

## **GENERAL TERMS AND CONDITIONS FOR PURCHASE OF GOODS AND/OR SERVICES ENERGO – PRO / LITOSTROJ GROUP**

### **1. DEFINITION**

- 1.1 The following terms have the following meanings:
- (a) **GTC** - General Terms and Conditions for Purchase of Goods and/or Services;
  - (b) **Supplier** is the party providing the Goods and/or Services to Customer;
  - (c) **Embedded software** is software necessary for operation of Goods, and embedded in and delivered as integral part of Goods;
  - (d) **Customer** is party ordering Goods and/or Services from Supplier; Customer can be any company/establishment from ENERGO-PRO or LITOSTROJ GROUP or its affiliated companies;
  - (e) **Order** is Customer's order issued to Supplier for the purchase of Goods and/or Services;
  - (f) **Intellectual Property** (Rights) are (a) patents, utility models, copyrights, database rights, rights in trademarks, trade names, designs, knowhow, and invention disclosures (whether registered or unregistered); (b) applications, reissues, confirmations, extensions or renewals of any of these rights; and (c) all other intellectual property rights and equivalent or similar forms of protection existing anywhere in the world;
  - (g) **Contract** is a written agreement and/or the Order for the purchase of Goods and/or Services by Customer from Supplier, including this GTC and any other documents submitted by Customer to form part thereof (i.e., technical specification);
  - (h) **Services** are the services to be provided by Supplier in accordance with Contract; and
  - (i) **Goods** are the items to be delivered by Supplier in accordance with Contract and/or any items which are the result of Services, documents or other results of Services provided by Supplier under the Contract in any form or media, including but without limitation to data, diagrams, drawings, reports and specifications.

### **2. APPLICATION OF GENERAL TERMS AND CONDITIONS**

2.1 No terms or conditions delivered with or contained in Supplier's quotations, acknowledgements, acceptances, specifications or similar documents will form part of Contract, and Supplier waives any right which might result from such terms or conditions.

2.2 GTC govern the content of Contract.

2.3 Supplier shall accept the Order either expressly by written statement or impliedly by fulfilling the Order.

2.4 Any amendments to the Contract must be agreed in writing and duly signed by authorised representatives of Customer and Supplier.

2.5 The execution of any adjustments by Supplier in Order submitted by Customer or acceptance of Order with any deviations does not constitute a Contract.

2.6 In case the Contract includes offer or any other document of the Supplier, only its part relating to the technical specification will be applicable. Any other conditions included in the offer or in any other document provided by the Supplier that is a part of the Contract (e.g. payment terms, delivery terms, warranties, contractual penalties, limitation of damages or any other limitation of Supplier's liability etc.) shall not apply.

### **3. SUPPLIER'S RESPONSIBILITIES**

3.1 Supplier shall deliver the Goods and provide the Services:

- (a) in accordance with Contract and any Customer instructions;
- (b) in accordance with the applicable laws and technical regulations; and
- (c) free from defects and from any rights of third parties, new and unused and fit for any particular purpose known to the Supplier or specified in the Contract or, in absence thereof, fit for the purposes for which such Goods and/or Services would ordinarily be used.

3.2 Supplier shall ensure that the Goods are packed according to industry standards and in a manner adequate to preserve and protect the Goods.

3.3 Supplier assumes full and exclusive responsibility for any occupational accident or disease occurred to its employees in relation to the provision of the Goods and/or Services.

3.4 Supplier is solely and exclusively responsible for any claims and/or lawsuits filed by its employees and/or subcontractors, and shall, without any limitations, defend, indemnify, and hold Customer harmless from and against any claim, proceeding, action, fine, loss, cost, damages and expenses arising out of or relating to any such claims and/or lawsuits. Supplier is obligated to indemnify and hold Customer harmless from any noncompliance with legislation, regulations, codes of practice, guidance and other requirements of any relevant government or governmental agency applicable to Supplier, its employees or subcontractors.

3.5 Supplier undertakes to appear in court or arbitration panel, if required by Customer, and to provide Customer with all requested documentation and information necessary to ensure proper legal defence of Customer in court or arbitration panel.

3.6 Customer may issue variation Orders to Supplier, and Supplier shall carry out such Variation Orders for the purpose of change, adjustments, restrictions addition or any other adjustments of ordered Goods and/or Services or part of it and Supplier is obligated to fulfil such variation Order. If any variation Order cause an increase or decrease in the cost of, or the time required for the performance of any Services or Goods, an equitable adjustment shall be made in the written form, unit prices specified in Order or otherwise agreed between Customer and Supplier shall be preferred.

3.7 Supplier must not in any case suspend or delay the Delivery of any Goods or the provision of any Services.

3.8 Supplier declares that all authorizations necessary for the delivery of the Goods and/or Services are in his dispositions.

3.9 Supplier is obliged to acquaint himself with all information, data and other documents that are part of Contract or were provided by Customer to Supplier in connection with it and furthermore with the legal requirements and conditions at the place of performance. Should any information, data or values supplied by Customer be insufficient, incomplete or inaccurate to the extent that this could affect the proper delivery of Goods and/or Services, it is Supplier's obligation to ensure for himself specification of missing information and data. In case the values or data provided by Customer are essential for the performance of delivery of Goods and/or Services, it is always Supplier's duty to verify such data. Customer shall provide Supplier with the necessary cooperation in terms of operational possibilities. Supplier is not entitled to any additional payments and extension of the

deadline for delivery of Goods and/or Services due to misinterpretation of any documents related to Contract.

#### **4. DELIVERY**

4.1 Unless agreed otherwise in Contract, Goods shall be delivered in accordance with FCA (INCOTERMS® 2010) to the place defined in Contract.

4.2 Services shall be provided at the place specified in Contract or, if no such place has been specified, at Customer's place of business defined in Order.

4.3 Supplier shall provide no later than at the time of acceptance of Contract the following minimum information: number of packages and contents, the customs tariff numbers of the country of consignment, and the countries of origin for all Goods. For controlled Goods, the relevant national export control numbers must be indicated and, if the Goods and/or Services are subject to U.S. export regulations, the U.S. Export Control Classification Numbers (ECCN) or classification numbers of the International Traffic in Arms Regulations (ITAR) must be specified. Supplier shall state Contract number on all invoices.

4.4 Upon delivery, Supplier (or its appointed carrier) shall provide Customer a delivery note and any other required export and import documents. If Customer has approved partial delivery, such delivery note shall also include the outstanding balance.

4.5 Ownership of the Goods passes to Customer at the time of delivery. To the extent that the Goods contain Embedded software, ownership of such Embedded software will not pass to Customer, but Supplier shall grant or procure that the third party owner grants Customer and all users right to use the Embedded software as integral part of such Goods and/or for servicing such Goods according to the clause 10.

#### **5. INSPECTION OF GOODS AND/OR SERVICES**

5.1 Supplier shall at its own expenses at any time during the fulfilment of obligations under Contract enable Customer, at his request, to check the current stage of completion of the subject of Contract in his manufacturing facility, or at its subcontractor's manufacturing facilities and/or at the place of performance of Services, in order to verify compliance of the actual progress of work with Customer's technical specifications or agreed delivery dates and/or to provide test samples of the relevant Goods or parts or materials of Goods. Supplier undertakes to provide the Customer's representative with the necessary technical measures and cooperation to carry out this inspection and to ensure entry into the relevant premises free of charge.

5.2 If Customer after such inspection or collection of test samples concludes that the Goods and/or the Service do not conform or are unlikely to conform to Contract, Customer may inform Supplier on the matter and Supplier shall immediately take all necessary steps to ensure conformity to Contract. Supplier is further obligated to carry out other necessary inspections or tests at his own expenses, while Customer has right to be present and participate in them.

5.3 Notwithstanding any inspections of Goods and/or Services performed by Customer, Supplier remains fully responsible for the conformity of Goods and/or Services to Contract. This applies irrespective of whether Customer perform his right to carry out inspections and/or tests and it does not affect Supplier's obligations under the Contract. For the avoidance of doubt, it is stated that the inspections or tests of Goods and/or Services carried out by Customer do not relieve Supplier in

any case from his responsibilities or obligations from the guarantees and neither it limits them in any way.

#### **6. PAYMENT**

6.1 In consideration of Goods delivered and/or Services provided by Supplier in accordance with Contract, Customer shall pay to Supplier the purchase price stated in Contract assuming that provided invoice fulfils the requirements defined in Contract.

6.2 Supplier shall submit invoices in compliance with applicable mandatory provisions of applicable laws, generally accepted accounting principles and specific Customer requirements, whereas invoices shall contain the following minimum information: Supplier name, address and contact person of Supplier; invoice date; invoice number; Contract or Order number; Supplier number; address of Customer; quantity and specification of Goods and/or Services; total price; tax or VAT amount; tax or VAT number; customs tariff classification of the goods; payment terms as agreed, whereas payment due shall be at least thirty (30) days.

6.3 In case the Supplier issue an invoice which does not contain all the aforementioned information, the Customer has the right to decline this incomplete invoice and return it to the Supplier for correction. In such case, maturity period will start from the delivery date of the corrected invoice.

6.4 Services charged on the basis of hourly rates require written confirmation of Supplier's time sheets by Customer. Supplier shall submit such time sheets to Customer for confirmation as may be instructed by Customer. Customer is not obliged to pay invoices based on time sheets which are not confirmed by Customer in writing.

6.5 Customer reserves the right to set off any of its receivable (including disputed receivables, not due receivables etc.) against any receivable of the Supplier, withhold payment or eventually not to proceed with payment for Goods and/or Services not provided in accordance with Contract.

6.6 Customer is entitled to require from Supplier to provide bank guarantees or other equivalent security measures for cases, where Customer shall proceed to Supplier with monetary payment before the final completion and handover of the subject of Contract. Unless Supplier provides security in a timely and proper manner, Supplier shall be entitled to demand payment of the purchase price only after full fulfilment of the subject of Contract, unless the parties agree otherwise.

#### **7. ACCEPTANCE OF GOODS AND/OR SERVICES**

7.1 Delivery of the Goods or provision of Services may not be deemed to be acceptance of such Goods or Services by Customer. Customer shall have reasonable time to inspect or test the Goods and/or Services and to report any defects to Supplier. If a defect in the Goods and/or Services was not reasonably detectable during the inspection, Customer shall have reasonable time to provide notice of such defect after it has become apparent and/or to reject the Goods/Services.

7.2 The acceptance shall be subject to a written declaration of acceptance by the Customer (or other company from the Customer's group) unless the Parties agree to other acceptance procedure. Within a reasonable time, the Supplier shall inform Customer (or other company from the Customer's group) that the Goods and/or Services are prepared for acceptance.

7.3 Customer may enforce any rights defined in Contract for any rejected Goods or Services.

7.4 In case of failure of the acceptance procedure or test of the Goods and/or Services caused by the Supplier (e.g. due to

defects of goods, unpreparedness of the Supplier, etc.), the Supplier shall pay CZK 5,000 to the Customer for the repeated participation of the Customer on the acceptance procedure or test. Provided the costs or damage (e.g. travel costs, accommodation etc.) incurred by the Customer exceed CZK 5,000, the Customer is entitled to payment of any such costs or damage in full amount. This clause does not exclude Customer's right to the agreed contractual penalties.

## **8. DELAY OF SUPPLIER**

8.1 If the Delivery of Goods or the provision of Services does not comply with the agreed date(s), Customer may at his own discretion, exercise one or more of the rights below:

- (a) terminate Contract in whole or in part;
- (b) refuse any subsequent delivery of Goods or provision of Services;
- (c) recover from Supplier any expenses reasonably incurred by Customer in obtaining the Goods and/or Services in substitution from another supplier;
- (d) claim any damages (including penalties claimed by a third party against the Customer); and
- (e) claim penalties as agreed in the Contract.

8.2 Unless agreed otherwise in Contract, Supplier is obliged to pay Customer for a delay in performance of any milestone for the delivery of Goods and/or provision of Services a contractual penalty of 0.3% of the total price of Goods and/or Services excluding VAT for each day of delay and for each delayed milestone separately.

8.3 Responsibility of the Supplier to pay any penalties or their payment does not exclude or limit Customer's right to compensation of damage.

## **9. WARRANTY AND REMEDIES**

9.1 Supplier warrants that Goods and/or Services comply with Contract, including but without limitation to Supplier's responsibilities as defined in clause 3.1.

9.2 The warranty period is twenty-four (24) months from delivery of Goods and/or handover of Services (unless extended warranty period is agreed in Contract).

9.3 The Supplier must remedy the defect within forty-eight (48) hours after Customer's notification.

9.4 In case of breach of any warranty which is not remedied within forty-eight (48) hours, or in case of any other breach of the Contract, the Customer is, at his own discretion, entitled to enforce any or all of the following remedies at Supplier's expense:

9.4.1 to give Supplier an opportunity to carry out any additional work necessary to ensure that Contract is fulfilled (e.g., repair or immediate replacement of defective Goods or Services)

9.4.2 to carry out (or to instruct a third party to carry out) any additional work necessary to make the Goods and/or Services comply with Contract;

9.4.3 to refuse any further Goods and/or Services; without releasing Supplier from liability for defective Goods and /or Services delivered by Supplier;

9.4.4 to claim damages caused to the Customer (or to a company from Customer's group) as a result of Supplier's breach of Contract (including penalties claimed by a third party against the Customer);

9.4.5 to demand a reasonable discount from the price of Goods and/or Services.

9.4.6 to withdraw from the Contract or part of the Contract, whereas in such cases:

9.4.6.1 Customer is not obliged to provide any compensation to the Supplier (including the Payment for Goods and/or Services that have been refused);

9.4.6.2 at Customer's discretion, Supplier return any remuneration received from Customer for the Goods and/or Services and take back the Goods at Supplier's own cost and risk; and

9.4.6.3 Customer may order appropriate substitute Goods and/or equivalent Services from an alternative supplier (at Supplier's expense)

9.5 In case of exercise of rights in the clause 9.4.1 or 9.4.2, the entire warranty period as defined in clause 9.2 shall be restarted for the additional deliveries or works from the date the remediation is completed to Customer's satisfaction.

9.6 All rights resulting from Contract that are available to Customer are cumulative and are not exclusive of any rights or remedies available at law.

9.7 Supplier is obliged to rectify defects of Goods and /or Services even in case Supplier does not recognize them, and if it is subsequently proven that these are not warranty defects, Customer shall reimburse Supplier reasonable and proven cost for rectification of such defects.

9.8 Supplier shall provide a guarantee for the project documentation for the period during which the rectification of defects in the documentation is still of economic or technical significance. This shall not affect Customer's right to compensation for damage due to defective project documentation.

## **10. INTELLECTUAL PROPERTY**

10.1 Supplier hereby grants Customer, or undertakes to procure that Customer is granted, a worldwide, irrevocable, transferable, non-exclusive, royalty-free license to use the Intellectual Property Rights in the Goods, including Embedded software, if any.

10.2 Supplier herewith assigns to Customer full ownership rights in any Intellectual Property in Goods resulting from the Services.

10.3 Intellectual Property Rights in any Goods created by or licensed to Supplier prior or outside Contract (Pre-Existing IPR) will remain vested in Supplier (or the third party owner). To the extent that Pre-Existing IPR are embedded in any Goods resulting from the Services, Supplier grants, or undertakes to procure that the third party owner grants, Customer and its Affiliates a worldwide, irrevocable, transferable, non-exclusive, royalty-free license to use the Pre-Existing IPR as part of such Goods

10.4 If any claim is made against Customer that Supplier's Goods and/or Services infringe a third party's Intellectual Property Rights, Supplier shall at its cost, but at Customer's discretion (i) procure for Customer the right to continue using Goods and/or Services; (ii) modify Goods and/or Services; or (iii) replace Goods and/or Services. Otherwise, Customer is entitled to terminate Contract and to reclaim all sums which he has paid to Supplier thereunder.

## **11. CONFIDENTIALITY AND DATA PROTECTION**

11.1 Supplier shall keep in strict confidence any information concerning Customer's (or its Affiliates') business, products and/or his technologies which Supplier obtains in connection with Goods and/or Services to be provided. Supplier shall restrict disclosure of such confidential material to other third parties as need to know the same for the purpose of the provision of Goods and/or Services to Customer, whereas Supplier will be liable for any unauthorized disclosures.

11.2 Supplier shall secure the Customer's confidential information against unauthorized access or disclosure thereof and to ensure the highest possible level of its protection. Disclosure of confidential information to other permitted additional recipients is only possible on the basis of a signed confidentiality agreement with Supplier.

11.3 The obligations under the Clause 11. shall continue to apply for a period of ten (10) years after Contract has been terminated.

## **12. COMPLIANCE WITH LAWS AND INTEGRITY**

12.1 Both Parties undertake to comply with all laws, regulations, directives and similar rules concerning bribery and corruption and with Customer's Code of Conduct and all Customer's policies mentioned in the Customer's Code of Conduct including but not limited to the ANTI-BRIBERY AND ANTI-MONEY LAUNDERING POLICY of Customer, available online at <http://www.energo-pro.com/en/policies>. Supplier declares that it has become acquainted with the Customer's Code of Conduct and related policies and undertakes to comply with them.

12.2 Any breach of obligations set forth in the clause 12.1 is a material breach of Contract and entitles the other party to terminate Contract with immediate effect, without effecting any other rights arising from this contractual relationship or applicable law. Notwithstanding anything to the contrary in the Contract, Supplier shall, without limitation, indemnify and hold harmless Customer from all liabilities, damages, costs or expenses incurred as a result of any such breach and/or termination of the Contract.

## **13. LIABILITY AND INDEMNITY**

13.1 Supplier shall, indemnify Customer for all damages (including non-material damages) incurred by Customer in relation to provision of Goods and/or Services as a result of (i) Supplier's breach of Contract and/or (ii) for any claim made by a third party against Customer in connection with Goods and/or Services.

13.2 Supplier is responsible for management and acting of all his employees, suppliers (subcontractors) and/or workers to the extension as if it was acting of Supplier.

13.3 Supplier is obligated to have liability insurance.

## **14. TERMINATION OF CONTRACT, SUSPENSION OF PERFORMANCE**

14.1 Customer may terminate the Contract or part of Contract for convenience in whole or in part by giving Supplier thirty (30) calendar days written notice. In such event Customer shall pay to Supplier the value of the delivered but unpaid Goods and/or Services and proven direct cost reasonably incurred by Supplier. This amount shall not exceed the price agreed under Contract.

14.2 In case of breach of Contract attributable to Supplier, customer may withdraw from the Contract or part of Contract pursuant to clause 9.4.6.

14.3 Customer may terminate Contract with immediate effect by notice in writing sent to Supplier in the event that petition for a bankruptcy order is presented, bankruptcy order is made against Supplier, any circumstances arise to make a winding-up order, change of control of Supplier or other similar action is taken against Supplier by reason of its insolvency or in consequence of debt.

14.4 The Supplier may terminate the Contract only if the Customer is in delay with payment of the Goods and/or Services for more than ninety (90) days and if the Customer does not rectify the debt even in the additional fifteen (15) day

period after receiving written request for payment from the Supplier.

14.5 Upon termination Supplier shall immediately at his expense return to Customer all respective Customer property handed over in relation to Contract (including any Customer data, documentation and information related to Intellectual Property rights), and information in possession of Customer available at that time to Supplier.

14.6 Customer is entitled to request in writing Supplier to suspend the performance of Contract at any time. In this case, Supplier shall upon receipt of such notice immediately cease all work until it receives a written request from Customer to continue performance.

14.7 Supplier shall not be entitled for the first ninety (90) days to require from Customer to pay the storage or other costs incurred in relation to suspension of performance. The deadlines for fulfilment of performance under Contract shall be extended accordingly by the duration of the suspension of performance.

## **15. ASSIGNMENT AND SUBCONTRACTING**

15.1 Supplier may neither assign, subcontract, nor transfer or encumber Contract, nor any parts thereof (including any monetary receivables from Customer) without prior written approval of Customer.

15.2 Customer may any time assign, transfer, encumber or deal in any other manner with Contract or parts thereof to its Affiliates.

## **16. FORCE MAJEURE**

Neither party will be liable for any delay or failure to perform its obligations under Contract if the delay or failure results from an event of Force Majeure. For the avoidance of doubt, Force Majeure means an event that was not foreseeable by the affected party at the time of execution of Contract, is unavoidable and outside the reasonable control of the affected party, provided that it cannot overcome such event despite all reasonable efforts, and that affected party provides notice to the other party within five (5) calendar days from occurrence of the Force Majeure event. If a Force Majeure event exceeds thirty (30) calendar days, contractual parties are obligated to negotiate Contract change.

## **17. FINAL ARRANGEMENTS**

17.1 Failure to enforce or exercise any term of the Contract does not constitute a waiver of such term and does not affect the right later to enforce such or any other term therein contained.

17.2 The Contract is governed by the laws of the country where Customer has registered seat.

17.3 Any dispute arising between Customer and Supplier in connection with Contract which cannot be settled amicably shall be submitted for resolution to the jurisdiction of the competent court at Customer's place of registration.

17.4 The invalidity or unenforceability of any term of Contract will not adversely affect the validity or enforceability of the remaining terms. Contract will be given effect as if the invalid or unenforceable term had been replaced by a term with a similar economic effect, if its achievable by replaced term.

17.5 Provisions of Contract which either are expressed to survive its termination or from their nature or context it is contemplated that they are to survive such termination, will remain in full force and effect notwithstanding such termination.

17.6 The relationship of parties is that of independent and unrelated parties. Contract does not imply any employment

relationship between Customer and Supplier, or between Customer and Supplier's employees assigned to the execution of the Contract.

17.7 Contract supersedes all previous agreements, offers, proposals or other understandings between the Parties regarding the delivery of Goods or Services.