

**TOS KUŘIM - OS, a.s.**

Commercial Terms and Conditions No. 1.3 of TOS KUŘIM – OS, a.s.,

Having its registered office in Kuřim, Blanenská 1321/47, postcode 664 34, Czech Republic, Comp. Reg. No.: 262 31 522, registered in the Commercial Register kept by the Regional Court in Brno, Section B, file No. 3474

**1. Introductory provisions**

These Commercial Terms and Conditions of TOS KUŘIM – OS, a.s., having its registered office in Kuřim, Blanenská 1321/47, postcode 664 34, Czech Republic (hereinafter referred to as “**TOS KUŘIM – OS, a.s.**”), cover the rights and duties of the contracting parties and the legal relationships arising from a contract for work concluded in accordance with the provisions of Sections 2586 et seq. of Act No. 89/2012 Sb., the Civil Code, as amended (hereinafter referred to as the “**Civil Code**”), or a general contract for work concluded in accordance with the provisions of Section 1746 (2) of the Civil Code between TOS KUŘIM – OS, a.s. as the contractor, on one hand, and the client, on the other hand, (hereinafter referred to as “**Client**”) (hereinafter referred to as “**Contract for Work**”).

In case of any contradiction between the provisions of the Contract for Work and those of these Commercial Terms and Conditions, the provisions of the Contract for Work shall prevail over the provisions of the Commercial Terms and Conditions. These Commercial Terms and Conditions shall, in turn, prevail over those statutory provisions which are not of a coercive nature.

**2. Validity of an Offer to conclude a Contract for Work**

Unless agreed otherwise by the contracting parties or unless provided for otherwise in the Offer, an Offer to conclude a Contract for Work (hereinafter referred to as “**Offer**”) shall remain valid for a period of 30 days after the date when this Offer is received by the addressee thereof.

**3. Performance of a work**

TOS KUŘIM – OS, a.s. shall perform the work at its own expense and own risk within the period of time agreed in the Contract for Work; where this period of time is not specified exactly, the work shall be performed within an appropriate period of time taking into account the nature of the work. This period of time shall be extended with the period, during which the Client is in default of providing the necessary cooperation to perform the work or fulfilling any of its duties under the Contract for Work and these Commercial Terms and Conditions. The Client undertakes to accept the performed work based on a completion notification given by TOS KUŘIM – OS, a.s. The Client is obliged to notify TOS KUŘIM – OS, a.s. of any and all circumstances that affect or are likely to affect the fulfilment of its obligations under the Contract for Work (e.g. the Client is obliged to report on the non-readiness of the assembly area, etc.) immediately after becoming aware of such circumstance. The Client is responsible for any damage possibly suffered by TOS KUŘIM – OS, a.s. as a result of any late notification concerning the above facts.

When performing the work, TOS KUŘIM – OS, a.s. shall proceed independently and shall not be bound by any instructions from the Client. TOS KUŘIM – OS, a.s. is entitled to outsource the work. If the work is outsourced, TOS KUŘIM – OS, a.s. shall remain liable to the same extent as if the work was performed by TOS KUŘIM – OS, a.s.

**4. Items intended for the performance of the work**

Any items provided by the Client for the purpose of performing the work shall be sent to TOS KUŘIM – OS, a.s. without undue delay following the conclusion of the Contract for Work. Any items provided by the Client for the purpose of control tests must be sent to TOS KUŘIM – OS, a.s. sufficiently in advance of the agreed final date of these tests. The price of these items shall be deemed to be included in the price for the work and the price for the work shall be deemed not to be reduced by the price of such provided items.

In case the Client fails to provide the relevant items in time, TOS KUŘIM – OS, a.s. shall be entitled to:

- a) Purchase these items on behalf and at the expense of the Client. The Client shall subsequently be obliged to reimburse their purchase price and any necessary expenses related to their purchase, without undue delay after being requested to do so by TOS KUŘIM – OS, a.s.;
- b) Interrupt the performance of the Contract for Work based on a default by the Client until the relevant items or the necessary cooperation are provided. The period of time agreed for the performance of the work shall be extended by the duration of default by the Client.

The Client shall bear the risk of damage to the items purchased for the performance of the work and shall remain their proprietor until they become an integral part of the subject-matter of the work as a result of their incorporation. TOS KUŘIM – OS, a.s. shall be obliged to return to the Client, within 1 month after the completion of the work or after the fulfilment of the obligation to perform the requested work, any and all items supplied by the Client that were not used for the performance of the work. Any ancillary costs shall be borne by the Client.

**5. Method of performing the work**

TOS KUŘIM – OS, a.s. is obliged to notify the Client, without undue delay, of the inappropriate nature of any items supplied by the Client or of the instructions provided by the Client with regard to the performance of the work, where such inappropriateness could have been identified based on due care. In the event that the inappropriate items or incorrect instructions hinder the due and proper performance of the work, TOS KUŘIM – OS, a.s. shall be obliged to interrupt the performance of the work to the extent necessary, until the relevant items are replaced or until TOS KUŘIM – OS, a.s. receives modified instructions from the Client, or until TOS KUŘIM – OS, a.s. receives a written notification confirming that the Client insists that the work is performed with the use of the items supplied and/or according to the instructions given. The period of time agreed for the performance of the work shall be extended by the duration of the necessary interruption of the performance of the work. In addition, TOS KUŘIM – OS, a.s. shall be entitled to reimbursement of costs related to such interruption or with the use of inappropriate items until their inappropriateness could have been detected.

Provided that its obligations are fulfilled in accordance with the previous paragraph, TOS KUŘIM – OS, a.s. shall not be responsible for any impossibility to complete the work and shall not be liable for any defects in the completed work



caused by the inappropriate items or incorrect instructions, in the event that the Client insisted in writing on their use in the performance of the work. If the work cannot be completed, TOS KUŘIM – OS, a.s. shall be entitled to the price agreed in the Contract for Work.

#### **6. Fulfilment of the obligation to perform the work**

TOS KUŘIM – OS, a.s. shall fulfil its obligation to perform the work upon the proper completion and handover of the subject-matter of the work to the Client at the agreed location (hereinafter referred to as “**Place of Handover**”).

If the Place of Handover was not agreed in advance and the Contract for Work provides for the obligation of TOS KUŘIM – OS, a.s. to arrange for the delivery of the subject-matter of the work, the handover of the subject-matter of the work shall take place upon its delivery to the first carrier who will transport it to the place of destination.

If the Place of Handover or the obligation of TOS KUŘIM – OS, a.s. to arrange for the delivery of the subject-matter of the work is not provided for in the Contract for Work, the handover shall take place at the location where the work was performed in accordance with the Contract for Work. If such place is not defined in the Contract for Work, the handover shall take place at the location of which the Client was already notified or should have been, at the time of conclusion of the Contract for Work, aware of as the place where the work would be performed by TOS KUŘIM – OS, a.s.

In situations which are not clearly covered by the previous paragraph of this Article, the handover of the work shall take place at the registered office or place of business of TOS KUŘIM – OS, a.s., provided that the notification of this place has been delivered to the Client in due time.

#### **7. Price for work and the payment thereof**

The Client undertakes to pay the price for the work under the following terms:

- 30% of the price within 14 days after the conclusion of the Contract for Work (after the date of signing of the Contract for Work by both the Client and TOS KUŘIM – OS, a.s.),
- 60% of the price after pre-acceptance in TOS KUŘIM – OS, a.s.,
- 10% of the price after acceptance at Client

The documentary letter of credit, in consistence with the previous paragraph, shall be irrevocable and available for TOS KUŘIM – OS, a.s. within 14 days after the signing of the Contract for Work. The payment shall be conditional upon the presentation of an invoice issued by TOS KUŘIM – OS, a.s. requesting the payment of the price for the work or a part thereof, and upon the handover of the delivery note by TOS KUŘIM – OS, a.s. signed by the Client, proving that the subject-matter of work was handed over to the Client in accordance with the previous Article.

If the Contract for Work provides for the obligation of TOS KUŘIM – OS, a.s. to deliver the work to the Client and if a part of the price for the work is due and payable after the acceptance of the work by the Client from the carrier, the Client is obliged to pay the agreed part of the costs for the work within the agreed time limit, even if the work has not been delivered within this period of time, but this situation is caused solely by circumstances falling under the responsibility of the Client.

In the event that, after the conclusion of the Contract for Work, TOS KUŘIM – OS, a.s. and the Client agree on any modification of the work and do not stipulate the impact of such modification on the price for the work, the Client is obliged to pay at least the price of the work as agreed in the Contract for Work. If the modification of the work (taking into account the scope of the possible various inevitable activities, necessary costs related to the performance of the work and the procurement of the items required for the performance of the work) results in increased costs which must be necessarily be paid by TOS KUŘIM – OS, a.s. for the performance of the modified work, the agreed price for the work will be increased with such costs.

#### **8. Reservation of ownership**

The Client shall acquire ownership to the work upon its acceptance and paying the full cost of the work. Until that time, the Client is not entitled to freely dispose of the work, whether legally or effectively, except for using the work to manufacture components, products or other output, in accordance with the exercise of the Client's legitimate business activities; under no circumstances the Client is entitled to sell the work to a third party. In addition, the Client is not entitled to interfere in any way in the hardware and/or software provided with the work at the time of its delivery to the Client, without the previous written consent of TOS KUŘIM – OS, a.s.

#### **9. Installation of the subject-matter of work**

If the Contract for Work stipulates the obligation of TOS KUŘIM – OS, a.s. to install the subject-matter of work, TOS KUŘIM – OS, a.s. is entitled to carry out such installation with its own staff or outsource it to a third party. The installation is not included in the price for the work and will be carried out at the Client's expense.

#### **10. Liability for defects; warranty**

TOS KUŘIM – OS, a.s. shall be liable for defects in the work existing at the time of handover of the subject-matter of work. TOS KUŘIM – OS, a.s. shall not be responsible for any defect in the work caused by the use of an item provided to TOS KUŘIM – OS, a.s. by the Client for the purpose of its use in the event that TOS KUŘIM – OS, a.s., in spite of due care, could not have recognized the inappropriateness of such item, or in the event that TOS KUŘIM – OS, a.s. notified the Client of this fact and the Client insisted on further use of the item. In addition, TOS KUŘIM – OS, a.s. shall not be liable for any defect caused by complying with inappropriate instructions given by the Client, in the event that TOS KUŘIM – OS, a.s. notified the Client of the inappropriateness thereof and the Client insisted on their compliance, or in the event that TOS KUŘIM – OS, a.s. was not able to recognize such inappropriateness.

TOS KUŘIM – OS, a.s. provides the Client with warranty for the quality of the work and guarantees that the work will be, throughout the warranty period, fit to use for the usual purpose or will retain its usual properties. The warranty period shall be 12 months after the handover of the work to the Client or 5,000 operating hours of the subject-matter of work, and shall expire after these 12 months or after the subject-matter of work has been in operation for 5,000 hours; however, the warranty period shall expire no later than 15 months after the subject-matter of work has been shipped from TOS KUŘIM – OS, a.s. If the shipping of the subject-matter of work is delayed for reasons attributable



to the Client, the aforesaid maximum warranty period shall commence on the day following after the date of occurrence of the event which resulted in the delayed shipping.

If, at any time during the warranty period, the subject-matter of work no longer meets the requirements specified in the previous paragraph of this Article, the Client shall only be entitled to request that TOS KUŘIM – OS, a.s. provides, free of charge, replacement for the damaged part of the subject-matter of work and repairs the subject-matter of work. This shall not apply if:

- (a) The damaged part of the subject-matter of work is used in the usual manner during the operation of the subject-matter of work and its service life during the operation of the subject-matter of work is shorter than the warranty period hereunder,
- (b) The damaged part of the subject-matter of work was exposed to a detrimental effect, which is incompatible with the proper use of the subject-matter of work,
- (c) The damage was caused by the Client, or by a third party, or by force majeure,
- (d) If the Contract for Work requires TOS KUŘIM – OS, a.s. to carry out the installation of the work, and the work was not accepted at the place of installation to be carried out by TOS KUŘIM – OS, a.s. or by a third party, which is responsible for the installation, in intact and complete packaging,
- (e) The installation and/or repair of the subject-matter of work was not carried out by TOS KUŘIM – OS, a.s. or by a third party designated by TOS KUŘIM – OS, a.s.,
- (f) The subject-matter of work and parts thereof were not stored in appropriate space prior to and during the installation, if the Contract for Work requires TOS KUŘIM – OS, a.s. to carry out the installation of the subject-matter of work,
- (g) The Client failed to protect the subject-matter of work or parts thereof against loss, destruction or damage,
- (h) The Client did not use the subject-matter of work or a part thereof in consistency with the instructions given by TOS KUŘIM – OS, a.s., which are explicitly indicated in the operating manual,
- (i) The damaged part of the subject-matter of work is not delivered by the Client at its expense to TOS KUŘIM – OS, a.s., and
- (j) The Client failed to request in writing the delivery of the replacement for the damaged part of the subject-matter of work during the warranty period.

### 11. Notification of defects

Any and all defects in the subject-matter of work must be notified to TOS KUŘIM – OS, a.s. in writing, without undue delay after the Client has detected or should have, under due care, detected such defects. The Client is, in particular, required to monitor the products manufactured with the subject-matter of work. Otherwise the Client shall not be entitled to demand from TOS KUŘIM – OS, a.s. the payment of any claim arising from the liability for defects. In such case, TOS KUŘIM – OS, a.s. shall also not be liable for any damage related to the operation of the subject-matter of work.

### 12. Confidentiality agreement

Any and all facts of commercial, production and technical nature, which the contracting parties have made accessible to each other in connection with the Contract for Work, shall be

subject to trade secret; the contracting parties undertake not to publish, disclose to third parties or use for their own benefit or for the benefit of a third party such information, directly or indirectly, when fulfilling their obligations arising from or in connection with the Contract for Work. Unless agreed otherwise by the contracting parties, they shall be obliged to keep confidential all facts and circumstances they learned about in connection with the Contract for Work also after the date of expiry of other rights and duties arising from the Contract for Work. In such case, the contracting parties are obliged to return any confidential information received or to destroy such information with full record, as the case may be. The contracting parties are also obliged to see to it that good reputation of the other contracting party is not damaged. A violation of these obligations shall give rise to a liability to pay damage.

### 13. Protection of transfers of personal data to countries outside of the EU/EEA

Should the performance of the Contract for Work include any transfers of personal data to countries outside of the EU/EEA within the meaning of the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), TOS KUŘIM – OS, a.s. and the Client shall before the execution of the Contract for Work sign the Standard Contractual Clauses for the Transfers of Personal Data to

Third Countries (Controller-to-Controller Transfers) or adopt any other appropriate safeguard pursuant to Articles 45 to 47 of the General Data Protection Regulation available at that time.

### 14. Final provisions

The rights and duties and the legal relationships arising from the Contract for Work concluded between TOS KUŘIM – OS, a.s. and the Client shall be governed by these Commercial Terms and Conditions upon the effective date of the Commercial Terms and Conditions, i.e. upon their signing by both TOS KUŘIM – OS, a.s. and the Client, provided that they were not signed upon the conclusion of the Contract for Work referring to them. Unless provided otherwise, the rights and duties as well as the legal relationships arising from the Contract for Work and from these Commercial Terms and Conditions shall be governed by the laws of the Czech Republic, including relationships arising from a violation of the Contract for Work and/or violation of these Commercial Terms and Conditions.

For the conclusion of the Contract for Work, the contracting parties exclude the application of Section 1740 (3) and Section 1751 (2) of the Civil Code, which provide that a contract is concluded even if the expressions of will by the contracting parties are not fully concordant.

These Commercial Terms and Conditions replace in full scope all previous General Commercial Terms and Conditions of TOS KUŘIM – OS, a.s., which were approved and signed by TOS KUŘIM – OS, a.s. and the Client.

Any disputes arising from or related to the contractual relationship concluded between TOS KUŘIM – OS, a.s. and the Client shall be finally settled, with exclusion of jurisdiction of general courts of law, in arbitration proceedings before the Arbitration Court attached to the Economic Chamber of the Czech Republic and the Agricultural Chamber of the Czech Republic, based in Prague, in accordance with its Rules and Procedures, by three arbitrators appointed pursuant to those Rules; the arbitration proceedings shall be held in Zlín.