

General Purchasing Terms and Conditions of AŽD Praha s.r.o.

to the Purchase Contract No.. or Contract for Work of ...
(hereinafter referred to as the "Contract")

1. Application of Terms and Conditions

These General Purchasing Terms and Conditions of AŽD Praha s.r.o. (hereinafter referred to as the "Terms & Conditions") are integral part of every purchase contract or contract for work or contract concluded by virtue of a framework purchase contract or framework contract for work (hereinafter referred to as the "Contract") by means of which AŽD Praha s.r.o., Žirovnická 2/3146, 106 17 Praha 10, Czech Republic (hereinafter referred to as the "Customer") purchases goods or orders a work (hereinafter referred to as the "Performance") from Seller or Contractor (hereinafter referred to as the "Supplier").

2. Performance

2.1. Deadlines and Conditions of Performance

The Supplier shall be obliged to fulfil properly all its obligations arising out of the Contract under the conditions and within the deadlines according to the Contract and the Terms & Conditions. The Supplier shall fulfil its obligation to perform the Contract if it delivers to the Customer the Performance in a quantity, workmanship and quality as specified in the Contract in a timely and proper manner and any and all Performance-related documents in a proper and timely manner. In case of endangerment of the deadline, quantity or quality of the Performance the Supplier shall immediately inform the Customer and take all steps necessary to remedy the situation.

2.2. Manner of the delivery of Performance

The Supplier shall be obliged to deliver the Performance to the Customer in a manner specified in the Contract in accordance with the INCOTERMS 2000 delivery term specified in the Contract. The Supplier shall be obliged to send the advice note on its readiness to dispatch the Performance at least 5 (five) working days in advance. No partial performance is allowed unless stipulated otherwise in the Contract. The Supplier shall be obliged to pack the Performance in a professional manner and fix for the transport in a manner specified in the Contract. If the Contract does not specify the way of packing the Performance, the Supplier shall be obliged to provide packing usual for the type of Performance in question, or if such way cannot be determined, packing necessary for preservation and protection of the Performance against any damage or degradation.

2.3. Documents pertaining to the Performance

The Supplier shall be obliged to hand over to the Customer any and all documents pertaining to the Performance and documents necessary for take-over and use of the Performance, including documents certifying the quality of Goods (accompanying technical documentation, certificates, user's and maintenance manuals, spare parts specification, etc.) in the manner and time specified in the Contract. If no such deadline is specified in the Contract, the Supplier shall send the documentation together with the Performance or within 5 (five) days after the date of the Performance's delivery at the latest. The Supplier shall hand over to the Customer on time the documents necessary for taking over the Performance or for discretionary disposal of the Performance for the Customer to be able to dispose of or take over the Performance in the moment when it arrives at the place of destination. The Supplier shall be responsible for the accuracy and completeness of any documents that the Supplier is to deliver under the Contract, as well as that this documentation does not contain any defects, which would prevent the Performance agreed upon in the Contract. If the Supplier or the Customer discovers that documentation is defective in any way, the Supplier shall immediately remove the defects at its own costs.

2.4. Suspension of the Performance

If the Supplier is in default with delivery of the Performance under the Contract, the Customer shall have the right to suspend the fulfilment of its obligations until the Performance is delivered or until the Supplier gives an adequate security for its obligations. If the Customer discovers that doubts about the Supplier's capability to fulfil its due or future obligations under the Contract arose, exist or are likely to arise, the Customer shall have the right to suspend the fulfilment of its obligations under the Contract until the Supplier gives appropriate security for its obligations. The same applies if the Customer discovers that the Supplier provided a false, incomplete or distorted information on its person, property or financial situation or other facts which might be important for the Customer or on the basis of which the Customer concluded or performed the Contract. The Customer shall have the right to be compensated for any costs incurred as a result of the performance of the Contract being suspended by fault of the Supplier.

2.5. Changes

The Customer may at any time ask the Supplier in writing to change the scope or specification of the Performance, including changes resulting from the amendments to acts, standards or regulations relating to the subject matter of the Contract that will take effect after the signature of the Contract and before the Performance is taken over by the Customer. The Supplier shall be obliged to implement changes in the Performance requested by the Customer if they are not in contradiction with any applicable regulations or standards. In case of changes influencing the scope or parameters of the Performance, its price or delivery terms, the Parties shall sign a supplement to the Contract in which the technical scope of changes to the Performance will be defined, as well as their impact on the price, and possibly to delivery terms and warranties.

2.6 Sub-suppliers

The Supplier shall have the right to order the manufacturing of any part of the Performance under the Contract with a sub-supplier, or transfer its rights and obligations arising out of the Contract to a third party only after a prior written approval of the Customer. The Supplier shall present a list of potential sub-suppliers upon the signature of the Contract and such list may not be changed without the Customer's prior consent. The Supplier shall be responsible for the actions and/or non-fulfillment of its sub-supplier in the same manner as for his own action or non-fulfillment.

3. Price

A firm-fixed purchase price for the Performance is agreed upon in the Contract. Unless provided otherwise in the Contract, the purchase price includes the value added tax and other taxes, bank and other fees, customs duties, packing, inspection, insurance and other costs incurred by the Supplier in fulfilment of its obligations under the Contract.

4. Payment conditions

The Supplier shall have the right to charge the price for the Performance by a tax document (invoice) made according to applicable regulations (including number of the Contract) after timely and proper handover of the Performance and its take-over by the Customer and sent in 2 (two) copies to the address of the seat of the Customer. Unless provided otherwise in the Contract, the invoice shall fall due 60 (sixty) days after being delivered to the Customer. In case that the invoice is made in contradiction with the Contract or lacks any of the essentials of a proper tax document under applicable legislation, the Customer shall have the right to return it to the Supplier without payment to be completed or rewritten. For this new or corrected invoice the maturity period starts running after the delivery of the corrected or newly made invoice whose essentials meet the conditions required by the Contract.

The Customer shall have the right to set off any of its claims towards the Supplier arising out of or in connection with the Contract (e.g. contractual penalties, compensation for damage, etc.) against the Supplier's claims towards the Customer.

5. Transfer of ownership

Unless provided otherwise in the Contract, the Customer shall acquire ownership of the Performance or individual parts of the Performance by delivery of the Performance. If any third party enforces its rights to the Performance, the Customer shall inform the Supplier without delay and the Supplier shall immediately provide the Customer with any and all documents necessary to protect its rights.

6. Transfer of risk of damage to the Performance

The risk of damage to Performance shall pass to the 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.

7. Insurance

If Supplier arranges transport of the Performance, it shall take out a relevant insurance cover for the Performance during transportation at its own costs against loss, theft or damage and destruction to the benefit of the Customer and shall prove such insurance cover to the Customer upon its request before the delivery of the Performance.

8. Quality warranty

8.1 Contents of the warranty and the warranty period

The Supplier shall provide the warranty for the Performance in a scope and manner according to the Contract. The warranty period over which the Supplier warrants that the Performance will have the qualities agreed upon in the Contract or will be fit for the contractual or otherwise customary use, shall be 24 (twenty four) months, unless provided otherwise in the Contract. The period of warranty begins to run at the moment of the Performances delivery. The Supplier shall be liable for defects of the Performance over the whole warranty period and shall be liable for removing the defects at its own costs in the warranty period in a manner specified in Article 9.2 hereof.

8.2 Warranty at new Performance

The Supplier shall be liable for defects of any repaired, replaced or newly delivered parts of the Performance in the same scope and over the same period as for the original Performance according to Article 8.1 hereof. The period of warranty stops running for the period over which the Customer cannot use the Performance because of defects for which the Supplier is liable.

9. Defects of the Performance

9.1 Defects

The Performance is defective, if the Supplier breaches its obligation to deliver the Performance in agreed upon quantity or quality, or if its workmanship does not correspond to its purpose of use under the Contract, or if it lacks properties specified in the Contract or does not comply with the generally binding regulations or norms according to which it is to be delivered, or if the documents which are necessary for use of the Performance have defects.

The Supplier shall be liable for all defects that the Performance has at the moment of transfer of risk under Article 6 of these Terms & Conditions, even if the defect becomes visible only after this time. In addition, the Supplier shall be liable for any defect that occurs after this moment, if the defect is caused by breach of its obligations under the Contract; the Supplier shall be especially liable for defects breaching the quality warranty under Article 8 of these Terms & Conditions. The recurrence of the same defect shall establish the right of the Customer to request its removal by modification in the technical design of the Performance.

9.2. Claims for defects

If defective Performance is delivered, the Customer may request at its own discretion the removal of the defects at the Supplier's account in one of the below mentioned manners:

- (a) delivery of substitute performance for the defective Performance, delivery of missing Performance and rectification of legal defects, all this within 10 (ten) days after the Supplier has been notified of defects;
- (b) repair of the Performance, if defects are repairable, within 10 (ten) days after the Supplier has been notified of defects;
- (c) reasonable discount on the purchase price. The Customer shall have the right to reduce the purchase price paid to the Supplier by a discount. If the purchase price has been already paid, the Supplier shall pay the amount equal to the discount to the Customer within 14 days after the notice about selection of this claim has been delivered to it, together with an interest of 8 (eight) % p.a., unless provided otherwise in the Contract.

If the Customer applies one of the claims for defects set forth in this Article 9 under (a) to (c) and the Supplier will not remove the defect in a proper and timely manner or is in default with returning the amount equal to the applied discount on the purchase price, the Customer shall be entitled to withdraw from the Contract without further notice.

10. Complaint procedure

10.1 Deadlines for notification of defects and making claims for defects of Performance

The 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 30 (thirty) days after the delivery of the Performance. For defects to which the quality warranty relates the warranty period under Article 8.1 of these Terms & Conditions shall apply instead of the above deadline.

10.2 Manner for notification of defects

The written notification of defects must contain especially the description of a defect of the Performance and choice of the claim for defects in accordance with Article 9.2 hereof.

10.3 Method for removal of defects

The Supplier shall be obliged to eliminate the claimed defects at its own costs even in case when it does not accept its liability for defects. The Supplier shall be obliged to hand over the removed defects to the Customer by means of an separate written protocol and the defect is considered removed only at the moment when this protocol is signed by both Parties to the Contract. If the Supplier does not eliminate the defect within a deadline set by the Customer, the Customer may have this defect removed at the Supplier's costs. The Supplier shall be obliged to pay the Customer all its expenses related to the above removal of defects not later than 10 (ten) days after the Customer charged the expenses to the Supplier.

11. Withdrawal from the Contract

11.1 Fundamental breach of the Contract

The Parties to the Contract have expressly agreed to consider the following events to be a fundamental breach of the Contract:

- a) delivery of the Performance with serious defects or breach of the Performance's specification as defined in the Contract;
- b) default of the Supplier with delivery of the Performance according to the Contract by more than 10 (ten) days, or non-delivery of the Performance within an additional deadline set by the Customer;
- c) default of the Supplier with removal of defects within deadlines under Article 9.2 hereof;
- d) if bankruptcy was declared over the Supplier's assets, the bankruptcy or settlement proceedings were initiated against the Supplier or the Supplier is in liquidation;
- e) other serious breaches of the Supplier's obligations not remedied by the Supplier within a reasonable additional period set by the Customer for this purpose in a written notice.

11.2. Effects of withdrawal

The withdrawal from the Contract causes the termination of all obligations of the Parties under the Contract, with the exception of the obligation to pay a contractual penalty or compensation for damage. The effects of withdrawal shall arise by the moment of delivery of a written notice of withdrawal to the other Party. In case of withdrawal by the Customer, the Supplier shall return to the Customer all amounts paid by the Customer in connection with the Contract implementation together with interests at the discount rate of the Czech National Bank (CNB) applicable at the moment of return increased by 5 (five) % p.a. for the period from the payment execution to its return.

12. Set-off and assignment of claims

12.1 Set-off

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

12.2 Assignment

Assignment of the Supplier's claims towards the Customer under the Contract shall be made only by virtue of a written agreement of the Parties to the Contract.

13. Intellectual and industrial property rights

Third party rights may not encumber the Performance delivered under the Contract; its delivery may not violate any patent or other protected third party rights and it may not show any other legal defects. In case that any third party enforces its claims against the Customer that arise out of the violation of its industrial or other intellectual property rights in connection with the Contract execution, the Supplier shall reimburse the Customer for any and all costs and damages incurred by the Customer in this connection.

If the Customer learns of even a possible violation of intellectual or property right of the Supplier or third parties in connection with the Performance or its use or transfer of rights thereto, it shall be obliged to inform the

Supplier without delay. The Supplier shall be obliged to carry on lawsuits concerning the intellectual or property rights related to the Performance and the Customer shall be obliged to extend all necessary cooperation.

14. Contractual penalties and compensation for damage

14.1 Contractual penalty for delay

In case of breach of any obligation to deliver the Performance on time according to the Contract the Supplier shall pay to the Customer a contractual penalty of 0.5 % of the contract price for each day of delay.

14.2 Compensation for damage

The Customer shall have the right to request on the Supplier and the Supplier shall be obliged to provide the Customer with compensation for damage caused by the Supplier or its sub-suppliers to the Customer by breach of their obligations under the Contract or in connection with the implementation thereof, including such breaches of obligations to which a contractual penalty applies, in the amount exceeding this contractual penalty. The compensation for damage includes the proven actual damage and lost profits.

14.3 Interest on late payment

If the Customer is in default with pecuniary performance under the Contract, it shall be obliged to pay to the Supplier the interest on late payment at the discount rate of CNB.

15. Confidentiality

Both the Supplier and Customer shall be obliged to maintain confidentiality of all facts related to the Contract, Performance or matters of the other Party. The Supplier shall treat the documentation, technical drawings and any other information of technical, operational, economic, financial or commercial nature handed over or disclosed by the Customer as secret and confidential. The Supplier shall not disclose such confidential information to any third party without prior written approval of the Customer and may only use it for the fulfilment of its obligations under the Contract. The obligation of confidentiality shall not, however, apply to cases when

a) the subject information is generally available and became available to the public through no breach by the Party, or

b) the information is in the lawful possession of the recipient Party prior to its receipt thereof, or

b) there is a legal obligation to disclose such information to the court, or any state or other body.

Both Parties undertake to keep the confidentially obligations even 5 (five) years after completion of the Performance under the Contract.

16. Governing law

This Contract and Terms & Conditions 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.

17. Disputes settlement

Any and all disputes arising out of or in connection with these Terms & Conditions or any other 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.

18. Force Majeure

18.1 Definition of the term

The force majeure shall mean any obstruction occurring independently from the will of the obliged Party and preventing it from fulfilment of its obligations, if it cannot be reasonably expected that the obliged Party would be able to avert or overcome this obstruction or its consequences despite making maximum efforts which can be reasonably required from it in connection with fulfilment of the obligation in question. The obliged Party shall not be obliged to fulfil its obligations under the Contract over the period of the force majeure 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, public unrest, uprising, revolution, violent demonstrations or terrorist attack;

b) explosion, fire, earthquake or other natural catastrophes making it impossible to the Party to perform the Contract.

Neither delayed deliveries from the sub-suppliers, nor other obstructions arising in time when the Party was in default with fulfilment of its obligation or as a consequence of its financial situation shall be considered a force majeure event.

18.2 Notification of a force majeure event

The Party that requires to be relieved of its obligation by virtue of a force majeure shall immediately inform the other Party in writing, but not later than 10 (ten) days after the occurrence of a force majeure event. This notification shall contain the description of a force majeure event, including circumstances and reasons for its occurrence and expected duration and shall be subsequently not later than 30 (thirty) days proved by a written certificate of a competent body in the country of the affected Party such as the Economic Chamber, etc. The obliged Party shall also notify in writing of termination of such force majeure event.

18.3 Consequences of a force majeure duration

The Party to the Contract that is not able to fulfil its obligations arising out of the Contract due to the reasons of a force majeure event, shall make all reasonable efforts to remedy or overcome the circumstances establishing a force majeure event as soon as possible. The interruption of the Contract performance shall neither be of a bigger scope nor take longer than can be reasonably attributed to such force majeure event. Provided the circumstances of force majeure last longer than 6 (six) months, the other Party shall have the right to withdraw from the Contract.

19. Severability

If any provision in the Contract 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.

The Parties hereby undertake to replace such invalid, ineffective or unenforceable, and at the same time severable provision by a perfect one corresponding to the purpose and contents of the provision being replaced.

20. Changes and amendments

Any Contract and Terms & Conditions 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.

21. Final provisions

These Terms & Conditions shall enter into force and be binding for both Parties to the Contract on the day of the effectiveness of the Contract in question.

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

The rights of the Customer are neither affected nor limited by his provision of any benefit, advantage, alleviation or a prolonged delivery or other term to the Supplier.

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

The agreements contained in the Contract and these Terms & Conditions shall repeal all previous agreements of the Parties, whether oral and written, concerning the Contract performance.

These Terms & Conditions are an integral part of the Contract and are executed in such number of copies that is identical to that of the Contract.