

Terms and Conditions for the Supply of Software and Works

Valid as of August 1, 2020

I.

General Terms

- 1.1 These Terms and Conditions for the Supply of Software and Works (hereinafter referred to as T&CS) are issued under §2586 and consequently Act. No. 89/2012 Coll., The Civil Code (hereinafter referred to as The Civil Code) and regulate the conditions in supplying Software and performing Works between the company VAE Prosys s.r.o., Identification No. 64084761, Tax Identification No. CZ64084761, with registered office at Technologicka 429, Ostrava, incorporated at the Regional Court in Ostrava under the file no.: C 8633 (hereinafter referred to as the Contractor) and the Purchaser. Any and all deviations from the T&CS must be agreed upon in writing in the respective Contract. The Works and Software of the Contractor determined in the Contract are to be performed exclusively for the benefit of the Purchaser.
- 1.2 In these T&CS the mentioned terms shall have the following meaning: "Contract" means a contract for Works concluded between the parties including all its annexes and amendments. "Works" means creation, assembly, maintenance or repair of a particular thing, creation of software or providing other tangibly expressed result according to the specification mentioned in the Contract.
- 1.3 An offer is always revocable and it may be revoked if the revocation is delivered to the Purchaser before the acceptance of the offer is delivered to the Contractor.
- 1.4 All the data concerning the weight, dimensions, power output parameters, prices and other information mentioned in catalogue and price lists shall be binding only to the extent that they are by reference expressly mentioned in the Contract
- 1.5 All drawings and technical documents relating to the Works submitted by one party to the other, prior or subsequent to the formation of the Contract shall remain exclusive property of the submitting party and can only be used for the purpose for which they were provided.
- 1.6 Without an agreement of the submitting party, the receiving party is not allowed to use such documents otherwise than stated in this Contract, to procure copies thereof, to reproduce and to disclose them to a third party. The end user of the Works is not considered to be the third party, provided he is not identical to the Purchaser.

II.

Passing of Risk, Purchaser's Cooperation and Purchaser's Delay

- 2.1 Provided the Contractor performs the Works on the site either owned or otherwise arranged for by the Purchaser, the risk of damage to the Works shall bear the Purchaser. In any other cases the risk of damage to the Works shall pass from the Contractor to the Purchaser at the time of the hand-over/take-over of the Works. In case the Purchaser is in delay with taking-over of the Works even after being duly called to take-over and after the Works are duly completed, the risk of damage to the Works shall pass to the Purchaser on the first day of his delay with taking-over.
- 2.2 The Purchaser shall provide the Contractor with cooperation necessary for proper execution of the Works. The Purchaser is especially obliged to ensure, free of charge, the fulfilment of the following conditions:
- a) The Contractor's personnel shall be able to start work at the Purchaser's place or at other agreed place of performance, in accordance with the agreed time schedule. If the Contractor notifies the Purchaser sufficiently in advance, the Contractor's personnel can perform the work also outside normal working hours.
 - b) Before the work is started, the Purchaser shall inform the Contractor, in writing, of all his safety and other regulations that the Contractor's personnel shall observe when executing the Works and, at the Purchaser's costs, provide the Contractor's personnel with all necessary safety and other instructions specific for the Purchaser's operation. The Purchaser shall ensure healthy and safe working environment for the Contractor's personnel during the whole time of execution of Works. The Purchaser shall provide the Contractor's personnel with specific protective and other equipment necessary for the Purchaser's operation.
 - c) The Purchaser shall provide the Contractor with suitable storage facilities, providing protection against theft or damage to the stored things. The Purchaser shall enable the Contractor's personnel to use his hygiene and boarding facilities.
 - d) The Purchaser shall hand over to the Contractor the place of performance of the Works in the form of written hand over protocol. Access to the place of performance of the Works, including the entry of the Contractor's vehicles, shall be suitable for transport of things and equipment constituting individual parts of the Works.
- 2.3 If the Purchaser anticipates that he will be unable to carry out his obligations in time, including, but not limited to the obligations mentioned in the Art. 2.1 and 2.2, he shall forthwith notify the Contractor in writing, stating the reasons and the assumed time of the remedy. In such case the Contractor is entitled to proceed in accordance with Art. 2.4 and 2.5
- 2.4 The Contractor shall, after notification to the Purchaser, be entitled to suspend performance of the Works for the duration of the Purchaser's delay or, if

appropriate, to remedy the defective situation by himself at the Purchaser's expense. In such a case, the Contractor shall proceed in reasonable and adequate manner. The time of delivery of the Works shall be extended at least by the time of Purchaser's delay, unless objectively a longer period is needed for Contractor's organization of work when executing the Works connected with suspension and restart of Contractor's performance. Shall the Purchaser not enable the restart of Works execution within 15 days, the Contractor is entitled to interrupt the performance of the Works. Shall the Purchaser consequently invite the Contractor to restart performance of the Works, the Contractor is entitled to restart the Works performance up to 30 days after receiving the Purchaser's invitation, without sanctions. Shall the Purchaser not enable the Contractor to start or restart Works performance within 30 days, the Contractor is entitled to withdraw from the Contract.

- 2.5 Should the Purchaser fail to remedy his default within the reasonable additional period set by the Contractor, the Contractor is entitled to withdraw from the Contract and invoice the work-in-progress or its parts. The Purchaser is obliged to settle the amount corresponding to the determined proportion of the total price for the Works.

III.

Variations, Acceptance Tests and Intellectual Property

- 3.1 The Contractor shall execute the Works in accordance with the laws and regulations applicable at the time of formation of the Contract.
- 3.2 The Purchaser is entitled to require variations of the Works, until the Works has been completed. The request for variations shall be in writing and shall contain an exact description and scope of the variations required. Within a reasonable time after receipt of a request for a variation of the Works, the Contractor shall notify the Purchaser, whether and how the variations can be carried out, resulting alteration to the price of the Works and time of delivery of the Works. The same notification shall be made by the Contractor in case of the changes necessary with respect to the changes in the laws mentioned in the Art.3.1 during the Works execution. The Contractor shall not be obliged to carry out any variations of the Works until the parties have agreed upon the respective changes in the Contract.
- 3.3 The performance of the acceptance test shall be expressly agreed upon in the Contract.
- 3.4 The Contractor shall propose the date of the acceptance tests, giving the Purchaser sufficient time to prepare for and to be present at these tests.
- 3.5 Should the performance of Works acceptance tests be agreed to be held at the Purchaser's premises, the Purchaser shall bear all costs of the acceptance tests

including the material consumption. The Contractor shall bear all costs related to the participation of his personnel and representatives. The Purchaser shall provide, free of charge, in particular any power, lubricants, fuels, water and other means and materials required for the acceptance tests. The Purchaser is also obliged to provide, free of charge, any labour and all other cooperation and assistance necessary for preparation and carrying out the acceptance tests.

- 3.6 Should the performance of the acceptance tests be held at the Contractor's premises, the Contractor bears all costs of the tests, excluding travel, accommodation and other costs of the Purchaser's representatives, which shall be borne by the Purchaser.
- 3.7 The acceptance tests at the Contractor's premises are performed within standard working time and in accordance with laws and regulations valid in the country of the Contractor.
- 3.8 If the Purchaser fails to fulfil his obligations under the Art. 3.5, or otherwise prevents the acceptance tests from being carried out, or is not represented at the acceptance tests even though he was duly notified of their date, the obligation to perform the tests ceases to exist and the tests shall be regarded as having been satisfactorily completed at the time of the commencement of the test proposed by the Contractor in his notice. The Contractor shall not provide these Works with warranty.
- 3.9 Unless other technical requirements are agreed, the acceptance tests shall be carried out in accordance with generally binding legal regulations and internal regulations of the Contractor.
- 3.10 If the acceptance tests show defects of the Works that prevent Works from being used for the determined purpose, or prevent safe operation of the Works, the Contractor is obliged to remedy these defects without undue delay, and, if required by the Purchaser, new acceptance tests shall be carried out.
- 3.11 Where the Work to be delivered and/or performed includes a subject protected by intellectual property, the delivery of the Work does not constitute assignment of the intellectual property right or any co-ownership of the intellectual property between the Contractor and the Purchaser. The Purchaser shall not be entitled to alter any trademarks of the Contractor in a way that they would be changed, adopted or used in a way differing from the way they were used by the Contractor upon delivery of the Work. Where the trademarks of the Contractor are used by the Purchaser during use of the Work, the Purchaser shall state that the respective trademark is a registered trademark of the Contractor, where appropriate.
- 3.12 Where the delivered Work includes software, the Contractor is entitled to execute the copyright related to the software. Where the delivered Work includes software, the Contractor can provide the Purchaser, after an agreement, with a non-exclusive licence to use the software in connection with the use of the delivered Work. The price of the licence is already included in the price of the Work. The Purchaser is not entitled to grant any further sub-licences without prior written consent of the

Contractor. The licence to the software is granted for the limited time period during which the Purchaser is using the Work, unless otherwise agreed upon by the Contractor and the Purchaser. The software can be used only in connection with the Work. The software may not be copied, analysed, altered or connected with other software without prior written consent of the Contractor. The software may be copied only for backup purposes.

IV.

Performance of the Works and Contractor's Delay

- 4.1 The completion of the Works takes place:
 - a. When the acceptance tests have been satisfactorily completed or are regarded as having been satisfactorily completed.
 - b. Where the parties did not agree to carry out acceptance tests, when the Purchaser has received a Contractor's written notice stating that the Works has been completed, provided that the Works is free of defects preventing the Works from being used for the determined purpose or preventing safe operation of the Works and the Purchaser has taken over the Works.
 - c. When the Purchaser does not cooperate with the acceptance tests and takes over the Works without the acceptance tests. The Contractor shall not provide any warranty for Works completed this way.
- 4.2 As due completion of the Works is also regarded delivery of the Works with minor defects, which do not prevent the Works from being used for the determined purpose, or safe operation of the Works. This does not affect the Contractor's duty to remedy minor defects.
- 4.3 The Purchaser is not entitled to use or operate the Works or any part thereof before its hand-over and take-over. If the Purchaser does so without the Contractor's written consent, the Works shall be regarded as taken-over and duly performed and the Contractor shall than be relieved of his duty to carry out the acceptance tests.
- 4.4 The contractual parties shall sign the written report confirming hand-over and take-over of the Works. A part of such report is a list of minor defects that may exist, with specification of the agreed time of remedy thereof. The date of signature of such report shall not affect the date of due completion of the Works.
- 4.5 Provided the Purchaser refuses to take-over the duly completed Works, the Works are regarded as handed-over and duly performed after the lapse of a time period set by the Contractor for hand-over of the Works.
- 4.6 The Contractor's delay with the completion of the Works entitles the Purchaser to contractual penalties against the Contractor, from the agreed date on which the

Works should have been completed. The contractual penalty shall be payable at a rate of 0.05% of the total price of the Works excl. VAT for each day of delay.

- 4.7 The aggregate amount of all contractual penalties is limited by the maximum amount of 10% of the total price of the Works excl. VAT. Potential extra costs and extra work are not included in the price of the Works.
- 4.8 If only a part of Works is delayed according to individual milestones as determined in the Contract, the contractual penalty shall be calculated from the price of the delayed part of the Work. If the Contractor subsequently completes the entire Works within the agreed time, these contractual penalties shall not be applied.
- 4.9 The contractual penalties are payable based on the penalty invoice issued by the Purchaser, but they do not become due before the take-over of the Works or the withdrawal from the Contract. Should the Purchaser, as a result of the Contractor's delay, be entitled to the maximum amount of the contractual penalties, the Purchaser can withdraw from the Contract.

V.

Payment Conditions

- 5.1 If not agreed otherwise in the Contract, the price of the Works means excl. VAT. The payment conditions are determined in the Contract.
- 5.2 The Purchaser's delay with payment of his monetary obligations entitles the Contractor to contractual penalty against the Purchaser amounting to 0.05% of the outstanding amount for each day of the delay.
- 5.3 The Purchaser's delay with payment of his monetary obligations resulting from the Contract or any other legal relationships between the Purchaser and the Contractor entitles the Contractor to suspend the performance of the Works according to the Contract, until the full payment. The time of delivery of the Works shall be extended by such period of time.

VI.

Warranty and Liability for Defects

- 6.1 The contractual parties have agreed that the Contractor's obligation arising from its liability for defects and warranty is to remedy for free the duly and timely notified defects of the Works, at its opinion, by repair or replacement. The Purchaser shall, at its costs, provide working access to the Works to the Contractor's personnel. The foregoing is a definition of the Purchaser's liability for defects and Contractor's warranty for the Works quality.

- 6.2 The warranty period is 6 months from the hand-over of the Works, however not more than 6 months from the delivery of the last substantial part of the Works into the place of performance, unless otherwise stated in the Contract. For replaced or repaired parts of the Works shall apply the 6 months warranty period and the warranty conditions as those applicable to the originally delivered supplies.
- 6.3 The Purchaser shall notify the Contractor, in writing, of any defects of the Works (including latent defects) without undue delay after the defect could have been discovered and within the warranty period. As for the defects of the Works that may cause damage, the Purchaser shall notify the Contractor immediately with a subsequent written confirmation. The notification of a defect shall contain the description of the defect and, as the case may be, specification how the defect is shown. The Purchaser shall bear the risk of the damage arisen as a result of breach of his obligations under this Article.
- 6.4 On receipt of the notice the Contractor shall remedy the defects without undue delay and at his own costs. The defective parts of the Works that have been replaced shall remain in the Contractor's property. If the Purchaser has notified the Contractor about defects and no defects are found for which the Contractor is liable, the Contractor shall be entitled to compensation for the costs he has incurred in connection with the notice.
- 6.5 The warranty shall not cover the defects of the Works caused by encroachment by the Purchaser or a third party, and the defects of the Works where it is not possible to prove that they occurred due to defective material used, faulty construction or incomplete manufacture. The warranty shall not cover the defects of the Works arisen at the Purchaser's premises, especially those occurred due to faulty installation and maintenance of the Works, non-compliance with set operational conditions, overvoltage, undervoltage, interference, excessive strain, mechanical damage, use of inadequate operation media, chemical and electrolytic influences, construction and assembly works by other persons than the Contractor's and all other reasons without the Contractor's default.
- 6.6 In connection with its liability for defects and warranty obligations, the Contractor shall not be obliged to remedy defects for free elsewhere than in its designated premises or at the delivery place agreed in the Contract.
- 6.7 The Contractor shall not be held responsible for the defects of Works caused by faulty documentation handed over by the Purchaser, when the Contractor was unable to detect these errors in the documents even after all professional care had been taken, or when despite the Contractor's written notice of the errors in the documents the Purchaser insisted on using them.

VII.

Force Majeure

- 7.1 Both parties are entitled to suspend performance of their obligations under the Contract for the time of duration of Force Majeure. The Force Majeure is deemed to be the obstacle which arose independently of the liable party's will and that prevents this party from performing its obligation, provided that it cannot be reasonably expected that the liable party could avert or overcome such an obstacle or its consequences, and further that the occurrence of such an obstacle was unpredictable at the time of formation of the Contract. Examples of the Force Majeure include especially: strike, epidemic, fire, natural disaster, mobilisation, war, insurrection, seizure of goods, embargo, blockade, prohibition on exportation or importation of goods, raw materials or services, ban on foreign exchange transfer, electric power taking regulation that is not culpable or any other obstacle caused by actions or omissions by any public authority, terrorist attack, etc. The Force Majeure makes it impossible to claim contractual penalties against the party affected by the Force Majeure. The party claiming to be affected by the Force Majeure shall notify the other party of this event without delay in writing and take all possible measures to reduce the consequences of non-performance of the contractual obligations. Should the Force Majeure last for more than six months, both parties are entitled to withdraw from the Contract.

VIII.

Compensation for Damage and Export of the Works

- 8.1 The Contractor's liability for any indirect and consequential damages arising out of the breach of obligations in connection with the Contract, including but not limited to the loss of profit, energy loss, costs connected with the impossibility of using the Works, costs of capital, costs connected with delayed delivery of the Works, non-fulfilment of the guaranteed parameters of the Works, etc. The total aggregate liability of the Contractor in respect of any and all damages including the contractual penalties and other claims in connection with the breach of one or more obligations of the Contractor shall not exceed the maximum amount of 10% of the total price of the Works excl. VAT. Possible extra-costs and extra-work are not included in the price of the Works. None of the above limitations of the compensation for damage shall apply to the damage caused by the Contractor intentionally or by gross negligence.
- 8.2 The Purchaser acknowledges that the Works may be subject to Czech and /or foreign statutory provisions and regulations regarding export control and without

export or re-export permits from the competent authorities may not be sold, leased or otherwise transferred or used for a purpose other than that agreed upon. The Purchaser agrees to comply with such provisions and regulations. The Purchaser acknowledges that such provisions and regulations may change and are applicable to the Contract according to the wording valid at the time.

- 8.3 The Works may neither directly nor indirectly be used in connection with development, production, handling, operation, maintenance, storage, detection, identification or dissemination of chemical, biological or nuclear weapons or other nuclear device or the development, production, maintenance or storage of missiles capable of delivering such weapons.

IX.

Final Provisions

- 9.1 The Contract is governed by the laws of the state of the registered office of the Contractor. Any and all disputes under the Contract, including but not limited to the disputes in connection with execution and validity thereof, shall be settled by the courts of the Czech Republic and under the Czech law.
- 9.2 None of the parties shall assign any of its claims arisen under the Contract without a written approval of the other party. The parties have agreed that any and all rights under this Contract shall be subject to the statute of limitations of three years. The parties have agreed that any and all rights under this Contract shall be subject to the statute of limitation of three years. The parties have agreed that the section §1978 (2) of the Act no. 89/2012 Coll., the Civil Code, as amended shall not apply in respect of the Contract.