

# **WITKOWITZ ENVI a.s.**

## **PURCHASE TERMS AND CONDITIONS**

**No. 02/2019/SoD**

### **ENTERING INTO A CONTRACT**

1. A proposal for entering into a Contract for Work (hereinafter referred to as an “Order”), submitted by the Client in writing, shall be accepted by the Contractor in writing within 10 days of delivery of the Order, but no later than 15 business days after the Client sends the Order. The Contractor may also notify the Client of acceptance of an Order by fax or e-mail, where the Contractor must send original written notice of acceptance of an Order, signed by the Contractor, to the address of the Client’s registered office within 3 business days from the date on which the fax or e-mail is sent.
2. The Contract for Work (hereinafter referred to as the “Contract”) shall be concluded on the date of delivery of written acceptance of an Order, signed by the Contractor, to the address of the Client’s registered office no later than the last day of the period specified in the Order for acceptance thereof. Late acceptance shall be effective as acceptance if the Client provides the Contractor with written confirmation of this fact.
3. Acceptance of an Order shall not lead to the conclusion of a Contract if it contains any amendments or modifications, even if such amendments or modifications do not substantially change the Order conditions. In such cases, a Contract shall only be concluded if the Client confirms this new proposal and sends it back to the Contractor.
4. Any changes to, amendments to, or cancellation of a Contract concluded between the Client and the Contractor (hereinafter jointly referred to as the “Parties”) may only be executed in writing. An Amendment to the Contract shall take effect between the Parties on the date it is signed by the Client and the Contractor, otherwise on the date of delivery of the Amendment, signed by the last Party, to the address of the registered office of the other Party.
5. If a Contract contains different provisions from the provisions of these Purchase Terms and Conditions (hereinafter referred to as the “Conditions”), the provisions of the Contract shall prevail.

### **PERFORMANCE OF THE WORK**

6. The Contractor undertakes to perform the work for the Client at the Contractor’s expense and risk, and the Client undertakes to accept the work duly completed and to pay the agreed price to the Contractor.
7. The work under these Conditions means an activity consisting in the manufacture of an item (if it does not fall under a Purchase Contract), as well as repairs to, modifications to or maintenance of a thing, or an activity with a different result (hereinafter jointly referred to as the “Work”). A concrete result of an activity is the Work completed in a tangible or intangible form (hereinafter referred to as the “Subject of the Work”).
8. The Contractor shall perform the Work and hand over the completed Work to the Client in the scope and quality agreed in the Contract. If a quality is not determined in the Contract, the Contractor shall complete the Work and provide it to the Client in a quality and design according to a technical standard, or in a quality complying with the agreed purpose, or a purpose implied in the Contract, and/or a purpose for which the Subject of the Work is normally used. The Work shall also comply with all generally binding legal, technical and safety regulations, including the Client’s internal OHS and FP regulations, and other regulations applicable to the agreed type of Work.
9. If the Work is performed on the Client’s premises, the Contractor shall adhere to the “Binding Conditions for Performing Activities by External Persons with Regard to Occupational Health and Safety, Fire Protection and Environmental Protection for WITKOWITZ ENVI a.s.”. These Conditions are published at [www.vitkovice-envi.cz](http://www.vitkovice-envi.cz), and the Contractor declares that they familiarised themselves with the Conditions before signing the Contract.
10. The Contractor shall hand over the Subject of the Work to the Client, together with documents relating to the Subject of the Work, at the Contractor’s expense and risk, and at the time and in the place agreed in the Contract. Unless agreed otherwise in the Contract, the place of handover shall be the Client’s registered office.

11. If transported, the Subject of the Work shall be packed in a manner that is suitable for the agreed type of Work and the agreed method of transportation in order to prevent any damage to the Subject of the Work during transportation to the agreed place of handover, and to ensure safe handling and storage of the Subject of the Work. The packages and padding materials used shall only be returned if their return is expressly agreed upon in the Contract. In such cases, the package number, package owner and a clear marking that the package is returnable must be displayed on returnable packages, otherwise packages shall be treated as non-returnable. All packages must be environmentally friendly, and must comply with the statutory requirements of applicable generally binding legal regulations.
12. All costs associated with the transportation and handover of the Subject of the Work at the place of performance, including costs for packages, packing and securing the Subject of the Work for transportation, and for returning the packages if applicable, shall be borne by the Contractor.
13. The Contractor shall provide the Client with documents determined in the Contract, certificates and documents necessary for the acceptance, free disposal, customs clearance and use of the Subject of the Work, and, in particular, documents determining conditions for the installation, operation, storage and maintenance of the Subject of the Work; these shall be provided in a timely manner, no later than the handover of the Subject of the Work. The documents must be legible, clear, without mistakes, and must include the Contract number. Unless otherwise required by the Client, the documents must be prepared in Czech.
14. A Handover and Acceptance Report shall be drawn up on the handover of the completed Work by the Contractor and acceptance thereof by Client; the report shall be signed by representatives of both Parties. If the completed Work is a manufactured thing, the document on the handover and acceptance of the Subject of the Work shall be a Delivery Note, which shall be confirmed by a representative of the Client.
15. Partial completion and handover of the Work are only acceptable in cases where the Parties expressly agree upon partial completion and handover in the Contract.
16. If the Contractor performs the Work on the Client's premises or at a place which the Client ensures for carrying out the Work, the Client shall be the owner of the item that is determined as the Subject of the Work, and shall assume the risk of damage to the item. In other cases, the title and risk of damage to the item shall pass from the Contractor to the Client upon acceptance of the Subject of the Work and signature of a Report on the Handover and Takeover of the Item by a representative of the Client. If the subject of a performance constitutes repairs to, maintenance of or modifications of an item, the title to the item shall not pass to the Contractor.
17. The Contractor is aware of the potential risk of a substantial change in circumstances, consisting in a disproportionate increase of the costs for the performance, and assumes this risk of a substantial change in circumstances.
18. The Contractor undertakes to ensure that the Work shall not be pledged, contain any legal defects or be encumbered with any third-party rights.
19. The Client is entitled to check the progress of the performance of the Work or parts thereof with the Contractor or the Contractor's Subcontractors at any time on business days, and may do so at the place where the Work is performed. For the duration of the warranty period, the Contractor shall maintain a quality management system for the performance of the Work in an adequate scope and quality as at the time that the Contract is concluded or higher.

## **QUALITY WARRANTY, LIABILITY FOR DEFECTS**

20. The Contractor shall provide a quality warranty for the Work completed and handed over to the Client for a period agreed upon individually in the Contract, otherwise for a period of 36 months from the date of due handover and acceptance of the Subject of the Work by the Client. If any properties of the Work are not expressly established in the Contract, the Contractor undertakes to ensure that the Subject of the Work shall maintain appropriate properties for the ordinary use of the Subject of the Work for the duration of the warranty period.
21. If the warranty period specified in the Contract differs from the warranty period specified in the warranty certificate, the longer period shall apply. The warranty period shall always be extended by the period for which the Work cannot be used due to defects for which the Contractor is responsible.
22. If the Client discovers any defects in the accepted Work, the Client shall notify the Contractor of this fact within 15 days of discovering the defects. A complaint about a defect shall be made in due time if it is sent by the Client by the last day of the warranty period inclusive.

23. The Client shall notify the Contractor of any discovered defects in writing, by post, fax or e-mail. The Client shall describe the discovered defect or the manner in which it manifests itself, and shall notify the Contractor as to which of the rights arising under liability for defects the Client has chosen, as well as the period within which the defect is to be eliminated. The method which the Client chooses for handling the problem shall be binding for the Contractor.
24. The Contractor shall commence work to eliminate defects which are subject to a complaint within 3 days of delivery of the complaint, unless a different period is specified in the complaint. The Contractor shall eliminate defects in the completed Work completed within a period determined by the Client, otherwise within a period that is adequate with regard to the scope and nature of the reported defect, but within no more than 10 days of delivery of the complaint, unless otherwise agreed by the Parties. In the event of a severe defect or a defect endangering the operation or safety of the Work, the remedial period shall be 24 hours from the time that such a defect is reported, unless otherwise agreed by the Parties. If requested by the Client, the Contractor shall promptly send a representative within 48 hours of delivery of the relevant notice to inspect and evaluate the defects subject to a complaint.
25. If the Contractor is delayed in eliminating a defect subject to a complaint within the period determined by the Client or agreed by the Parties, the Client shall be entitled to eliminate the defect themselves or through a third party, at Contractor's expense; the Contractor shall reimburse the costs to the Client within 30 days of delivery of the relevant bill. If a defect cannot be eliminated or disproportionate costs would be required for its elimination, the Client shall be entitled to terminate the Contract, or to choose any other right arising under liability for defects.
26. Until any defects are eliminated, the Client shall not be obliged to pay a part of the price for completion of the Work (if not paid yet) which, based on an estimate, corresponds to the Client's right to a discount. This part of the price shall be retained by the Client until the defect is eliminated.
27. The Contractor shall eliminate any defects in the Work subject to a complaint, even if the Contractor does not admit them. In such disputable cases, the costs for eliminating a defect subject to a complaint shall be borne by the Contractor until a judicial decision is issued.
28. The exercise of a right arising under liability for defects shall not prevent the Client from exercising any other legal rights.
29. In addition to the rights arising under liability for defects, the Client shall be entitled to claim compensation from the Contractor for damages incurred by the Client from a breach of Contractor's obligations, including costs for the potential disassembly of the defective Subject of the Work, reassembly, or any other costs associated with the defective Subject of the Work. The Client shall be entitled to bill such damages, and the Contractor shall be obliged to compensate the Client for the damages within 30 days of delivery of a bill to the Contractor.

## PAYMENT TERMS

30. The Client shall pay the Contractor the price for the completed Work (hereinafter referred to as the "Price of the Work") determined in the Contract, which shall include all costs associated with the performance of the Work, including potential packaging, transportation, etc., and including a quality warranty for the Work. The Price of the Work shall be increased by value-added tax at the rate determined by Act No. 235/2004 Coll., on value-added tax (hereinafter referred to as the "VAT Act"), as amended. The Price of the Work shall be paid to the Contractor by bank transfer on the basis of an original tax document – invoice (hereinafter referred to as the "Invoice"). The Invoice shall be delivered to the Client and must particularly contain:
  - the Client's Contract number
  - the subject matter of the performance
  - a CZ-CPA code (if the reverse charge mechanism according to Section 92e of the VAT Act is applied)
  - the agreed price in the agreed currency
  - the account number including the code of the bank into which payment is to be made
  - the maturity period of the Invoice, which shall commence on the date on which the Invoice is delivered to the Client
  - requirements of a tax document under the VAT Act
31. The Invoice shall be accompanied by a document proving due handover of the Subject of the Work (Work Handover and Acceptance Report or Delivery Note) signed by a representative of the Client as specified in the Contract.

32. The Client reserves the right to return an Invoice to the Contractor for correction or completion if the Invoice does not contain the details agreed upon or stipulated by law, or does not contain the accompanying document specified above. In such cases, the agreed maturity period shall commence on the date on which the corrected Invoice is delivered to the Client.
33. The Client shall pay the Price of the Work by transfer order into the account specified in the Contractor's Invoice, and the obligation to pay the Price of the Work shall be treated as fulfilled on the date on which the amount is debited from the Client's bank account and credited to the Contractor's bank account specified in the Invoice. If a retention (or withholding) fee for a part of the Price of the Work is agreed upon in the Contract (hereinafter referred to as the "Retention"), the Client shall pay the Price of the Work reduced by the Retention, and the Retention shall be paid by the Client to the Contractor without delay after the Contractor becomes entitled to the payment thereof (if an amount equal to the Retention has not been invoiced yet, the Client shall pay it after delivery of a proper Invoice for the Retention). Unless otherwise agreed in the Contract, the right to the payment of the Retention (or an unused part thereof) shall arise upon the expiry of the agreed warranty period, provided that any claims of the Client arising from the Contractor's liability for defects in the Work have been settled. Unless otherwise agreed in the Contract, the Client shall be entitled to use the Retention to cover any claims to which the Client becomes entitled from the Contractor in connection with the Contract. If a decision is issued declaring the Contractor bankrupt or refusing an insolvency petition on the grounds that the Contractor's assets are insufficient, the Parties shall establish the value of the as yet unused quality warranty for the Work as an amount equal to the agreed amount of the Retention (excl. VAT). Upon issuance of any of these decisions, the Price of the Work shall then be automatically reduced by the value of the unused warranty equal to the agreed Retention; at the same time the Contractor's right to release the retention agreed upon in the Contract shall expire. If a Retention has not been agreed upon in the Contract, the Parties shall establish the value of the quality warranty for the Work at 20% of the Price of the Work (excl. VAT), and upon issuance of a decision declaring the Contractor bankrupt or refusing an insolvency petition on the grounds that the Contractor's assets are insufficient, if issued before expiry of the warranty period, the Client shall become entitled to a discount on the Price of the Work equal to 20% of the Price of the Work (excl. VAT).
34. If a period for the payment of the Price of the Work is not expressly agreed in the Contract, the Client shall pay the Price of the Work within 90 days of delivery of a proper Invoice by the Contractor.
35. The Contractor shall become entitled to the payment of the agreed Price of the Work upon due completion and handover of the Subject of the Work to the Client.
36. Should the Parties be delayed with the payment of any financial obligations within the maturity period, the amount of default interest shall be 0.02% of the due amount for each day of the delay.
37. If the Client pays a principal first, the costs and interest shall not accrue interest (Section 1932 (2) of the Civil Code).
38. If the tax administrator decides, in accordance with Section 106a of the VAT Act, that the Contractor is an "Unreliable Taxpayer", the Contractor shall notify the Client of this fact in writing without delay, no later than 48 hours after this decision takes effect. Written notice shall particularly contain the date on which the decision of the tax administrator took effect, and the name and number of the bank account of the competent tax office, including the variable symbol. If a decision is made identifying the Contractor as an unreliable payer according to Section 106a of the VAT Act, or if in an Invoice requires a payment to be made into a bank account which the Contractor does not specify in the list maintained by the tax administrator, the Client shall be entitled, according to Section 109a of the VAT Act (Special Means of Securing Tax), to pay the VAT amount as specified in the Invoice into the account of the competent tax administrator.
39. The Contractor shall not be entitled to unilaterally set off any of their claims against the Client.
40. The Contractor shall be entitled to pledge any claims against the Client for the benefit of a third party, to transfer rights or liabilities as a security, or to assign the claims, only on the basis of a prior written agreement between the Parties, or on the basis of the prior express written consent of the Client.

## **PROTECTION OF INDUSTRIAL AND INTELLECTUAL PROPERTY RIGHTS**

41. Any technical documentation (drawings, technical documents, calculations, procedures, manuals, etc.) which is provided by the Client to the Contractor as supporting materials for performance of the Work (hereinafter referred to as the "Technical Documentation") is the exclusive intellectual property of the Client. The exclusive intellectual property of the Client shall include all technical solutions and other solutions and procedures which are recorded in the Technical Documentation and which are marked as such.

42. Without the express written consent of the Client, the Contractor shall not be entitled to publish or disclose the Technical Documentation to any third party, nor to use it for their own benefit or the benefit of any third party. The Contractor is only entitled to use the Technical Documentation in connection with the performance of the Work. This obligation does not apply to administrative or other public bodies or authorities if they carry out inspections or other supervision regulated by applicable legal regulations. Unless otherwise agreed in the Contract, after the completion of the Work, the Contractor shall return the Technical Documentation and any other documents to the Client and destroy all copies thereof made by the Contractor for the purpose of performing the Contract.
43. If the subject matter to be supplied under the Contract is a tangible result of activities (hereinafter referred to as the “Tangible Result”) which is protected by an industrial or other intellectual property right, by signing the Contract, the Contractor grants the Client a free licence to use the Tangible Result, including the right to use it for other purposes than those stated in the Contract. The licence shall cover the Client’s right to use the Tangible Result without limitation with respect to time and place, and the right to grant a sub-liscence to a third party.

## **CONTRACTUAL PENALTIES**

44. Should the Contractor be delayed with the handover of the Subject of the Work to the Client within the period agreed in the Contract, the Client shall be entitled to charge the Contractor, and the Contractor shall be obliged to pay the Client, a contractual penalty equal to 0.2% of the total Price of the Work (excl. VAT) for each day of the delay.
45. For every discovered and reported defect in the completed Work, including errors in documents required for use of the Work, which the Contractor fails to eliminate within a period determined by the Client, the Client shall be entitled to charge, and the Contractor shall be obliged to pay the Client, a contractual penalty equal to 0.2% of the Price of the Work (excl. VAT) for each defect and each day of the delay in eliminating the defect.
46. If the Contractor prepares incorrect or incomplete documents that are required for the acceptance of the completed Work, the Client shall be entitled to demand a contractual penalty from the Contractor equal to CZK 5,000 for each incomplete or incorrect document.
47. If the Contractor breaches the obligations stated in paragraph 42 of these Conditions, the Client shall be entitled to charge the Contractor a contractual penalty equal to CZK 100,000 for each breach of the obligations, even for repeated breaches. The obligations stated in paragraph 42 of these Conditions shall not expire upon payment of a contractual penalty.
48. If the duty to provide notification stated in paragraph 38 of these Conditions is not fulfilled, the Client shall be entitled to charge the Contractor a contractual penalty equal to 20% of the Price of the Work (excl. VAT).
49. The contractual penalty for a breach of the Contractor’s obligations stated in paragraph 40 of these Conditions shall be 20% of the claim that would have been the subject of a breach of the determined obligation.
50. The Client’s right to compensation for damages shall not be affected by the payment or charging of a contractual penalty. The Client is entitled to exercise these rights separately, in parallel and in full, without regard to any claim for or payment of a contractual penalty by the Contractor.
51. Any contractual penalties charged and claims for compensation for damages shall be due within 30 days of delivery of the relevant invoice or other payment request to the obligated Party.

## **TERMINATION OF THE CONTRACT**

52. Either of the Parties is entitled to terminate the Contract for reasons specified by law, in the Contract and in these Conditions. Notice of termination of the Contract must be executed in writing.
53. Either Party shall be entitled to terminate the Contract if the other Party to the Contract enters into liquidation, files an insolvency petition due to bankruptcy, or an insolvency petition is filed against the other Party.
54. The reason for termination shall be a substantial breach of the Contract by the Contractor, which primarily means a breach of the obligation to complete and hand over the Work to the Client in a due and timely manner, and a delay in eliminating defects.
55. If the title to the Subject of the properly completed Work passes to the Client before the Contract is terminated:

- a) after the termination, the Subject of the Work shall remain in the ownership of the Client, and the Contractor shall be entitled to financial compensation equal to the amount of profit the Client obtained from the Work used, or
  - b) the Client shall be entitled to return the Subject of the Work, if it is possible in terms of the nature of the Work, and the Contractor shall also return the price for the performance of the Work to the Client, according to the Client's choice.
56. Upon termination of the Contract, all rights and obligations of the Parties shall expire, with the exception of contractual penalties, default interest, compensation for damages, rights arising under liability for defects of the Work, rights arising from a security, and arrangements that, due to their nature, shall remain binding after the Contract is terminated (for example obligations to confidentiality, industrial and intellectual property rights, etc.), and any other rights which arise under generally binding legal regulations.

## **FINAL PROVISIONS**

- 57. Legal actions taken between the Client and the Contractor shall be exclusively executed in writing, unless otherwise stated in these Conditions. Any other forms of manifestation of will shall not impose any obligations on the Parties and must not be interpreted inconsistently with the provisions of the Contract or its Amendments.
- 58. The Contractor and the Client declare that they shall not infer any rights and obligations from the current or future practice established between them, from generally observed customs, or from the industry of the delivered goods, above and beyond what is laid down in the concluded Contract and these Conditions.
- 59. No obligation under the Contract or these Conditions is a fixed obligation, unless otherwise stipulated in the Contract.
- 60. The rights and obligations of the Parties, as well as legal relations resulting from or arising out of the Contract shall be governed by the concluded Contract, the Client's instructions issued during the performance of the Work, these Conditions, the Civil Code (Act No. 89/2012 Coll., as amended) and other generally binding legal regulations of the Czech Republic.
- 61. The Parties agree to resolve any disputes arising out of or in connection with the Contract through mutual negotiations. If the Parties fail to resolve any such disputes amicably, the competent court of first instance for resolution of disputes shall be the ordinary court having local jurisdiction over the Client's registered office.
- 62. Should any provision of these Conditions or a specific Contract be or become invalid or ineffective, or is not taken into account according to law, this shall not affect the validity, effectiveness or legal impeccability of the remaining provisions. In such cases, the Parties shall immediately conclude an Amendment, whose contents shall replace the invalid or ineffective provision with a provision that is as close as possible to the meaning and purpose of the original provision.

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These Purchase Terms and Conditions are valid and effective from 1 October 2019