



# GENERAL TERMS AND CONDITIONS OF SALE

## Contents

1. General Terms and Conditions of Sale.
2. Definitions.
3. Price of the Work.
4. Currency Clause.
5. Payment Conditions.
6. Time of the Execution of the Work.
7. Performance of the Work.
8. The Activities of the Contractor in the Place of the Installation of the Work.
9. Cooperation of the Customer.
10. Passage of the Ownership Right.
11. Guarantees.
12. Complaints, Claims Arising from Defects.
13. Contractual Penalties, Sanctions.
14. Protection of Information.
15. Obligation of Confidence.
16. Governing Law, Arbitration Clause.
17. Amendments to the Contract.
18. Termination of the Contract.
19. Circumstances Excluding Liability.
20. Correspondence, Communication.
21. Final Provisions.

## 1. General Terms and Conditions of Sale

1.1. These General Terms and Conditions of Sale (herein after referred to as the "Terms") constitute an integral part of contracts in which PAPCEL, a.s., with its registered office in the Czech Republic, 784 01 Litovel, Uničovská 132/19, reg. number 25 35 04 71, acts as the Contractor, the Seller of the Supplier.

## 2. Definitions

2.1. The terms below used in the Terms and/or in the Contract capitalized are of the following meanings:

Day – a calendar day.



Work – a set of things, activities and/or services specifically and individually specified in the Contract as things, activities and/or services to be supplied by the Contractor under the Contract for the Customer.

Delivery – a particular/individual delivery of things, activities and/or services specifically and individually specified in the Contract as things, activities and/or services to be delivered by the Contractor under the Contract for the Customer or of only some of their parts.

Guarantee Tests – the process of verifying the parameters of the Work guaranteed by the Contract according to the methodology of the Contract. The duration of the Guarantee Tests is 8 hours for each specified reference range; each specified reference range must be being produced for at least 24 hours before the start of the Guarantee Tests; if the Contractor instructs so, the Guarantee tests can be started even before the expiration of this 24 hour period in term/time determined by the instruction of the Contractor. Guarantee Tests are performed only on a reference range designated (specified) by the Contract; the other ranges are excluded from the Guarantee Tests.

Material Delivery – an individual/component element of the Material Subject of the Work, intended for Assembly, composition or installation.

Material Subject of the Work – a thing, things, equipment, a machinery unit, machinery units the Contractor undertook by the Contract to deliver.

Individual Test – a test of the functionality of the individual machine parts of the Material Delivery without the working medium - paper stock.

Complex Tests – a test of the overall function of the basic nodes of the technological line assembled from Material Deliveries of the Contractor and of the prospective deliveries of the Customer, operated with water first and then using the working medium - paper stock.

Assembly Inspection – an inspection carried out by the Contractor concerning the flawlessness of the Assembly of Material Deliveries, performed and/or ensured by the Customer.

Month – a calendar month.

Assembly – work and activities consisting in the assembly, mounting, installation and completing of the Material Deliveries and prospective deliveries of the Customer in the place of final destination of the Work, performed according to the technical and technological procedures and conditions specified by the Contractor. Installation is regarded as completed at the moment of signing the Assembly Takeover Record.

Start-up Group – the Contractor's personnel organizing, implementing and ensuring activities consisting in Commissioning the Work and/or related to Commissioning the Work, in the scope as specified in the Contract.

Customer – the entity designated as the Customer, Buyer or Client in the header of the Contract.

Shutdown – a period for which the Material Subject of the Work and/or a process line including the Material Subject of the Work is temporarily out of operation.

Contract – the Contract where an integral part thereof is the Terms.

Parties – the collective name for the Contractor and the Customer.



Supervision of Assembly – according to the nature of a particular business case:

- a) when Assembly is ensured by the Customer - checking by the Contractor's chief assembler randomly selected assembly parameters and checking by the Contractor's chief assembler randomly selected parameters of fitting in place of a particular machinery, carried out by the Contractor's chief assembler in the place of Assembly for the period agreed in the Contract;
- b) when Assembly is ensured by the Contractor - management/leading of assembly groups by the Contractor's chief assembler for period agreed in the Contract.

Permanent Operation – the phase of operation of the Material Subject of the Work, immediately following the Commissioning of the Work or meeting the parameters guaranteed by the Contract or successful performance of the Guarantee Tests, if the performance of the Guarantee Tests was agreed by the Contract.

Week – a calendar week.

Commissioning of the Work – the Work implementation phase, immediately following the completion of the Complex Tests; in case of the stock preparation line - the moment of the first filling of the last tank in the line with paper stock; in case of the reconstruction of the paper machines or complex deliveries – operation with paper stock or the winding of the first reel on the winder with a diameter of min. 600 mm, regardless the quality of the paper achieved, breakages, reported consumption of raw materials and media or functionality, operation or operation parameters of individual systems of the Material Subject of the Work or of its individual parts. The Record of Commissioning of the Work is made concerning the completion of this phase; on the date of signature of this Record by both Parties the Work is handed over to the Customer for Trial Operation or for Permanent operation. Commissioning of the Work is performed by trained personnel of the Customer under the supervision and according to instructions of the Start-up Group.

Contractor/Seller/Supplier – PAPCEL, a.s., with its registered office in the Czech Republic, 784 01 Litovel, Uničovská 132/19, reg. number 25 35 04 71, registered in the Commercial Register maintained by the Regional Court in Ostrava, Section B, Insert 1356.

Trial Operation – the period from Commissioning the Work to the moment when the parameters guaranteed by the Contract are reached or when the last of the Guarantee Tests is successfully carried out if carrying them out was agreed in the Contract.

### **3. Price of the Work.**

**3.1.** The Price of the Work agreed in the Contract (herein after referred to as the “**Price**”) expresses and includes the performance, procurement, provision and delivery of only the things, activities and/or services specifically and individually specified in the Contract and in the scope, type and way agreed in the Contract.

**3.2.** The Price does not express and does not include performance, procurement, provision and/or delivery of such things, activities and/or services, financial products, securities or guarantees that are not specifically and individually specified/agreed in the Contract as well as completing the Work with its possible accessories, parts or other equipment which is/are necessary for Commissioning of the Work, Permanent operation, Guarantee tests and/or for any other operations/operational activities.

**3.3.** If at the request of the Customer or with the Customer's consent the Contractor delivers things, activities or services beyond the scope specified by the Contract or if the things, activities or services agreed by the Contract are supplied by the Contractor in a different design, in a different way



or performed differently than it was agreed in the Contract, the Customer undertakes to pay - beyond the Price - the amount invoiced by the Contractor to him in this context.

**3.4.** The Price is a final and a firm price. The Price may be changed only by written agreement of the Parties, executed in the form of a written amendment to the Contract unless otherwise stated below.

**3.5.** The Contractor is not obligated to deliver, provide and/or arrange for the Customer things, activities, financial products, securities, guarantees and/or services that are not expressly and individually specified in the Contract as things, activities, financial products, securities, guarantees and/or services to be the delivered under the Contract by the Contractor to the Customer.

**3.6.** For the construction, subcontracting, assembly, completing and/or other activities of the Contractor that are included in the specification in the Contract on the basis of incomplete bases only, prior to the processing of binding offers or relevant projects (hereinafter referred to as the “**estimated items**”), the price is determined on the basis of professional appraisals/estimated items agreed mutually by the Parties and the agreed remuneration of the Contractor. The estimated items will be listed separately in the Contract.

**3.7.** An estimated item is regarded as estimated - not specified exactly in advance - only in relation to the volume and not in relation to the subject matter, quality or performance. An estimated item is always work, activities and services performed by the Contractor under the Contract in the place of installation of the Work.

**3.8.** If the actual scope and volume of the executed estimated items is higher/lower compared to the assumption specified in the Contract, the Parties undertake to conclude an amendment to the Contract concerning the increase/decrease in the Price, which will fully reflect the actual state; this amendment to the Contract will be concluded not later than 20 days from the date when the evaluation of the actual state of the execution of the estimated items is delivered to Customer. The Contractor has the right to raise objections against such evaluation; if the Contractor does not do so within 10 days from the day of its delivery, it shall be deemed that the Contractor fully and unconditionally agrees with it.

**3.9.** If the Price is agreed in such way that the price of the estimated items and the price of the remaining performances are not distinguished, the Parties shall make Record of pricing that will contain detailed price specifications and a breakdown.

**3.10.** The Price agreed in the Contract applies if the Work is executed in accordance with the schedule specified in the Contract. If any extension, delay or postponement of the execution of the Work or even a part thereof by more than 5 months compared to the schedule specified in the Contract occurs by reason on the side of the Customer, the Price shall be changed in such a way that it is increased by an amount equal to 3 % of the price/value of delayed/postponed Deliveries. The Parties undertake to conclude an amendment to the Contract concerning the change in the Price - undersigning this amendment is a condition for the start or/and continuation of the execution of the Work by the Contractor; if the amendment is not undersigned by the Customer within 1 month from the day when the Customer was requested in writing to do so by the Contractor, the Contractor has the right to withdraw from the Contract.

**3.11.** The Contractor is obligated to bear only the costs and the expenses to which the Contractor undertook by undersigning the Contract. If after undersigning the Contract or after the preparation of the final project documentation the calculated costs are increased or another cost not assumed in the



Contract and not explicitly stated in the specification of the Contract is incurred, this cost/these costs shall be covered by the Customer.

#### **4. Currency Clause.**

**4.1.** If during the period from undersigning the Contract to the agreed term of any individual payment pursuant to the Contract the exchange rate of the Czech crown to the currency in which the Price is stipulated/expressed strengthens by more than 2 %, the amount invoiced by the Contractor in that context shall be without further/automatically increased by amount which equals to the percentage expression of this strengthening of the Czech crown; the middle foreign exchange rates announced by the Czech National Bank are regarded as the decisive.

#### **5. Payment Conditions.**

**5.1.** The Customer is obligated to pay the Contractor the Price in the way, at times and under the terms and conditions specified in the Contract.

**5.2.** Invoices issued by the Contractor are payable within 14 days from the date of their delivery to the Customer. Payment is considered as made on the day when the invoiced amount is entered into the account of the Contractor.

**5.3.** If the Price or any part thereof is paid/released by the bank or paid to the Contractor directly by the Customer on the presentation of appropriate documents about the performance, when executing the Material Deliveries such documents are to be understood copies of the shipping documents of the Contractor, issued on the departure of the vehicles from the Contractor's plant.

**5.4.** If an advance payment was made by the Customer, the Contractor shall take account of the advance payment when invoicing so that the Contractor will deduct from the amount invoiced for a specific payment the corresponding percentage value of the advance payment received; the amount calculated in this way is then the amount to be paid. (Example calculation: The invoice is for an amount equivalent to 15 % of the Price - the amount to be paid according to the invoice = 15 % of the Price - 15 % of the advance payment received).

**5.5.** The Customer is obligated, to the request of the Contractor and not later than until the start of Deliveries by the Contractor, to procure and provide the Contractor with at its own costs the guarantees/securities of the performance of all of its obligations agreed in the Contract in the form of an irrevocable letter of credit or irrevocable bank guarantee; these bank instruments shall be confirmed by the bank of the Contractor or by any other first-class European bank. The Customer is obligated to maintain the guarantees provided (bank/securities instruments) in force at its own expense until the full payment of the total Price.

**5.6.** As a guarantee of the performance of the values/criteria or parameters of the Work agreed in the Contract the Contractor shall provide the Customer, if the Parties agree so in the Contract, with an irrevocable bank guarantee of the "performance bond" type up to 10 % as a maximum of the total Price.

**5.7.** The text of the bank guarantee under section 5.6. of the Terms shall be designed in such a way that when individual conditions, values/characteristic or parameters of the Work agreed in the Contract are reached/met, the amount of the bank guarantee is continuously reduced by the value corresponding to them.





**5.8.** The Customer is not entitled to enforce the bank guarantee if the conditions for the possibility of its use has been reached due to the lack of cooperation of the Customer, the Customer's delay, or for any other reason not only on the part of the Contractor. In case of any breach of this section of the Terms the Customer undertakes to pay the Contractor a contractual penalty equal to the amount of the bank guarantee paid/triggered in this way; the payment of the contractual penalty pursuant to this section of the Terms does not affect the Contractor's claims for damages.

**5.9.** The bank guarantee pursuant to section 5.6. of the Terms will be issued under the conditions agreed in the Contract and shall become effective at the moment when the full Price is paid up to the Contractor; the Customer is obliged to pay up the full Price to the Contractor not later than 10 days from the date when the bank guarantee issued in this context was delivered to the Customer.

**5.10.** If the time of the execution of the Commissioning of the Work and/or of the Guarantee Tests is postponed compared to the times/deadlines set in the Contract for reason on the side of the Customer, the Contractor will extend the term of validity of the bank guarantee only if the Customer pays any and all costs arisen in this connection. If the time of the execution of the Commissioning of the Work and/or of the Guarantee Tests is postponed for more than five months compared to the times/deadlines set by the Contract, the bank guarantee is not extended and the Customer is not entitled to use/trigger the bank guarantee.

**5.11.** If the bank guarantee taking into account the time/deadline and/or the execution of the Guarantee Tests is issued by the Contractor and if it is necessary to repeat the Guarantee Tests, the Customer is not entitled to use the bank guarantee before the term/time for the last of the possible repeated Guarantee Tests under the Contract.

**5.12.** If the Customer is in default in the payment of any payment to the Contractor by more than 30 days, an insolvency petition has been filed in respect of the Customer or the Customer has entered into liquidation, the agreed method/terms of payment of the Price is changed in such a way that from that moment the Contractor is entitled to require from the Customer the immediate payment of the full Price; the Price becomes due and payable on the date on which the call to pay it was delivered to the Customer.

**5.13.** If any postponement, delay, suspension or shift of the time of the execution of a particular phase of the Work compared to the time/deadline initially set by the Contract occurs, regardless of whether, in this context, i.e. concerning the change of the schedule for the execution of the Work, an amendment to the Contract has been agreed, the Customer is obligated to pay the agreed payments of the Price according to the original times/deadlines pursuant to the Contract, i.e. regardless of the actual status and progress of the execution of the Work. If a particular payment is conditional on the submission of certain documents or records – that cannot be issued/made for the above mentioned reason - in this case the payment shall be made by the Customer also without submitting them, only in relation to the time when such document or record should be issued/made according to the Contract; this term of payment shall also be included in the text of the possible letter of credit or another banking/payment instrument. If a payment is not made according to the original time/deadline under the Contract, the Contractor is not obligated to, until it is credited to its account, continue in the execution of the Work. The Contractor has this right, i.e. the right to suspend the execution of the Work, also in the case of any other outstanding obligations of the Customer to the Contractor; the Contractor is not obligated to, until the full payment of all outstanding obligations of the Customer to the Contractor, continue in the execution of the Work.

**5.14.** If there is a delay or if there is the danger of delay in execution of the Work for reasons not only on the side of the Contractor and if the financing of the Work is ensured in the form of a special-



purpose loan/credit, a letter of credit, a bank guarantee, and the like, the Customer is obligated to ensure the corresponding change of the conditions for drawing/using these bank/financial instruments and renew/prolong them at least for the duration of this delay plus one month. The extension of bank/financial instruments, including their confirmation by a first-class European bank, shall be ensured by the Customer at its expense not later than until the 50<sup>th</sup> day of the delay compared to the times/deadlines specified in the Contract; otherwise, the Contractor has the right to suspend the performance of the Contract and if the validity of the bank instruments is not extended by the 70<sup>th</sup> day from the date of the beginning of the delay compared to the times/deadlines specified in the Contract, the Contractor has the right to withdraw from the Contract.

**5.15.** All bank and other charges/fees which were/are incurred in connection with the payment of the Price under the Contract outside the country of the Contractor are borne by the Customer; if they are/were incurred in the country of the Contractor, they are borne by the Contractor. Any and all charges, fees and expenses relating to ensuring financing or to securing the risks of the financing of the Work are borne by the Customer. The Customer shall pay the costs of the Contractor associated with the execution of the inspection of the performance of the Work carried out by the financing banks or with the participation or cooperation of the Contractor in insuring loans/credits or opening bank/financing/payment instruments relating to the Contract.

**5.16.** If, after the signature of the Contract the Customer changes the method/way or source of originally announced or agreed method/way of the financing of the Work or of securing the financing of the Work, the Customer shall pay any and all financial and cost impacts incurred to the Contractor in this connection and for that reason.

**5.17.** Mutual claims and obligations of the Parties can only be set off on the basis of a separate agreement; setting mutual claims and obligations one-sidedly is not permitted unless otherwise stated by the Terms or by the Contract.

## **6. Time of the Performance of the Work.**

**6.1.** If the Contractor becomes delayed in the execution of the Work due to: a) circumstances of force majeure or other circumstances which are beyond the control of the Contractor and which have occurred independently of the Contractor's will and prevent the Contractor from fulfilling the Contractor's obligations and it cannot be reasonably assumed that the Contractor would avert, could avert or overcome these circumstances or their consequences and further that at the time of the creation of the obligation the Contractor foresaw or could foresee these circumstances; b) any act, omission, or delay of the Customer when performing any of its obligations arising from / under the Contract or the Terms; the time of the performance of the Contractor pursuant to the Contract shall be extended by the period upon which the Parties agree, but at least by a period which is not shorter than the duration of the circumstances referred to in this section.

**6.2.** The Contractor is not liable for any delay caused by circumstances specified in sec. 6.1. of the Terms.

**6.3.** The time of/for the execution of the Work or of/for its specific phase/part is always extended by the period for which the Customer is in default with any payment to the Contractor, with the extension of the validity of the relevant bank/financial/payment/assurance instruments or with the provision of cooperation which the Customer is obligated to render under the Contract or the Terms.

**6.4.** The time of/for the execution of the Work or of/for a specific phase/part thereof is always extended by the period for which the Customer is in delay with the execution of any deliveries, works,



acts, services or any other obligations which the Customer is obligated to render under the Contract or the Terms.

**6.5.** The Material Deliveries shall be shipped by the Contractor in accordance with the times pursuant to the Contract, in the order according to production and transport possibilities or priorities of the Contractor. The Customer is obligated to receive/take over any individual Material Deliveries from the Contractor and ensure their customs clearance and proper storage, adequate to their nature.

**6.6.** If the Customer refuses to receive a Delivery/Deliveries, the term of/for the execution of the Work shall be extended by the period of the delay of the Customer in taking over the Delivery/Deliveries; the Customer is obligated to pay the Contractor for all costs, losses and damage incurred by the Contractor in this connection.

**6.7.** If the production or the design processing of the Work is tied to bases, data, measurements, etc. to be provided by the Customer or to the Customer's decision on the acceptance or approval of possible technical variants of the performance of the Work or to the supply of input bases for the processing of the implementation projects, the times of delivery and execution of the Work are extended by the time equal to the duration of the period from the time stated in the Contract or determined by the Customer for supplying these bases to the moment when the record of handover and/or clarification of all technical issues necessary for the execution of the Work or for the processing of the implementation projects is signed.

**6.8.** If the time of the execution or of the delivery of the Work, or of any Material Deliveries, is extended or changed due to the reason on the side of the Customer, the Contractor is entitled to determine unilaterally alternative time of delivery of the Work, or of any Material Deliveries, for the Customer with regard to the capacity possibilities of the Contractor. The Customer is obliged to pay the Contractor all costs and expenses incurred by the Contractor in connection with the extension or change of the time of the execution or of the delivery of the Work, or of any individual Material Deliveries.

## **7. Performance of the Work.**

**7.1.** The Contractor is obligated to perform the Work in the way, in the scope, in the design, and in the times according to the Contract. The Contractor is entitled to charge its subcontractor with performing individual Deliveries pursuant to the Contract.

**7.2.** If during the detailed technical processing of the Work or on the basis of the assessment of the data supplied by the Customer the necessity of making changes or supplementing the subject-matter of the Work is found after signing the Contract, the Contractor is obligated to submit to the Customer an offer for these changes within 15 days from the date when such circumstances were found; further procedure is according to Article 17 of the Terms.

**7.3.** All requirements of the Customer for compliance with the relevant legal, technical or other standards/rules of the country of the Customer or of any other country shall be individually, expressly and precisely stated, described, and specified in the Contract. Otherwise or in the rest of the scope the Work will be performed according to the standards/rules and practices applicable in the country of the Contractor; if the Contractor receives the Customer's request within the meaning of the first sentence of this section of the Terms after the conclusion of the Contract, further procedure is according to Article 17. of the Terms.





**7.4.** The transport obligations, risks of loss, shortage/incompleteness, damage or accidental destruction of the Deliveries shall be determined according to INCOTERMS 2010. The Material Deliveries, unless otherwise stipulated in the Contract, are delivered EXW the production plant of the Contractor (INCOTERMS 2010).

**7.5.** If the Customer finds out that any Material Delivery is damaged or incomplete, it is obligated to inform the Contractor about it not later than within 5 days from the date when the Customer took over the Material Delivery; otherwise, it is considered that the Material Delivery is not damaged or incomplete, and therefore that it is proper, complete and perfect, and the liability for damage or loss of this Material Delivery is borne by the Customer.

**7.6.** The Customer is obligated to send the Contractor a written - in the paper form or electronically - message undersigned by the responsible person of the Customer about the takeover of the Material Delivery not later than within 5 days from the date of that takeover; if the Customer fails to do within the specified time, the Delivery is deemed to be executed, properly delivered, complete, perfect, and received by the Customer without any reservations or comments.

**7.7.** The Material Deliveries shall be performed/delivered by the Contractor in the disassembled condition/form, depending on the nature of individual parts or components and on common practices of the Contractor. The assembly and completion of the Material Deliveries from the condition/form in which they were delivered by the Contractor to the Customer is considered as the Assembly and shall be carried out by an assembly organization.

**7.8.** The Customer is obligated to determine the person responsible for keeping records and storage of the Material Deliveries before the start of the Material Deliveries. The Customer is further obliged to use only the premises and areas approved by the Contractor to store individual Material Deliveries and ensure storage and protection corresponding to their nature.

**21.9.** The Material Deliveries shall be stored by the Customer in a dry, covered and lockable storage room, where the air temperature does not decrease below 5 °C. The storage of selected parts of the equipment - Material Deliveries - in outdoor areas must be approved in writing by the Contractor in advance; the specification of parts – Material Deliveries - that are allowed to be stored in this way shall be an integral part of this approval.

**21.10.** After receiving/taking over the Material Deliveries the Customer bears the responsibility for their completeness, undamaged condition, including the undamaged condition of the packaging and labelling, until the time when the Assembly is performed and/or the Commissioning of the Work is completed. Further, the Customer is obligated to ensure the records/register according to the Contractor's packing lists and the labelling of the Material Deliveries and ensure the issue/handing out of the Material Deliveries for the Assembly. Any and all costs of additional production and delivery of during the storage lost or damaged Deliveries are borne by the Customer.

**7.11.** The issue/handing out of the Material Deliveries for the Assembly shall be done by an authorized person of the Customer. The Customer ensures the transport of the Material Deliveries from the store warehouse to the place of the Assembly, including the issuance of appropriate documents on the takeover of the Material Deliveries by assembly group workers, which shall contain the signature of the authorized worker of the assembly group. The Customer is obligated to keep the documents on the takeover of the Material Deliveries by the assembly group and submit them on request of the Contractor within 24 hours from the receipt of such a request of the Contractor.



**7.12.** The Customer is obligated to ensure conditions for the storage of special equipment of the Contractor and the Contractor is obligated to inform the Customer about the conditions for storing and handling such equipment at least 30 days before sending the Delivery which contains it.

**7.13.** The Work is completed at the moment when the conditions laid down in the Contract are met, i.e. either when the Work is performed or when the Work is delivered or when the Work is Commissioned or when the Guarantee Tests are carried out.

**7.14.** A record is made about the execution of each of the implementation stages of the Work immediately, i.e. immediately after its execution, and each of the Parties is obligated to undersign it. The Parties can state their objections, complaints, reserves, or comments in the records. If either of the Parties refuses to undersign a record, this is regarded as a gross violation of the Contract, which entitles the other Party to withdraw from the Contract.

**7.15.** The Contractor shall ensure the packing and preservation of the Material Deliveries in accordance with the terms and conditions customary for the transport of the given equipment or things and according to the type of transport agreed.

## **8. The activities of the Contractor in the Place of the Installation of the Work.**

**8.1.** If the Contractor is obligated under the Contract to perform any work or activities in the place of the installation of the Work, the Customer agrees that the working hours of employees of the Contractor are max. 10 hours a day (2 hours of this are intended for statutory breaks), five days a week. The Commissioning of the Work and Work staff training shall be carried out by the Contractor exclusively during the day (not night) shift. Any work beyond this scope shall be approved in writing by the Contractor in advance and shall be subject to the additional payment of the Customer - payment beyond the payment stipulated in the Contract.

**8.2.** The Customer undertakes to ensure for the Contractor the possibility of performing the Work during weekends, bank holidays, and public or other holidays in the country of the execution of the Work. The Customer is obligated to provide the Contractor with and ensure for it all cooperation agreed by the Contract also during this time.

**8.3.** The Contractor is not obligated to perform work or activities in the place of the installation of the Work during the period from 20/12 to 5/1. Not performing work or activities in the place of the installation of the Work during this time is not the Contractor's delay in fulfilling its obligations under the Contract.

**8.4.** If the Assembly is ensured or performed by the Customer, the Customer is obligated to keep an assembly log and submit it at any time to the Contractor; the Contractor is entitled to inspect the assembly log without any limitation and put its comments, requirements, reserves or observations in it.

**8.5.** The representative of the Contractor responsible for the Assembly Inspection (a chief assembler of the Contractor) has the authorization to require at any time a change in assembly procedures and check the conditions of the installation of individual pieces of equipment and compliance with the prescribed tolerances, including the submission of records of the assembly company of compliance with them. If the assembly company does not enable the representative of the Contractor responsible for the Assembly Inspection (a chief assembler of the Contractor) to carry out the above mentioned activities, the representative of the Contractor responsible for the Assembly Inspection (a chief assembler of the Contractor) has the right to stop assembly work until this situation is remedied; the period from the time when assembly work is stopped to the time when the situation is remedied is delay on the side of the Customer.



**8.6.** The Contractor is responsible only for such assembly parameters (tolerances) that the chief assembler of the Contractor personally inspected and where he recorded the inspection of them in the assembly log or the relevant record; the assembly organization is responsible for the remaining assembly parameters (tolerances).

**8.7.** The arrival of the Start-up Group is organized on the basis of the written notification of the Customer about the full completion of all assembly work. The date of the required arrival of the Start-up Groups will be notified by the Customer at least 14 days in advance. A condition for the arrival of the Start-up Group is the submission of the report of the completion of assembly work in all professions - machinery, electrical, instrumentation, control system, pipelines, hydro and pneumatic piping, etc. The records of the completion of assembly work must include a detailed list and photo or video documentation of the assembled parts or distributions according to the relevant technical or design documentation, including records of actual assembly tolerances, and in case of electrical wiring, also the records of the inspection of the connections.

**8.8.** If it is found that the Assembly is not done properly, is not completed in the full scope or is carried out differently from the approved project or records submitted pursuant to section 8.7. of the Terms and if the subsequent work of the Contractor is delayed for this reason, the Contractor's expenses caused by this delay are borne by the Customer.

**8.9.** The days dedicated by the Contract to Commissioning of the Work and to carry out Individual or Complex Tests must be used only for these activities; they do not include time to complete the Assembly, which was to be made by the Customer, or waiting for the readiness of the Customer to ensure the conditions for the start of the appropriate tests or for the performance of repairs to existing equipment of the Customer or equipment ensured by it or other activities and/or co-operations of the Customer.

**8.10.** In the event of downtimes of the Start-up Group by reason of the unpreparedness of the Customer or by reason of waiting for the cooperation of the Customer, the Customer pays the Contractor for the extension of the stay of the Start-up Groups beyond the Contract the price in accordance with the hourly tariff of the Contractor, stated in the Contract.

**8.11.** The inspection of the Assembly is carried out on the first day of the presence of the Start-up Group. In case of finding such defects in the Assembly which shall not be removable during the next 48 hours, the Start-up Group has the right to leave and the costs of its re-arrival and all additional costs associated therewith are borne by the Customer beyond the Price. If defects in the Assembly are removable within a shorter period, the Customer pays the Contractor the price for extension of the stay of the Start-up Group beyond the Contract, according to the hourly tariff of the Contractor, stated in the Contract. In addition, the Customer ensures and pays charges for the change in the time of the return tickets and/or air tickets of the Start-up Group and the costs of accommodation of the Start-up Group.

**8.12.** The Contractor shall hand over the bases for the processing of the technological réglement and the bases for the training of the operators of the Work according to its standards and practices. The training of the operators of the Work is provided at the time specified by the Contractor and in the extent agreed by the Contract.

**8.13.** The Customer is obligated to designate responsible persons - supervisors - for all professions trained (technologist, mechanic, electrician, etc.). These people - supervisors - will be present throughout the training and the Commissioning of the Work and guarantee subsequent additional training and examination of knowledge of each member of the personnel who will operate or repair the Work after the Commissioning of the Work. The supervisors will also prepare a written record of each of the training and process/prepare specific written instructions for the operators of the Work. Before



the start of each of the training the supervisors shall ensure the required number of copies of the technical documentation on the subject of training. The Contractor will start individual training only if the operators of the Work show the knowledge of the technical documentation on the subject of training.

**8.14.** If it is necessary to provide additional training beyond the framework agreed in the Contract, this activity will be charged separately according to the hourly tariff of the Contractor, specified in the Contract.

**8.15.** In case of absence of the supervisors at the proper/respective training and/or failure to process records of training or specific written instructions for the operators of the Work or if lack of knowledge of the operators is found in spite of the completion of the training, the Contractor is entitled, as a condition for continuing with the execution of the Work, to require additional training or repetition of the relevant training; this activity shall be paid by the Customer beyond the scope of the Contract - Price - in the way according to section 8.14. of the Terms.

**8.16.** In case that lack of knowledge of an operator of the Work who has already completed training is found, the Contractor has the right to require the exclusion of such a worker from the shift and replace him/her with a professionally qualified worker. The Customer is obligated to ensure this replacement for the personnel; until it is ensured, the responsible foreman or supervisor of training is obligated to replace the worker excluded in this way.

**8.17.** Within the Trial Operation, the Customer is responsible for ensuring the operation of the line (Work) and carries out in cooperation with the Contractor the optimization of operation of the Work, aimed at meeting successfully the conditions of the Guarantee Tests. An integral part of the schedule of this phase of the execution of the Work is the agreed chart for the gradual increase in performance until the guaranteed performance and readiness for the performance of the Guarantee Tests are achieved. The Contractor is responsible for achieving the guarantees and parameters agreed in the Contract only if during the Trial Operation the line (Work) was used to produce the range guaranteed by the Contract and only from material specified in the Contract.

**8.18.** If it is agreed in the Contract that the quality of the Work submitted will be checked by the Guarantee Tests, the Parties are obliged to define in the Contract precise and measurable parameters which will be the subject of technical and technological guarantees of the Work handed over. These guarantees shall be decisive for determining the quality of the Work. All other technical data, values, measurement results, technological scheme balances, etc. have only an informative, indecisive and non-binding nature in relation to the Contract. The Guarantee Tests check only the values and parameters of the Work which are guaranteed by the Contract. The values and parameter of the Work which are guaranteed by the Contract are the only subjects to the Guarantee Tests.

**8.19.** If it is specified in the Contract that the quality of the Work shall be checked by the Guarantee Tests, the Parties are obliged to specify precisely in the Contract the conditions and the course of the Guarantee Tests, the guaranteed parameters and values, as well as the method of measuring the guaranteed values. In case the method of measurement is not specified in the Contract, then measurement according to ISO standards applicable in the country of the Contractor shall be used. Evaluating the Guarantee Tests is based on the principle of the "Sameness of the method of adjusting and evaluating variables"; this means that the same apparatuses and measuring methods which are available for adjusting the process line shall also be used for the evaluation of the achieved parameters.

**8.20.** The Guarantee Tests are organized and carried out by the Customer no later than within 4 months from the Commissioning of the Work. In case the Customer does not carry out the Guarantee Tests at the specified time or in case the Customer reaches the guaranteed values in full as early as



during the Trial Operation, it will inform the Contractor thereof and the Guarantee Tests are regarded successfully carried out. The Contractor is entitled to be present at the Guarantee Tests and evaluate their results.

**8.21.** Immediately after carrying out/finishing the Guarantee Tests the report on the course of the Guarantee Tests shall be published and promptly undersigned by both the Customer and the Contractor. In case the Customer does not confirm/undersign the Record on the execution of the Guarantee Tests - no matter for which reason, the Contractor is entitled to prove that the guaranteed parameters of the Work are achieved by submitting any documents evidencing this fact, for example, copies of the records from the QCS and DCS, photo documentation, or laboratory results; such evidence, documented by the Contractor, is regarded as sufficient.

**8.22.** In case it is impossible to procure materials according to Article 8.21. of the Terms and disputes concerning the performance or evaluation of the Guarantee Tests persist, the test/tests shall be carried out/repeated and/or evaluated by the independent organization CJSC "Giprobum-Pöyry" (St. Petersburg) or Pöyry, Finland. This organization shall be addressed within 1 month from the date when the disputed Guarantee Tests were carried out. In case of contradictions in/regarding the interpretation of the text of the Contract concerning the conditions of executing or course of the Guarantee Tests this independent organization shall be addressed by the Contractor as early as prior to the commencement of the Guarantee Tests. The costs of participation of this independent organization are paid by the Customer; the Customer is obligated to document to the Contractor that the letter of credit is open or the bank guarantee is given to cover the costs of this independent organization; otherwise, the Guarantee Tests are regarded as fulfilled.

**8.23.** If the related equipment of the Customer does not correspond, especially as regards the production capacity, to the capacity of the Work according to the Contract, the Contractor shall call the Customer to cure. If the Customer fails to cure, especially does not adapt the capacity of its equipment to the capacity of the Work according to the Contract within the period determined by the Contractor in writing to do so, the Contractor has the right to redefine/determine the parameters of the Guarantee Tests unilaterally. If the Customer does not approve the parameters of the Guarantee Tests defined/determined in this way, they shall be forwarded to the independent third organization according to section 8.22 of the Terms for review and for approval; all costs which may arise in this connection are borne by the Customer.

## **9. Cooperation of the Customer.**

**9.1.** The Customer is obligated to appoint and determine a contact person with the appropriate professional skills who will permanently cooperate with the Contractor and who will be able to take decisions and/or ensure that decisions are taken in a timely manner. This person shall be present when the Guarantee Tests are carried out and evaluated and shall have the authority to undersign the Record of the performance of the Guarantee Tests and is obligated to hand it (the authorisation) over to the Contractor before the commencement of the Guarantee Test.

**9.2.** The Customer is obligated to provide the Contractor with all and complete information, bases and/or documentation necessary for the proper performance of the Work. If damage or other costs, expenses or losses occur as a result of failure to perform this obligation or as a result of communicating false or incomplete information, the liability for them is borne and they are paid by the Customer.

**9.3.** The Customer is obligated to participate actively in optimizing the operation of the Work within the Trial Operation and inform without any delay the Contractor of the course and results of the Trial Operation. In case the Guarantee Tests are agreed, the Customer is obligated to check continuously





the quality of the Work, at least within the parameters guaranteed by the Contract. From the moment when the Work is Commissioned the Customer is obligated to keep detailed records of the operation of the technology of the Work, with recording all ongoing activities and/or effects, causes of breaks on the paper machine and on the set parameters of the technology and send them to the Contractor at least once a week. The forms for these records, with predefined parameters, are annexed to the Record of Commissioning of the Work.

**9.4.** To be able to meet the conditions and/or times/periods according to the Contract, the Contractor is entitled to require and rely on efficient, effective and active support and assistance of the Customer. The Customer undertakes to support by all of its abilities and means those activities of the Contractor which are necessary for the proper and timely performance of the Work. If the Customer refuses to give the necessary cooperation for the request of the Contractor, this is understood to be a breach of the Contract and delay in the performance of obligations under the Contract on the part of the Customer.

**9.5.** The Customer is obligated to procure/ensure for the employees and workers of the Contractor who work in the place of the installation of the Work especially:

- a) an invitation for arranging for a visa, foreigner registration formalities, and all permits required for the performance of their activities under the Contract in the place of the installation of the Work;
- b) training in health and safety and fire protection;
- c) a lockable, heated and separate office with the necessary equipment, internet connection (WIFI, ADSL, at least 5 access points), and a local phone for chief assemblers or the Start-up Group workers;
- d) a lockable room for the storage of tools and equipment of the Contractor; and
- e) hygienic sanitary facilities of the European type and cleaning the office, changing room and sanitary facilities once a day.

**9.6.** The Customer further ensures at its own expense:

- a) the transport of the Contractor's workers to the workplace (the place of the installation of the Work) from the place of accommodation and back;
- b) the transport of the Contractor's workers from the airport (station) to the place of accommodation and back;
- c) the accommodation of the Contractor's workers (max. 3 workers in an apartment, a heated apartment with kitchen, washing machine and social facilities, hot and cold water all the time, linen changed once a week, cleaning twice a week, and wi-fi internet connection);
- d) enabling hygienic boarding and sufficient safe drinking water;
- e) translating into the local language, arranging for the formalities at local authorities, etc.;
- f) in the case of injury or other health problems of the Contractor's workers the necessary medical and administrative assistance and possible transport of such worker of the Contractor to the appropriate medical facility and back.

**9.7.** The Customer is obligated to assemble an implementation group in the place and at the time of installation of the Work, including at least the following persons: contact persons according to Article 9.1. of the Terms and representatives of the following professions - technology, electrical, construction, control systems, mechanical part, and assembly.

**9.8.** The Customer is obligated to attend according to the call of the Contractor inspection days and operational meetings necessary for the control, coordination and planning of work, activities, and procedures during the execution of the Work.

**9.9.** The Customer is obligated to carry out and ensure at his own expense all activities, things, media and/or substances which are not carried out or ensured by the Contractor under the Contract and which are necessary for the successful performance of the Work, Commissioning of the Work, and operation or tests of the Work under the Contract. These are especially:



- a) media and raw materials necessary for the operation of the Work, in the appropriate quantity and quality according to the project/the Contract;
- b) ensuring the appropriate environmental and other official permissions necessary for the installation, financing and operation of the Work and the performance of individual activities under the Contract;
- c) obtaining all permissions, decisions and conditions necessary or required by the relevant authorities for receiving, for operation, for delivery, and for performance of the Material Deliveries, construction, and Assembly;
- d) ensuring the adaptation of the documentation to the local legislative standards and the approval of the project documentation of the Contractor;
- e) processing and approval of the implementation project documentation of the Customer in such times that ensure that these activities do not endanger the plan of the execution of the Work according to the Contract;
- f) ensuring the proper construction preparedness;
- g) ensuring deliveries ensured by the Customer under the Contract and all necessary assemblies and/or activities/works beyond the Contractor's obligations under the Contract;
- h) ensuring that the existing equipment is in a good technical condition and in condition corresponding to the Contract and that it meets all the requirements of the relevant technological diagrams and project documentation;
- i) proper and timely execution of the other work, following, related to, and/or preceding the Contractor's activities;
- j) ensuring the proper protection and guarding of the unfinished Work against theft and/or damage;
- k) the continuous issue of equipment and Material Deliveries for Assembly and keeping records of the stored and issued material;
- l) equipment and site equipment corresponding to the purpose of the Contract, including handling means, in accordance with the applicable rules of safety of operation and work, and the possibility of using infrastructure, machine tools, measuring instruments, the Contractor's laboratories, etc.;
- m) ensuring qualified personnel for the maintenance and operation of the Work; the conditions and the type and level of qualifications of the personnel will be agreed by the Parties prior to the start of the assembly activities;
- n) ensuring training supervisors, processing a record of training, technological réglement, and work instructions for the operators of the Work, and checking the knowledge of the personnel acquired by the training;
- o) checking the operation of the technology (Work) by supervisors during the time when the Contractor is absent;
- p) ensuring the record of the operation of the technology of the Work during the Trial Operation;
- q) ensuring the presence of mechanical services for welding, cutting and forming work, with the necessary working and technical equipment, and also roller grinding equipment - the roller grinding equipment shall meet the requirements of the technical documentation for grinding rollers, and these all throughout the all period of the execution of the Work; and
- r) ensuring valid certification for all instruments and tools which shall be used when the parameters guaranteed by the Contract are measured.

**9.10.** If the Customer ensures the Assembly, the assembly organization selected by it shall have experience of installing paper machine equipment and shall document at least two references. This assembly organization shall have its group to check tolerances for the installation of the equipment prescribed by the technical documentation and requirements of the Contractor, supplied before the start of Assembly, shall dispose of the required measuring instruments, with valid certification of an instrument, and shall continuously, at the Contractor's request, submit records of the levelling of machines stating the actual and the prescribed tolerances. The assembly organization selected by the Customer shall be properly insured for liability for damage arising as a result or in connection with its activities.



**9.11.** If the site and/or the place of the installation/execution of the Work does not enable to execute the Work safely or does not meet the requirements of safety of operation and the occupational health and safety requirements, the Contractor has the right not to come to execute the Work until the defects found and pointed out by the Contractor in this connection are removed and the full safety of the site/the place of the execution of the Work is ensured by the Customer; the period of execution of the Work is extended by the length of this period; the Contractor is not delayed in the execution of the Work for this period.

**9.12.** The Customer undertakes to handle the shipping package and waste generated in connection with the execution of the Work and activities of the Contractor in the place of installation of the Work in accordance with the legislation valid in the territory.

**9.13.** The Customer undertakes to dispose of or remove any waste generated in the place of installation of the Work in connection with the performance of the Work on its own responsibility and at its own expense.

**9.14.** The Customer is obligated to provide the Contractor with complete and true information about specific conditions (geological, political, climatic, etc.) of the place of execution of the Work and the place of the Assembly. The Customer is fully liable for damage and costs incurred by the Contractor as a result of a breach of this obligation.

**9.15.** The Customer undertakes to provide the Contractor with all available resources, as well as cooperation for the elimination of any possible accident during the Assembly and the execution of the Work (a fire, leakage of chemicals, and the like).

**9.16.** The Customer is obligated to prepare a detailed technological règlement for the Commissioning of the Work and submit it to the Contractor for inspection and approval. The Customer is obligated to designate a qualified person responsible for proper and complete compliance with this règlement as well as technological disciplines during the operation of the Work. The technological règlement shall contain all the data and information necessary for the proper adjustment of the technological line (Work). The Customer is obligated to familiarize all operating personnel with this règlement and check continuously whether it is properly complied with.

**9.17.** The Customer is obligated to ensure qualified operators and qualified maintenance workers for the Commissioning of the Work and for the subsequent operation of the Work. The raw materials and media used shall be in accordance with the technological règlement requirements and with the technical documentation of the Work handed over by the Contractor.

**9.18.** The Customer is obligated to use exclusively original spare parts and operating materials or those recommended by the Contractor for the duration of the mechanical guarantee; otherwise, its complaints and claims arising out of defects in the Work will not be recognized.

**9.19.** Before the Commissioning of the Work, the Customer is obligated to ensure a prescribed set of spare parts of the Work. The Contractor is not responsible for delay resulting from a shutdown of a machine (the Work or any part thereof) due to failure to ensure a spare part prescribed by the Contractor; the costs and expenses incurred as a result of this fact are fully borne by the Customer. The costs incurred by the Contractor as a result of the Customer's failure to ensure a prescribed spare part are borne by the Customer.

**9.20.** For the period of the mechanical guarantee, the Customer is obligated to follow all instructions of the Contractor for the operation, maintenance or service of the Work and keep the appropriate records in this connection, especially the Contractor's Service Cards handed over. All repairs, interventions, spare parts replacement, individual faults, and complaints must be recorded on the



Service Card; the Customer undertakes to send the Service Card to the Contractor after each record made. The Customer is obligated to inform the Contractor throughout the guarantee period of any measures or steps that have been made on the Customer's side/by the Customer within the operation of the Work.

**9.21.** The Customer undertakes to enable the Contractor to inspect the Work at any time during the guarantee period. For repairs and servicing of individual machines or machinery of the Work, the Customer shall enable the Contractor to access and execute work during a Shutdown; the Customer undertakes to inform the Contractor of the time of a planned shutdown at least 1 month in advance.

**9.22.** The Customer undertakes to give the Contractor access to the equipment (the Work) delivered, commissioned or being commissioned for the purpose of making reference materials (videos, photos, and samples). The Contractor is obligated to inform the Customer in advance in this connection and agree with it upon the purpose and time of the visit or trip. After the Commissioning of the Work the Customer shall enable, after a prior agreement, a reference visit/inspection of the Work for the potential customers of the Contractor.

**9.23.** The Contractor is entitled to obtain, procure, and use without any limitation a remote access to the camera system and to the control system of the equipment (the Work), especially at the time of the Commissioning of the Work, the Trial Operation of the Work, the Guarantee Tests of the Work, and the guarantee period of the Work or by reason of seeing trends if the system is delivered by the Contractor or if this is a system which follows or works directly with equipment delivered by the Contractor (technological, machine part). If the Customer disables or disturbs setting up remote access or the execution of remote access of the Contractor under this Article of the Terms, the Contractor has the right to interrupt the execution/performance of the Contract.

**9.24.** The Customer is obligated to ensure all activities and perform all obligations arising from the Contract for it (especially extending a letter of credit, providing bases for the financing banks and insurance companies, performing construction, deliveries ensured by the Customer or its sub-contractors under the Contract) as well as other activities and acts which have impact on meeting the times and obligations of the Contractor. If the Customer is delayed in fulfilling its obligations and meeting the times under the Contract or providing the necessary and required cooperation to the Contractor, the times of the performance of the Contractor are extended by the period of such delay and there is no delay on the side of the Contractor for that period.

**9.25.** The Customer undertakes to undersign the relevant records of meeting/performing individual stages of the Work immediately after the performance thereof and in the presence of representatives of the Contractor. Possible comments of the Parties shall be attached to the records, stating the next steps, the draft solutions thereof, and the times of their solutions. Failure to undersign a particular record by the Customer is regarded as a material breach of the Contract and gives the Contractor the possibility of withdrawing from the Contract or to interrupt the execution of the Contract. The time of further performance of the Contractor under the Contract is extended by the period of the Customer's delay in undersigning the relevant record; for the period for which the relevant record is not undersigned by the Customer the Contractor is not delayed in performing its obligations under the Contract.

## **10. Passage of the Ownership Right.**

**10.1.** The ownership right to the Work passes from the Contractor to the Customer only after the full payment of the Price of the Work under the Contract.



## **11. Guarantees.**

**11.1.** The Contractor guarantees and declares that the Work meets the requirements and specification stated in the Contract.

**11.2.** The Contractor is not obligated to provide the Customer with performance due to a guarantee if the Customer is in delay in the fulfilment or payment of any obligations in respect of the Contractor or if the Customer fails to observe the obligations which it undertook to observe by the Contract.

**11.3.** The Contractor gives a mechanical guarantee on the Material Deliveries of new equipment with duration of 12 months from the date of the Commissioning of the Work, but not more than 18 months from the date of the delivery of an individual Material Delivery to the Customer or from the date of its readiness for shipment under the Contract.

**11.4.** If “second hand” equipment is delivered, mechanical guarantees are given only on repairs and refurbishment carried out by the Contractor; the length of a guarantee period is 6 months.

**11.5.** The guarantee does not cover the wear parts which are specified in the technical documentation and consumables (especially wires and fabrics, covers and trims, blades, knives, ropes, belts, all types of gaskets, seals and ring cups, functional surfaces of rotors, inner coating of machinery and equipment coming into contact with the stock, oil filling and lubricants, and the like).

**11.6.** If the Contractor is in delay with the execution of the Work by reason on the part of the Customer, the guarantee period starts and runs according to the original schedule of the execution of the Work, stated by the Contract.

**11.7.** Only such guarantee period applies to the parts and components which are not manufactured by the Contractor but purchased by it as finished components for the completion of the Work which the Contractor is able to use with its supplier, but at least 12 months from the date of delivery of the parts to the Contractor. These are especially the following parts: electrical parts, including M&C, motors, measuring instruments, couplings, gearboxes, cardan shafts, bearings, as well as other standalone devices which are not produced directly by the Contractor but supplied by it within comprehensive deliveries (according to the technical documentation of individual machines).

**11.8.** A guarantee defect is not a defect caused by improper handling and/or improper operation or maintenance of the Work or by operating the Work in contrary to the binding operational documentation, technological règlement or normal/common operating practice.

**11.9.** Only the Customer, as the direct contractual partner of the Contractor, has a claim for guarantee performance and only if the Work is operated in the place in which/where it was Commissioned.

**11.10.** The Contractor will not provide guarantee performance for the Customer if:

- a) The Customer did not respect the related technical documentation during the installation of the Work, the Commissioning of the Work, and the operation of the Work
- b) the Customer commissioned the equipment (Work) without the participation of the Contractor if the Contractor's participation during the Commissioning of the Work was agreed on in the Contract;
- c) the Contractor found a significant breach or repeated breaches of the conditions of the technological règlement by operators during a service visit;
- d) the Customer has not prepared the detailed technological règlement;
- e) the destruction of or damage to the Work has occurred in such situation or due to such fact which is not related to its operation or does not result from its operation;
- f) the destruction of or damage to the Work has occurred due to force majeure;





- g) the Customer has not enable the Contractor to carry out a timely inspection of the defective part or equipment or has made modifications to the Work without the prior consent of the Contractor;
- h) the Customer has not ensured a timely and proper inspection of the subject of the Work immediately after the passage of risk of damage to the Work;
- i) the Customer did not give a report to the Contractor concerning the defects of the equipment (Work) without undue delay after it had found the defects or after it should had found with professional care the defects during the inspection which it was obligated to make but not later than within the expiry of the guarantee period;
- j) the Customer has not submitted proper records of the lubrication of the machines and the properly kept Service Cards; or
- k) the Customer has not used original spare parts and operating media or those recommended by the Contractor during the guarantee period.

**11.11.** If the Contractor comes to the conclusion that there has been some of the situations envisaged by section 11.10. of the Terms, it will carry out the repair to the Work only on the basis of a written order by the Customer and for a separate payment, going beyond the Contract, in the amount of the actual costs.

## **12. Complaints, Claims Arising from Defects.**

**12.1.** If the Customer uses its claims arising from defects of the Work during the guarantee period, it is obligated to do so directly with the Contractor and through the worker of the Contractor designated in the Contract or through the complaints department of the Contractor.

**12.2.** The Customer also proceeds in the same way as in Article 12.1. of the Terms when it uses a claim arising from defects and outstanding works of the Work found after the completion of individual partial stages of the Work.

**12.3.** The Customer is obligated to use a defect of the Work with the Contractor within 3 days from the moment when it was found out. Using a defect later results in the extinction of the claim arising from defects.

**12.4.** A complaint must include a detailed description of the problem/defect and of its manifestation, a description of all related technological settings of the damaged technological node, possible samples, and photo and video documentation.

**12.5.** After the assessment of related information and documents the Contractor will recognize the complaint or reject it as unjustified. If the complaint is rejected, the Contractor is obligated to hand over a written justification of the rejection of the complaint to the Customer immediately on finding the relevant circumstances of the complaint (processing the necessary expertises, opinions, etc.).

**12.6.** If a complaint is recognized as justified, the Contractor is obligated:  
- to remove the defects complained about by repair to the Work if the defects are repairable  
- or remove the defect complained about by replacing the defective part of the Work with a new one  
- or provide a reasonable discount on the Price.

**12.7.** The Parties have agreed that the choice between the options for the settlement of a justified complaint stated in Article 12.6 of the Terms lies solely with the Contractor.

**12.8.** A guarantee repair may be carried out by the Contractor or by another entity with the consent of the Contractor. If a guarantee repair is carried out by another entity with the consent of the Contractor, the Contractor shall approve the costs of this repair in advance.



**12.9.** If the repair was carried out by a third party without the consent of the Contractor or without the prior approval of the costs of this repair by the Contractor, the Contractor has no obligation to pay the costs incurred or expended in this connection by the Customer.

**12.10.** The Contractor undertakes to start the settlement of the complaint without delay. The Contractor undertakes to inform the Customer about its steps not later than within 3 working days from the day when the complaints department of the Contractor received the written notification of the complaint.

**12.11.** If it is necessary to transport the object of a complaint from the Customer to the Contractor and back, the dismantling of the equipment and all necessary formalities necessary for the export and customs clearance of the object of the complaint in the country of the Customer are ensured and paid by the Customer.

**21.11.** The existence of defects, backlogs or complaints does not release the Customer from the obligation to pay and fulfil its financial/payment and other obligations towards the Contractor.

### **13. Contractual Penalties, Sanctions.**

**13.1.** If the Customer is in delay with the payment of the Price or any part thereof compared to the terms of payment agreed in the Contract for a period longer than 30 days, the Customer is obligated to pay the Contractor a contractual penalty of 0.05 % of the amount due for each, even not whole, day of delay.

**13.2.** If the Contractor is - through the fault of it – in delay with Deliveries under the Contract for a period longer than 30 days, it is obligated to pay the Customer a contractual penalty of 0.05 % of the price of the undelivered Delivery for each, even not whole, day of delay.

**13.3.** The total maximum amount of any and all contractual penalties and sanctions under the Terms and the Contract is limited to an amount equal to 10 % of the Price..

**13.4.** The entitled party is not entitled to other sanctions, compensations and penalties than those stated by the Contract and/or by the Terms

**13.5.** The Parties have agreed that the entitled/injured party is not entitled to request any compensation for damage/damages from the other Party, except for cases where such right results expressly from the Terms or the Contract.

### **14. Protection of Information.**

**14.1.** Any information provided, handed over and/or made available in connection with the Contract by the Contractor for the Customer, especially technical data and project and/or technical documentation, is regarded as confidential and as a subject of the Contractor's trade secret and is intended only for the internal use by/of the Customer, connected with the performance of the Contract.

**14.2.** The Customer undertakes that without the prior written consent of the Contractor it will not inform third parties of the content of the Contract; information about the itself existence of the Contract can be made public if the Contract does not restrict it explicitly.



**14.3.** Unless having the prior written consent of the Contractor to do so, the Customer is not allowed to provide for or make available to third parties any information or documents which relate to the Contract and which have been handed over or otherwise made available to the Customer by the Contractor in connection with the Contract.

**14.4.** In the event of a breach of any of the obligations stated in Article 14. of the Terms the Customer is obligated to pay the Contractor a contractual penalty of EUR 100.000 for each individual breach of these obligations, also repeatedly.

### **15. Obligation of Confidence.**

**15.1.** The Contractor and the Customer undertake to maintain mutual loyalty. They declare that they will avoid and refrain from any activities which would or could harm the other Party.

**15.2.** The Parties undertake not to employ and also not to otherwise cooperate on business with any employee of the other Party during the period of validity of the Contract unless the other Party has given its written consent to do so.

**15.3.** The Customer declares that it is not a party to any legal, arbitration, administrative or other proceedings which or where a result of it could significantly affect business activities of the Customer, its economic stability, freedom of contract, power to dispose of property, or financial situation and that it also is not facing up such proceedings. The Customer further declares that its economic situation is stable and that it is not aware of any facts which could endanger its economic stability to an essential extent. If any of these facts occurs, the Customer undertakes to inform the Contractor thereof promptly, completely and truly. If the Customer fails to fulfil this of its obligations within one week from the date on which it learned of the given fact, but no later than within one month from the date on which this fact occurred, this is a breach of the Contract which gives the Contractor the right to withdraw from the Contract.

**15.4.** If either of the Parties breaches the obligations resulting from Article 15. of the Terms, it is obligated to pay the other Party a contractual penalty of 100.000 EUR for each individual breach of these obligations, also repeatedly.

### **16. Governing law, Arbitration Clause.**

**16.1.** This Contract and all legal relations arising from and connected with it are governed by the Czech law (the legal order of the Czech Republic).

**16.2.** The Parties undertake that they will try to solve disputes which may arise mainly by mutual agreement first. An attempt to reach such agreement will be regarded as failed when one of the Parties notifies the other Contra Party of this fact in writing.

**16.3.** The Parties have agreed that all disputes arising from and in connection with the Contract will be finally decided by the Arbitration Court attached to the Economic Chamber of the Czech Republic and Agricultural Chamber of the Czech Republic according to its Rules by three arbitrators.

**16.4.** The place of arbitration is Prague, the Czech Republic. The language of arbitration is the Czech language. An arbitral award given is the final decision in the case and is binding on the Parties.

**16.5.** If it is possible and if it corresponds to a reasonable arrangement of relations, the Parties shall continue with performing the Contract also for the period when the disputes arisen are solved or legal



or arbitration proceedings are conducted. This does not apply if the subject of the disputes arisen or legal or arbitration proceedings is the fact that the Customer, even partially, does not fulfil its payment obligations arising from the Contract.

**16.6.** In case of a discrepancy between the Contract and the Terms, the text of the Contract is decisive.

## **17. Amendments to the Contract.**

**17.1.** The Contract can only be amended or supplemented by written chronologically numbered amendments, approved and undersigned by both Parties.

**17.2.** The request to amend the Contract can be initiated by either of the Parties.

**17.3.** The request to amend the Contract must be made in writing and handed over to the other Party. The other Party shall inform the initiating Party of its opinion on the request to modify the Contract raised not later than within 14 days from the day on which such request was delivered to it.

**17.4.** If the Parties do not agree upon the execution of the Customer's request to amend the Contract as regards the method of performing and/or the technical solution to/performance of the Work within one month from the date when such request of the Customer was delivered to the Contractor, the Contractor is entitled to continue with executing the Work in the way and under the terms and conditions according to the original version of the Contract; if the Customer expresses in writing its disagreement with this procedure of the Contractor, the Contractor has the right to withdraw from the Contract.

**17.5.** The Customer is aware of the fact that at the time of undersigning the Contract all and complete information on the conditions of the execution of the Work as well as execution projects for the installation of the Work may not be known. The Customer agrees that in such case the technical solutions and volumes of Deliveries will be made more specific additionally, on inspection days. In this context, a list of +/- changes in the specification of a Delivery will be kept; all changes will be evaluated and their specification will be given. In the case of a value of up to 50.000 EUR the change is valid for execution on its inclusion in the list of +/- changes mutually undersigned by the Customer and the Contractor. In the case of changes in a value of more than 50.000 EUR the procedure is according to sections 17.1 - 17.3. of the Terms.

**17.6.** Regarding the changes recorded on the +/- list an amendment to the Contract shall be prepared every 3 months, with determining the method and time of the performance of the financial compensation of +/- . If such amendment is not undersigned by the Customer, the Contractor has the right to suspend the execution of the Work until its signature, without the possibility of applying any sanctions or penalties by the Customer. If the execution of the Work is suspended in accordance with this Article of the Terms, the Contractor is not in default with the performance of its obligations under the Contract for the period of such suspension.

**17.7.** If an amendment to the Contract according to Article 17.6. of the Terms is not undersigned within 90 days from the date when it was handed over to the Customer, the Contractor is entitled to withdraw from the Contract.



## **18. Termination of the Contract.**

**18.1.** The Contract may be terminated by written agreement of the Parties.

**18.2.** The Contractor has the right to withdraw from the Contract if the Customer is in delay with the fulfilment of its obligations/commitments arising out of the Contract or its individual part for more than 90 days.

**18.3.** Effects of withdrawal from the Contract come on the day when the written notice of one of the Parties of the withdrawal from the Contract is delivered to the other Party but not later than on the 10<sup>th</sup> day from the date when a registered letter was sent to the mailing address; if there is no such an address, then to the address specified in the header of the Contract for the other Party.

**18.4.** If the Contractor withdraws from the Contract, it has the right towards the Customer to the payment of all direct, indirect and overhead costs incurred in connection with the Contract and to a compensation in the amount of 15 % of the Price; the Contractor shall issue an invoice/invoices for the Customer which the Contractor delivers to the Customer together with the withdrawal from the Contract. The Customer has the right to inspect in this connection the items invoiced to it by the Contractor within 30 days from the effective date of the withdrawal of the Contractor from the Contract.

**18.5.** Within 90 days from the date on which the Customer pays all amounts invoiced by the Contractor according to Article 18.4. of the Terms the Contractor shall hand over to the Customer the material, semi-finished products and those parts of the Work which were charged in this way to the Customer; parts of projects and documentation shall be handed over to the Customer only in the scope of the Contract without providing detailed manufacturing and design drawings.

**18.6.** If the Customer becomes in default with the payment of invoices issued by the Contractor according to Article 18.4. of the Terms for more than 60 days, the Contractor has the right to convert into money/sell individual parts of the Work or material designated for the production thereof to the extent which brings financial means equal to the amount thus invoiced, reduced by the advance payments made by the Customer. The Contractor is entitled to set off the financial means obtained in this way against a claim/receivable it has in relation to the Customer according to section 18.4. of the Terms.

**18.7.** The Contractor can store the remaining subject of the Work, material and parts intended for the production thereof, if the Customer does not take over them immediately, in the Contractor's premises. In this case the price of the storage area is 5 EUR/1m<sup>2</sup>/month. If it is necessary to store outside the Contractor's premises, the Customer is obligated to pay the real incurred storage costs. If the Customer fails to pay the storage costs for 2 months, the Contractor has the right to dispose of or otherwise use the stored remaining subject of the Work, material and parts intended for the production thereof without any compensation to the Customer.

## **19. Circumstances Excluding Liability.**

**19.1.** A circumstance excluding liability is considered to be an obstruction which has occurred independently of the will of the liable Party and prevents it from fulfilling its obligation unless it can be reasonably assumed that the liable Party can avert or overcome this obstacle or its consequences and that at the time of the creation of the obligation/Contract it foreseen or could foresee this obstacle.

**19.2.** Liability is not excluded by an obstacle which arose only at the time when the liable Party was delayed in fulfilling its obligation under the Contract or if this obstacle has arisen from its economic situation.





**19.3.** The effects excluding liability are limited only to the period for which the obstacle with which they are associated lasts/lasted.

**19.4.** If such situation arises which one of the Parties regards as a circumstance excluding liability and which may affect the performance of its obligations arising from the Contract, it shall immediately notify the other Party thereof and shall endeavour to continue with performing its obligations as much as it is reasonable and reasonably possible. At the same time such Party shall notify the other Party of all of its proposals, including possible proposals for alternative performances, but it will not proceed to perform/execute them without the written consent of the other Party.

**19.5.** If a circumstance excluding liability occurs, the times/periods set by the Contract shall be extended by the period equal to the duration of this circumstance.

## **20. Correspondence, communication.**

**20.1.** The Parties have agreed that mutual correspondence and communications under the Contract and/or relating to the Contract may be made in person, in the form of postal mail, by e-mail or fax, and also using a video conference or video conference clients.

**20.2.** The Parties agree with the possibility of recording videoconferencing calls and any other meetings by both sides. When starting a video conference or a particular meeting, before starting their own record the Parties are obligated to notify verbally the other Party of taking a record/recording.

**20.3.** Each of the Parties has the right to ask for the record of a call, meeting and/or video call taken by the other Party.

**20.4.** The Parties are obligated to confirm on request the receipt of correspondence sent to them by the other Party.

**20.5.** Correspondence and other material consignments are delivered to the mailing address of the Party; if there is no such address, then to the address specified in the header of the Contract. A recommended/registered mail is regarded as delivered not later than on the 10<sup>th</sup> day from the date when it was sent to the other Party.

**20.6.** In the event of a change of the address or contact detail of either Party the new address or contact detail are regarded as the mailing address or contact detail of this Party only after the other Party was provably notified of such change.

## **21. Final Provisions.**

**21.1.** The Customer bears full responsibility for the accuracy and completeness of all data which it has provided for the Contractor in connection with the performance and purpose of the Contract as well as for the fact that the persons that has acted and act for it in the matter of the Contract are persons fully authorized and qualified to do so.

**21.2.** On the date of conclusion of the Contract all previous agreements and correspondence between the Parties are cancelled and their mutual relationship is then governed exclusively by the Contract.



**21.3.** In case that any of the provisions of the Contract is found later to be invalid or unenforceable, the invalidity or unenforceability of this provision does not cause the invalidity or unenforceability of the Contract as a whole. The Parties undertake to replace without any delay, after a mutual agreement, an invalid or unenforceable provision of the Contract with a new provision which most closely corresponds to the intent of the Parties at the time when the Contract was concluded.

**21.4.** If it comes out additionally that the contractual arrangements are incomplete, incorrect or otherwise insufficient, the Parties undertake to seek agreement on such solution which will reflect as close as possible the purpose of the Contract. They undertake to make immediately an amendment to the Contract concerning such agreement.

**21.5.** The obligations arising out of the Contract are also binding on possible legal successors of the Parties.

**21.6.** The Parties are obligated to inform each other and without undue delay of possible changes which may affect the performance of the Contract, e.g. changes in the seat, account number, contact person, and the like.

**21.7.** Any annexes mentioned in the text of the Contract are an integral part of the Contract. In case of a discrepancy between the text of an annex to the Contract and the text of the Contract, the text of the Contract is decisive.

**21.8.** The Terms are effective from November 1<sup>st</sup>, 2014.