

## 15. Interest and Contractual Penalty for Delay

Should Customer be in delay with his payments according to the Contract, he is liable to pay to Supplier the interest on late payment amounting to 0.05 % of the due sum for each day of delay.

Should Seller be in delay with delivery of the Performance and the Performance is not delivered even in additional period of 10 (ten) working days, then Customer is entitled to demand from Supplier contractual penalty amounting to 0.05 % of the price of the undelivered Performance for each day of delay after the additionally set period, but not more than 5 (five) % of the purchase price. The delay in Supplier's performance is not considered as delay liable to contractual penalty if Supplier is not notified on the delay in writing by Customer.

## 16. Limitation of Supplier's Liability

In no event shall Supplier's cumulative liability be in excess of 50 (fifty) % of the total purchase price of the relevant Contract, whether arising under warranty, negligence, indemnification, damages, contractual penalty or any other cause. Customer shall be obliged to demonstrate in due form the actual damage incurred. Supplier shall not be liable for any special, indirect, incidental or consequential damages

whatsoever including loss of production, business, profit or other financial or economic loss whether suffered by Customer or by any third party.

**17. Intellectual and Industrial Property Rights**

No intellectual or industrial property rights of Supplier are transferred to Customer by delivery of the Performance. Customer shall indemnify Supplier from any suit or proceeding brought against Supplier by any third party based on claims that the Performance delivered to Customer infringes any patent or other intellectual property rights in case the Performance was designed and manufactures on the basis of designs and documentation furnished by Customer.

**18. Confidentiality**

Both Supplier and Customer shall be obliged to maintain secrecy and confidentiality of all facts and documents related to any Contract, Performance or matters of the other Party which are considered to be a commercial secret, and to take appropriate measures so that such confidential information and documents were not disclosed to any third party. This provision applies also to price or costs calculations, drawings and documentation of Supplier handed over to Customer in connection with the offer before conclusion of the Contract.

**19. Governing Law**

The Contracts and the Terms and any legal relations between the parties resulting from the Contracts shall be governed by, and construed in accordance with, the Commercial Code of the Czech Republic in valid wording and other generally binding material-law regulations and norms of the Czech Republic.

**20. Resolution of Disputes**

Any and all disputes arising out of or in connection with these Terms or any Contract, which cannot be settled amicably, shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by three arbiters appointed in accordance with these Rules. The arbitration proceedings shall take place in Prague, Czech Republic with English as the language of proceedings. The arbitration award shall be final and binding upon both contracting parties.

**21. Severability**

If any provision in the Contract or Terms is invalid, ineffective or unenforceable or if it becomes such in the future, than only this provision is invalid, ineffective or unenforceable, if it does not arise from its character, contents or circumstances, under which this provision was made, that it cannot be severed from the remaining provisions of the Contract.

**22. Changes**

The Contract and the Terms may be only changed or amended by written numbered supplements with attached signatures of authorised representatives of both Parties to the Contract on the same instrument.

Any request for change shall be in writing and it shall include a detailed description of the requested change. If the parties fail to agree upon the impact of the changes to the Contract wording, especially to the purchase price and delivery terms and the relevant supplement to the Contract is not signed, then the Contract shall be executed in the original scope without regard to the desired modification. If Customer demands any changes in technical execution of the Performance or makes other demands on changes of the Contract, then he is obliged to settle all demonstrable costs incurred to Supplier by such change.

**23. Force Majeure**

Supplier shall not be obliged to fulfill its obligations under the Contract and shall be excused from its respective obligations under the Contract or from any contractual penalty and damages compensations in case that it is not able to meet its obligations under the Contract as a consequence of a Force Majeure event such as:

- a) war, invasion, revolution, natural catastrophe, fire, flood, explosion, breakdown of machinery or equipment, strike, riots or other civil disturbances, terrorist attack, epidemic, etc.
- b) due to any law, regulation, norm or legislative change in the Czech Republic or in the country of the Performance which makes it impossible to Supplier to fulfill any obligation under Contract despite making maximum efforts which can be reasonably required from it in connection with fulfilment of the obligation in question.

The party that requires to be relieved of its obligation under Contract by virtue of Force Majeure shall inform the other contracting party in writing within 15 (fifteen) days after the occurrence of a Force Majeure event.

Provided the circumstances of Force Majeure last longer than 6 (six) months, either contracting party shall have the right to withdraw from the relevant Contract, whereas Supplier shall be entitled to settlement of all costs of its Performance under the Contract till the date of its premature termination.

**24. Final provisions**

Any provisions of the Contract being different from the Terms shall prevail over the application of respective provisions of the Terms.

The rights of Supplier are neither affected nor limited by its provision of any benefit, alleviation, discount or a prolonged term to Customer.

Assignment of any Customer's rights and obligations under the Contract is not allowed without prior written approval of Supplier.

The rights and obligations of contracting parties under these Terms and any Contract shall pass to the legal successors of either Supplier or Customer.

The agreements contained in the Contract and these Terms supersede any prior or contemporaneous agreements, representations, or understanding between the contacting parties, whether oral and written, concerning the Contract performance and constitute the entire agreement of the parties with respect to the subject matter contained herein.