

# PURCHASE BUSINESS CONDITIONS No. 1/2014

## 1. Introductory Provisions

These business conditions (hereinafter the "Conditions"), issued acc. to provision § § 1751 and following, of act No. 89/2012 (Civil Code in valid wording) by the firm **ConTree Concept a.s.** (hereinafter the "Purchaser"), based in Plzeň, Zborovská 6, postal code: CZ 30100, company registration number: 290 82 269, incorporated in the Companies Register by the regional court in Plzeň, section B, insert 1516, set up rights and duties resulting from all contractual relations (hereinafter also "Contract"), in which the Purchaser acts as the buyer (in contracts of purchase), or as the order party (in contracts for work or contracts for provision of diverse performance), and resulting from relations regarding both damages and refund of unjust enrichment incurred within the infringement of rights and duties consequent upon the Contract in context of the Contract. These business conditions enjoy priority over possible conditions included with the Supplier's documents or over any other references of such conditions contained in the Purchaser's documents.

## 2. Interpretation of Terms

For these conditions (NOP) and Contract purposes applies:

- a) the "Goods" is any movable asset, service, works made, or any other performance provided by the Supplier to the Purchaser;
- b) the "Price" is the amount, which the Purchaser is obliged to pay the Supplier for supply of the Goods;
- c) the "Delivery date of Goods" is the term agreed on supply of goods to the Purchaser;
- d) the "Invoice" is the bill or any other tax document, whereby the Supplier charges Price the Purchaser.
- e) the "Contract" is also Purchaser's Order for supply of Goods confirmed by the Supplier, or Supplier's offer for supply of Goods confirmed by the Purchaser;
- f) the "Order" is an order made by the Purchaser in any form addressed and delivered to the Supplier for supply of Goods to the Purchaser;
- g) the "Supplier" is the seller in contract of purchase, the Maker in contract of work, or any other subject, which is to supply the Goods or performance based on an Order or Contract to the Purchaser;

h) the "Client" is any third party, which orders Goods or performance from the Purchaser based on an Order or contract for work.

## 3. Supplier's Rights and Duties

**3.1** The Supplier is obliged to supply the Purchaser with agreed Goods in due form in time, i.e. leastwise before the expiration of agreed Delivery date of Goods and enable the Purchaser to acquire the proprietary rights to such Goods. The Supplier undertakes to deliver the agreed Goods free both of legal and physical defects, in contracted quantities and quality, unless agreed otherwise. The Supplier is obliged to hand over all necessary documents to the Goods if the Purchaser asks for such documents or if it is prevalent.

**3.2** If the Delivery date of Goods has not been agreed explicitly, the Supplier is obliged to supply the Goods to the Purchaser without baseless delay after the conclusion of the Contract, with consideration of the kind and quantity of the supplied Goods. Unless agreed otherwise, the Supplier's obligation to deliver the Goods is not accomplished simply by letting the Supplier handle with the Goods in the Place of delivery accompanied with the early notification of such possibility. If there is a proposed Delivery date of Goods mentioned in the Order and the Supplier accepting the Order has not expressed whether agreed with the proposed Delivery date of Goods, it is understood he agrees the proposed Delivery date of Goods. If by the Order receipt the Supplier states that the Delivery date of Goods proposed by the Purchaser, or by the Supplier in Order receipt stated Delivery date of Goods is not binding or is in any other way vague, then the Delivery date of Goods is maximum three days later beyond the Delivery date of Goods mentioned in the Order receipt (eventually proposed by the Purchaser in the Order, as far as there is no Delivery date of Goods stated in Order receipt). By the delivery of the Order receipt from the Supplier, or just by the delivery of the Order from the Purchaser, the Contract of purchase is affirmed as long as from the content of the Order is evident that the Purchaser is interested to perform. For the occasion the written notice, fax or e-mail deliverance of Purchaser's Order is taken as the correct delivery. In case of any changes within the

order, the order is considered as a totally new Order.

**3.3** The Goods is not delivered properly, as far as it is not delivered without defects both de facto and de jure, minor blemishes, or does not correspond the terms or stipulated conditions of the Contract (e.g. in amount, quality, packing, declaration of conformity, or differs with a sample etc.), legal regulation or technical standard. The Purchaser is entitled to decline a partial delivery of the Goods, or claim reduction in Price amounting minimally to the difference in Price purchasing from another supplier, as long as the Supplier is in delay. The Purchaser possesses the same right in case of a defect of the Goods in the moment of the hand over, even though the defect evinces later or the defect was inflicted by the Supplier breaching his obligations. The obligation of the Supplier of the warranty of quality is not affected.

**3.4** Unless otherwise agreed, the Purchaser is under below stated conditions, entitled to withdraw from the Contract if the Supplier is in delay with the delivery of the Goods or has not supplied the Goods at all or properly without any defects and backlogs, or there will be any other major breach of the contract in accordance and teh meaning of the provision § 2002 of Civil Code (NOZ).

**3.5** In case the delivered Goods or any of its part has a rectifiable deficiency during warranty period, then following the Purchaser's claim, the Supplier is bound to cure such a deficiency within 48 hours, provided the parties did not agree otherwise. In case the deficiency has not been removed within mentioned time, the Purchaser reserves the right to withdraw from the Contract.

**3.6** The warranty period lasts 36 months, assuming that something else is not provided by the statutory or other notorious binding instrument. The guarantee period commences in the moment of the hand over of the Goods to the Purchaser. In case the Goods is delivered through the agency of the third person, the guarantee period commences in the moment of the acceptance of the Goods by the Purchaser.

**3.7** The right of option - the Supplier undertakes, within minimally 12 months since the delivery of the Goods, to assure for the Purchaser the possibility of the delivery of the same Goods under equal conditions, based on another Purchaser's Order forwarded to the Supplier, and namely without exception.

**3.8** Any deficiency to which is applicable the warranty, will be taken out by and at the expense of the Supplier within the periods acc. par. 3.4 or 4.8.

**3.9** All agreed Prices are considered as fixed namely during the whole period of the Order and are understood inclusive of delivery costs of Goods, especially the wrapping and handling and the cost of transport material and insurance in some case.

**3.10** The Supplier is obliged to pack the Goods properly for transport purposes in accordance with common practise, considering the possible negative environmental impact, so there is the most ensured keeping and protection of the Goods from non-delivery and damage during transportation.

The Supplier is responsible for any non-delivery and damage incurred prior the day of delivery and taking-over by the entitled person of the Supplier.

**3.11** The Goods must satisfy technical requirements set by legal regulations of the Czech Republic. The Supplier is obliged that the delivered Goods is going to have its usual qualities and will be capable of the usual usage, both for the stipulated period of time, and at least for the period stipulated in the provision 3.6. In case of special technical-qualitative requirements on the part of the Purchaser, which he announced to the Supplier at least by the Order, the Goods must fulfil these technical-qualitative requirements too. As far as the Goods do not meet these stipulated requirements, the Purchaser has the right to withdraw from the Contract.

**3.12** The Supplier is obliged to provide on his own expense the necessary certificates or permits or approvals issued by state authorities of the country of origin and as well as the Czech Republic.

**3.13** The Supplier is obliged to provide the Purchaser with all necessary documentation and subsequent data needed for regular treatment with the delivered Goods.

#### **4. Purchaser's Rights and Duties**

**4.1** The Purchaser has the right to ask the Supplier for information about the state of performance and fulfilling the conditions of the Contract. If the Supplier does not give such information within three working days after obtaining the Purchaser's request, then the Purchaser is entitled to withdraw from the Contract and claim refund of all till this time rendered performance.

**4.2** The Purchaser must inspect the Goods with at least the usual attention at least within fifteen days after its taking-over, provided no conditions on the part of the Supplier hinder to do it. As far as the Purchaser on the occasion of inspection finds out some defects, he has to notify the Supplier within thirty days from their finding. Along with the right to back out of the Contract owing the defects not removed by the Supplier within agreed time or owing the irremovable defects, the Purchaser has always the right to adequate deduction from the Price of the Goods, or the right to obtain the alternative Goods within 96 hours after claiming such demand.

On occasion it is impossible to correct the asserted defects of the Goods or performance within 48 hours by reason of lack of time, the supplier has the right to claim reduction in Price according to par 4.8c), any time but minimally amounting to the reduction in price that can claim the client from the Purchaser and which shall be specified within 15 days from announcement and claimed for compensation defects of the Goods. The stipulation about compensation for damage is not affected by this provision.

**4.3** The delivery is considered as accepted only after completion of inspection by accredited member of Purchaser's staff, but not before the moment stipulated as a date of the delivery.

**4.4** If installation or assembly of the Goods or performance of services is necessary, the Goods or performance is considered to be supplied only after regular installation or assembly has been taken over and recorded in protocol by the buyer, i.e. installed perfect Goods without backlogs. Until duly take-over as stated above the Purchaser has the right repudiate the Invoice, or return it as unjustified, while is not obligated to pay even the purchase price.

**4.5** The Purchaser is not bound to accept the Goods or performance prior to agreed Delivery date. The Purchaser is not bound to accept less or more of the Goods, than agreed amount.

**4.6** The Purchaser may change or cancel any portion of his Order, as far as he has notified the Supplier in time. The change of the Order made by the Purchaser is allowed until the Delivery date.

**4.7** The Purchaser must notify the Supplier within 30 working days after acceptance of the Goods about its proven obvious defects, incl. supply of smaller amount of Goods, incompleteness or apparently disturbed integrity or hidden defects of the delivery

**4.8** The Supplier must rectify defects in the Goods within a period mentioned in Purchaser's Declaration about defects.

Purchaser's claims on defects of the Goods:

a) to request the rectification of the Goods by the reparation within 48 hours, as far as the defects are reparable;

b) to demand the delivery of alternative, new or missing Goods within 96 hours;

c) to request for proportional reduction in Price of defective Goods,

d) withdraw from the Contract of purchase.

The option of claims on defects belongs to the Purchaser based on his consideration. The Purchaser must inform the Supplier by sent notice about this option of claims on defects namely without unreasonable delay after this notification of finding of defects. If possible, with the consideration of all circumstances, the Purchaser reserves the right to change the already realized choice without the consent of the Supplier. The Purchaser reserves the right to withdraw from the Contract even in case the Purchaser does not notify the Supplier about the defects in time. By the withdrawal from the Contract the buyer's claim for compensation of damages does not expire.

## **5. Terms of Payment and Sanctions**

**5.1** The Supplier is entitled to issue the Invoice in the term stated below commencing in the moment of acceptance of the Goods by the Purchaser under the condition the Goods has been delivered properly in the amount according to the Order (see par 3.2 of the Conditions). Invoice due date is 90 days since its issue. Till the payment of invoice is the Purchaser entitled return the issued invoice back to the Supplier if it was issued in contradiction with the Contract, or with these Conditions or legal regulations, or if it contains wrong or incomplete data. If the return is justifiable, then the Purchaser is not in payment default. Payment of the new invoice applies within the same number of days as it was by the returned invoice.

The Supplier must attach to the invoice the delivery note with filled in number of the Order and person, who is entitled to sign the delivery note. The delivery note must incorporate signature of the person, who on behalf of the Supplier, handed the Goods to the Purchaser, giving his name and position.

**5.2** In case there is a delay in delivery of the Goods from the Supplier, the Supplier pledges to pay on Purchaser's call together with full payment

for eventually damages incurred also the contractual fine 0.5% of the total Price of the Goods for each day on default.

**5.3** In case the Supplier commits a breach of his obligation stated in paragraph 3.5 (NOP), pledges to pay the Purchaser the contractual fine amounting to twenty thousand Czech crowns each day of delay in defect rectification. The claim for the damage is not affected by such.

**5.4** In case the Supplier commits a breach of his obligation to supply after another possible Order, or according the right of option, pledges to pay the Purchaser the contractual fine one thousand Czech crowns each day on default. The claim for the damage is not affected by such.

**5.5** In case the Supplier commits a breach of his obligation to supply on schedule the entire Goods according to the Order, pledges to pay the Purchaser the additional contractual fine ten thousand Czech crowns each day on default. The claim for the damage is not affected by such.

**5.6** Observance of confidential data protection (paragraph 7.3 NOP) is assured by the contractual fine amounting to one hundred thousand Czech crowns, which the party breaching the confidential data protection must compulsorily pay to the entitled party.

**5.7** The contractual fine can be claimed by the Purchaser by means of penalty invoice, which shall contain, besides the data required by the legal regulations, also the statement on infringement of duties. If it is not stated otherwise, the due date of such an invoice is within a period of 15 days since its issue.

**5.8** The Purchaser is entitled, in the case the specifications stated in relevant legal regulations are fulfilled, to add one-sidedly each contractual fine, or alleged reduction in Price, into payable debt of the Supplier, also retroactively. The statute of time limitation is considered ineffective in connection with the claim if the limitation became capable for the offset of such claims before the moment the offset could be firstly realized.

**5.9** The Supplier undertakes to replace the delivered Goods that became inapplicable or failed performing technical-qualitative standards as a result of defective material, manufacturing, design, or botched-up by the Supplier installation. So far as the delivered Goods or performance has defects, the Purchaser is not bound to pay the Price for defective Goods, eventually to pay still unsettled portion of the Price, until complete rectification of the defects or delivery of alternative Goods has been done. The same is

valid in case, it would be delivered smaller amount of the Goods, than agreed.

## **6. Arbitration Clause, Delivery of Mail, Modification of the Contract**

**6.1** Both the Supplier and the Purchaser explicitly came to terms that all property contentions, which eventually grow up in the future in connection with the Contract (incl. Conditions), as well as contentions which can eventually grow up in connection with the Contract (incl. Conditions), cum its validity, interpretation, implementation or termination and rights directly resulting from the Contract (incl. Conditions), questions of Contract legal validity (incl. Conditions), as well as questions of rights related to this rights, also when the Contract (incl. Conditions) will be invalid, canceled or relinquished (thereinafter "contention" or "contentions" only), will be decided in jurisdiction of courts of justice determined according to the relevant law stipulations which stipulate the subjective and local affiliation of such courts. The initial stipulation in connection to such matter is the Civil Procedural Act and other common and usual law stipulations.

**6.2** Both the Supplier and the Purchaser further came to terms that the delivery of mail and papers within contractual relations based on the Contract and during arbitration acc. paragraph 6.1 is performed towards the Purchaser at the address Zborovská 6, Plzeň and towards the Supplier at the address mentioned in the Contract, if not there, then at any other commonly known commerce address of the Supplier mentioned in the Contract or to any address known as a address from the usual business intercourse. If the delivered papers are not deposited by the subject performing delivery of mail, it is considered as delivered the day following the day, when the sending was returned back to the sender (contracting party or arbiter), also when the addressee did not know about this delivery. Both the Supplier and the Purchaser explicitly claim to deliver the verdicts of the arbiter in arbitration according to paragraph 6.1 (a posteriori § 46, section 1.5.6 Civil Procedure Act) at the addresses of parties specified according to the first clause of this paragraph (6.2) for delivery.

## **7. Final Provisions**

**7.1** These Conditions supersede in extenso all former issued and operative Purchaser's business Conditions for purchase of the Goods. These Conditions become operative as of 4-3-2014

**7.2** Differing provisions of the Contract enjoy priority over provisions of the Conditions. Issues of law unsolved by the Contract and by these Conditions are governed by the legal order valid in the territory of Czech Republic, primarily by the Civil Code, no. 89/2012 Sb., and the Corporate Code.

**7.3** In case the participants will notify to incompatible business conditions, the agreement

is still concluded based on the conditions in which the conditions are compatible.

**7.4** The Supplier acknowledges that all data and information interchanged between The Supplier and the Purchaser are confidential.

**7.4** The Supplier reserves the right to change these business conditions where necessary at any time.

**7.6** The Supplier expressly accepts this version of business conditions without reservations.

New version done:

In

Plzeň,

01.01.2014