

# **OT Energy Services a.s. General Business Terms & Conditions** **effective from 23/4/ 2014**

## **for deliveries of goods and products (purchase)**

### **1. General Provisions**

- 1.1 These General Business Terms & Conditions (hereinafter referred to as "T&C") shall be interpreted within the meaning of § 1751 of Act No. 89/2012 Coll., the Civil Code, as amended, (hereinafter referred to as "Civil Code"), and shall apply to purchasing of goods and products by OT Energy Services a.s., registered office: Pražská 684/49, 674 01 Třebíč, registered in the Company Register administered by the Regional Court in Brno, Section B, File no. 4153 (hereinafter referred to as "Buyer"), from the seller (hereinafter referred to as "Seller").
- 1.2 A subject matter of the contractual relation is an obligation of the Seller to deliver goods or products to the Buyer, and an obligation of the Buyer to pay a price agreed in the respective contract/purchase order to the Seller.
- 1.3 These T&C shall be binding upon the Buyer and the Seller and shall form a part of every respective contract/purchase order. These T&C shall apply exclusively; any terms and conditions tendered by the Seller are rejected, unless expressly accepted by the Buyer. In order to exclude any doubts, in the case that the Seller's business conditions apply besides these T&C, then in case of any contradiction these T&C shall prevail over the Seller's business conditions.
- 1.4 Any departures from the T&C shall only become effective if agreed upon in writing in the respective contract/purchase order. Provisions given in the respective contract/purchase order shall prevail over these T&C. Rights and obligations of the contracting parties that are not provided for in the respective contract/purchase order shall be governed by the Czech legal regulations.

### **2. CONTRACTUAL RELATION**

- 2.1 Delivery of goods between contracting parties shall be executed based on a contractual relationship concluded between the Buyer and the Seller as a result of:
  - conclusion of a written contract between the Buyer and the Seller, that is upon a signature of both contracting parties;
  - written confirmation by the Seller of a written purchase order placed by the Buyer.
- 2.2 The scope of goods or products (hereinafter referred to as "Goods") is specified in the respective contract/purchase order. Unless extra terms and conditions are agreed in the respective contract/purchase order, the Seller shall deliver the Goods in design/configuration and with usual accessories as to suit the purpose, for which such Goods is usually intended.
- 2.3 When negotiating an individual contract/purchase order, it is assumed that the Seller has been made acquainted with and agreed to these T&C.
- 2.4 These T&C shall be deemed accepted at the latest upon conclusion of the respective contract or upon the Seller's confirmation of the purchase order.

### **3. DELIVERY OF GOODS**

- 3.1 The Seller shall deliver the Goods in accordance with requirements, conditions, parameters, specifications, and other documents, data and information, contained in the respective

contract/purchase order. A delivery of Goods without related documentation (especially technical documentation) or documents/certificates, in particular documents that are necessary for handling the Goods, shall be deemed defective and the Buyer is not obliged to accept such Good; in such case the Buyer is not obliged to pay the purchase price or otherwise compensate the Seller in connection with the declined order under the respective contract/purchase order. Any and all deliveries outside the scope of the respective contract/purchase order shall only be provided as extra deliveries by agreement in writing with the Buyer.

- 3.2 The Seller shall provide all documents, rights of use and licences for the scope of Goods and services as necessary for completeness and operability of the Goods and for its smooth, reliable, and safe functionality.
- 3.3 Unless otherwise agreed between the Seller and the Buyer, all Goods shall be delivered as DDP (according to INCOTERMS 2010). The place of destination and the date of delivery shall be specified by the Buyer in the respective contract/purchase order. Costs of transport to the place of delivery and related costs, in particular costs of packaging, customs, and insurance, shall be at the Seller's expense.
- 3.4 The Goods shall be delivered in packaging suitable for the agreed kind of Goods and for agreed or adequate transport conditions with regard to the agreed kind of Goods as to prevent from damage to the Goods during transport to the place of delivery. The used packaging is only returned, if expressly stipulated.
- 3.5 Partial deliveries of Goods shall only be possible by prior written agreement with the Buyer.
- 3.6 The Seller shall always notify in writing (via email) the Buyer's contact person of the date of delivery to the place of destination at the latest twenty (5) days in advance.
- 3.7 The delivery of Goods to the place of delivery shall be acknowledged by signing the acceptance certificate or bill of delivery by persons duly authorised to act on behalf of the Seller and the Buyer, respectively.

#### **4. PRICE**

- 4.1 All prices shall be agreed as fixed, unless otherwise agreed in the respective contract/purchase order.
- 4.2 The price shall include all costs associated with the fulfilment of the respective contract by the Seller.
- 4.3 All costs of the delivery of Goods associated with the fulfilment of the respective contract/purchase order such as freight, packing charges, insurance, customs, and further costs, shall be at the Seller's expense.
- 4.4 As a matter of principle, the Seller becomes entitled to the payment of price upon the Buyer's signature (of a duly authorised person to act on behalf of the Buyer) in the acceptance certificate or the bill of delivery, which shall serve as a basis for billing, unless otherwise agreed between the parties.
- 4.5 The price shall be inclusive of VAT at the current rates.

#### **5. PAYMENT TERMS**

- 5.1 Upon a delivery of Goods is effected and associated documents (acceptance certificate or bill of delivery) are signed, the Seller shall become entitled to issue an invoice (tax document) at the amount of taxable supply.
- 5.2 Every invoice shall be issued by the Seller at the earliest at the effective date of taxable supply, but at the latest within 15 days after the effective date of taxable supply, and shall contain all tax document requisites in accordance with all respective legal regulations applicable as at the date of issue of the invoice, in particular with the Act No. 563/1991 Coll., on accounting, as amended, the Act No. 235/2004

Coll., on the value added tax, as amended, and § 435 of the Civil Code.

5.3 The invoice (tax document) shall contain in particular the following information:

- contract/purchase order identification number of the Buyer;
- invoice designation and identification number;
- tax identification numbers of the Seller and of the Buyer;
- names and registered offices of the Seller and of the Buyer, where the Buyer's name and registered office shall be as follows:
- OT Energy Services a.s., Pražská 684/49, 674 01 Třebíč;
- the Seller's bank connection;
- date of issue of the invoice;
- extent, subject, and effective date of taxable supply;
- the due date of invoice in accordance with the contract/purchase order;
- where the Seller is a VAT payer, every invoice (tax document) issued by the Seller shall include the VAT exclusive price, VAT % rate, VAT amount in %, and possibly the VAT inclusive price for each item of the Goods delivered and the price total;
- information about advanced payments;
- signature and stamp of the Seller.

5.4 The invoice shall be submitted together with a copy of acceptance certificate for the respective delivery of Goods, confirmed by the Buyer's representative.

5.5 Invoices shall be sent by the Seller to the Buyer's registered address: OT Energy Services a.s., Pražská 684/49, 674 01 Třebíč.

5.6 Unless otherwise explicitly stated, the Seller is not entitled to issue an invoice combining payments for two or more deliveries of Goods.

5.7 The amounts of invoices shall become due 30 days after the invoice is served to the Buyer; in case of doubt, the invoice shall be deemed served at the latest on the third day of its provable posting by the Seller. The Buyer is entitled to return an invoice before its due date to the Seller, if the invoice lacks requisites mentioned in this article 5 or if it shows other deficiencies in terms of legal regulations or in terms of its content. Along with returning the invoice, the Buyer shall inform the Seller of the reasons, for which the invoice is being referred back. Depending on the nature of defect, the Seller shall correct the invoice or issue a new invoice, including its enclosures. A well-founded return of an invoice within the above mentioned date makes the remaining term to maturity of the original invoice stop to lapse. The new invoice maturity starts to lapse on the day of issue of an amended or corrected or newly issued invoice containing appropriate requisites and meeting conditions of the respective contract/purchase order.

5.8 The Buyer is entitled to pay the VAT for the Seller directly to the Seller's tax administrator for the purpose of special guarantee of VAT under § 109a of the Act No. 235/2004, on value added tax, as amended. The Buyer shall inform the Seller thereof in writing. Thus settled tax decreases the amount of the Seller's receivable from the Buyer by the value of the VAT amount paid by the Buyer and the Seller

is not entitled to charge this amount to the Buyer.

- 5.9 The invoice shall be a hard copy of A4 format, single-sided printout on a standard office paper with weight approx. 80g/m<sup>2</sup>, scannable (copiable) in black-and-white without any loss of the information contents, readable, and 5 pages at the maximum.
- 5.10 The payment shall be understood as a non-cash transfer of money to the bank account of the Seller indicated in the contract/purchase order. The bank account of the Seller has to be a bank account maintained by an inland provider of banking services and in a published manner enabling remote access in accordance with the Act No. 235/2004 Coll., on the value added tax, as amended. A different method of payment (such as setting off, instalment schedule, bill of exchange, etc.) shall only be possible, if approved in writing by the Buyer. The contracting parties have agreed that any change of the bank connection and account number of the Seller can only be done through a written amendment to the given contract, or through a written notification provably delivered by the Seller to the Buyer, at the latest along with the respective invoice. This notice shall be an original copy and shall be signed by persons authorized to sign contracts or by a statutory body of the Seller. The change of a bank account of the Seller has to comply with as mentioned above, that is it has to be a bank account maintained by an inland provider of banking services and in a published manner enabling remote access.
- 5.11 The Buyer shall not be deemed in default with the payment, if the Buyer's account is charged off with the invoice amount to the credit of the Seller's account at the latest on the invoice maturity day.
- 5.12 The Seller may agree with the Buyer on conditions of using electronic invoices.
- 5.13 The Seller shall not transfer fully or partially claims resulting from the fulfilment of a contract/purchase order unless previously agreed to in writing by the Buyer. Should this obligation be breached, the Seller shall pay to the Buyer a contractual penalty amounting to 20% of the nominal value of transferred claims. The Buyer's right for damages shall not be affected by the payment of contractual penalty of the Seller in accordance with the previous clause. The Seller shall not transfer any rights or duties arising from the contractual relationship with the Buyer or the contract itself without a prior consent of the Buyer.

## **6. TRANSFER OF TITLE OF OWNERSHIP AND DAMAGE LIABILITY**

- 6.1 The title to the Goods shall be transferred from the Seller to the Buyer at the moment of delivery of Goods to the place of delivery or through the payment for the Goods by the Buyer, whichever first occurs.
- 6.2 The liability for damage to the Goods shall be transferred from the Seller to the Buyer at the time of delivery of Goods to the Buyer's warehouse. The Seller bears the liability for damages to the Goods until its complete unloading at the Buyer's warehouse.

## **7. QUALITY, WARRANTY, COMPLAINTS**

- 7.1 The Seller is liable for quality, functionality, and completeness of the Goods.
- 7.2 The Seller provides a 24-month warranty on the Goods starting upon the delivery of Goods to the Buyer.
- 7.3 The above warranty becomes extinct, if the Buyer or a third party on the Buyer's request intervenes, repairs or alters the Goods, unless agreed in writing by the Seller.
- 7.4 Warranties provided by the Seller do not apply to normal wear and tear, failures caused by carelessness and negligence during operation, non-observance of manufacturer's instructions or operating under different conditions or parameters than those agreed.

- 7.5 The Goods shall be deemed defective, if it does not correspond to parameters specified in the respective contract/purchase order and/or its purpose of use and/or lacks attributes explicitly specified in the respective contract/purchase order, generally binding regulations, or binding or agreed technical standards for manufacture of the Goods. Also, a delivery of different goods than was agreed, defects in documents necessary for the use of the Goods as well as legal defects, that is where the fulfilment of contract or the method of fulfilment of the contract results in a breach of rights of third parties, shall be included in defects.
- 7.6 The notice of defect shall be sent to the Seller in writing, without undue delay. In case of doubt, a complaint shall be deemed served at the latest on the third day of its provable posting by the Seller. The complaint shall include a description of defect and shall mention options as described below.
- 7.7 On finding that the Goods shows defects, the Buyer is entitled to request the following:
- removal of the defect by providing a new deliverable, if the defects make the subject matter of performance useless, and so within a period of time as agreed by and between the Seller and the Buyer with regard to the nature of defect;
  - removal of the legal defect within 10 days of notifying the Seller, unless otherwise agreed by the contracting parties with regard to the nature of defect;
  - removal of the defect, provided the defect in question is repairable. The Seller shall remove the defect without undue delay, but at the latest within 10 days of notifying the Seller of the defect, unless otherwise agreed by the contracting parties with regard to the nature of defect;
  - withdraw from the contract, if the nature of defect constitutes a significant breach of the contract.
- 7.8 The time periods referred to in the previous article 7.7 start to lapse on the day of service of the notice of defect to the Seller; notices sent via email or fax shall be regarded as served on the day and time of dispatch of such email or fax message. The Seller shall start removing the defect of the Goods within forty eight (48) hours after the defect is notified, unless otherwise agreed with the Buyer.
- 7.9 If the Seller does not remove defects of the Goods within time periods mentioned in article 7.7 above, the Buyer is entitled to remove the defect at their discretion either on their own or through third parties at the Seller's cost, without any prejudice to the Buyer's rights arising from the warranty. The Seller shall refund the Buyer's provable expenses incurred to the purpose of correction of the defect, within 21 days of receiving the respective invoice of the Buyer.
- 7.10 Based on a well-founded notification in accordance with these T&C, the Seller shall remove the defect or satisfy another claim selected by the Buyer in accordance with article 7.7 of these T&C, free of charge, at the Seller's expense and risk.
- 7.11 The removal of defect or satisfaction of a different claim as selected by the Buyer in accordance with article 7.7 of these T&C, shall have not effect on the Buyer's claim to contractual penalty and compensation for damage.
- 7.12 For defects claimed during the warranty period, the warranty period will be extended by the lapse of time between the defect notification and the defect removal. The removing claimed defect handover between the Seller and Buyer shall always be made in writing.
- 7.13 Any new delivery within the defect removal, including the liability for defects in connection with such new delivery, shall be subject to the full extent of provisions of the contract/purchase order and these T&C.

## **8. CONTRACTUAL PENALTIES**

- 8.1 In the case of failure to meet any deadline under the contract /purchase order, the Buyer is entitled to

claim a contractual penalty amounting to 0.5 % of the Goods price for each started day of default. Where the Buyer and the Seller have agreed on partial deliveries of the Goods, the time of being in default for each agreed partial delivery starts to lapse separately.

- 8.2 In the case that a faultless invoice or down payment request is not settled at the due date in accordance with the contract/purchase order, the Seller shall receive late payment interest amounting to 0.05 % of the amount outstanding for each day of delay.
- 8.3 The contractual penalty in case of the Seller's default with removing of each individual defect of the Goods for each day of being in default amounts to 0.5 % of the price of the Goods as defined in the respective contract/purchase order, to which the defect relates to, for each defect separately, up to the maximum amount of 30% of the total price of the Goods.
- 8.4 If the total amount of contractual penalties under the contract/purchase order exceeds 30% of the contract price, the Buyer shall be entitled to withdraw from the contract/purchase order. This provision does not affect the Buyer's right to compensation for damage by the Seller or the Seller's duty to fulfil their obligations arisen from the failure to meet contractual duties.
- 8.5 The payment of contractual penalty does not affect the right of the relevant contracting party to compensation for damages. The Buyer is entitled to claim compensation for damages suffered from the Seller's breach of obligations even in the case that the breach of obligation is subject to the contractual penalty. The compensation for damage covers the actual damage and loss of profit.

## **9. SUSPENSION OF THE CONTRACT, WITHDRAWAL FROM THE CONTRACT**

- 9.1 The Buyer is entitled to ask the Seller any time to suspend all activities related to the fulfilment of obligation. Provided that the Buyer has notified the Seller of the request in writing, then as at the date of service of the notice the Seller shall comply with the request and secure the item (the Goods) in process of completion against any damage. Also, the Buyer shall inform in writing the Seller as to resume the execution of obligations, and at the same time reimburse all provable costs incurred by the Seller in connection with such suspension.
- 9.2 A termination of contract shall be communicated by the withdrawing party to the other party in writing and without undue delay upon finding out about the reason for termination.
- 9.3 A withdrawal from a Contract does not affect any claim to contractual penalties, compensation for damages, protection of business secret and confidentiality of information, and possibly to further provisions contained in the contract/purchase order.
- 9.4 In the case of withdrawal, the contracting parties shall settle their provable obligations on a mutual basis.
- 9.5 If the withdrawal from a Contract is due to reasons on the part of the Buyer and at the time before the commencement of performance, the Buyer shall settle the Seller's actual costs purposefully and provably spent in connection with the performance under the Contract, but up to the maximum of 50 % of the total amount, unless stipulated otherwise in the respective contract.

## **10. INTELLECTUAL PROPERTY RIGHTS**

- 10.1 The Seller shall grant a non-exclusive licence to its intellectual property related to the Goods to the Buyer; such licence shall be granted in the full extent, for indefinite period of time, and free of charge.
- 10.2 The Seller shall compensate the Buyer for any damage incurred by the Buyer as a consequence of a third party claim of infringement on intellectual property rights in connection with the Goods.

## **11. CONFIDENTIALITY**

- 11.1 The contracting parties shall maintain confidentiality on any facts learnt in connection with the respective contract/purchase order and/or its performance; neither party shall especially make such facts public or disclose or otherwise make available to a third party or use such facts for its benefit or a benefit of a third party. This obligation shall also apply to facts that are expressly identified by the other party as confidential ("Confidential Information").
- 11.2 Either contracting party shall exert maximum efforts that can be rightfully requested in order to maintain confidentiality or secrecy of information in accordance with this article 11 in a consistent manner by its employees and individuals possibly engaged in the fulfilment of the respective contract/purchase order.
- 11.3 Every respective contract/purchase order shall be considered confidential, even prior to its signature by contracting parties.
- 11.4 The contracting parties undertake to maintain confidentiality in accordance with the respective contract/purchase order also after its termination, and so for the whole period of time, for which the Confidential Information is not publicly known and available without violation of provisions under this article 11.
- 11.5 If any of obligations to maintain confidentiality and secrecy of information (including its purposeful use) is breached, the breaching party shall pay to the other contracting party a contractual penalty amounting to CZK 100,000 in every (single) case of proven breach. This shall not affect the right of the injured contracting party to full compensation for damage.

## **12. FORCE MAJEURE**

- 12.1 Neither the Buyer nor the Seller shall be considered as in default in fulfilment of their respective obligations arising from the contract/purchase order, if such default in fulfilment results from circumstances beyond their reasonable control (force majeure) and such circumstances disable or substantially affect the fulfilment of obligations under the contract/purchase order, but exclusively for the period of existence of force majeure circumstances or their consequences and only in relation to the obligation or obligations directly affected by obstacles arising from the force majeure.
- 12.2 Force Majeure shall mean any event or circumstance that could not be anticipated by the Buyer or the Seller at the moment of conclusion of the respective contract/purchase order and that objectively obstructs the Buyer or the Seller to fulfil their contractual obligations. Events of force majeure include circumstances that occur after a conclusion of contract/purchase order in consequence of events of extraordinary or unavoidable nature that cannot be anticipated and avoided by contracting parties and that have a direct impact on the fulfilment of a contract/purchase order. Such events may among others in particular include natural disasters, weather abnormalities, wars, general strikes, society-wide and economic changes, possibly measures imposed by competent administrative authorities.
- 12.3 The force majeure events do not include late deliveries of subcontractors, loss of power supply or production interruptions, if they are not attributable to force majeure.
- 12.4 Any delays in fulfilment in consequence of force majeure shall not be deemed a failure to fulfil contractual obligations and shall not give rise to any sanctions under the respective contract. The completion date for fulfilment of contractual obligations shall be postponed for each contracting party, but exclusively in relation to the obligations directly affected by the force majeure obstacle and only for the period of existence of force majeure circumstances or their consequences.
- 12.5 The contracting party seeking the relief from contractual obligations due to the effects of force majeure, shall immediately, but at the latest within five (5) days, inform the other party to the contract about force majeure circumstances in writing. The affected contracting party shall inform in the same

way the other contracting party about cessation of the force majeure circumstances. The contracting party seeking the protection in the force majeure clause shall on request produce proofs to the other party or enable the other party to verify existence of such circumstances.

- 12.6 If force majeure circumstances continue to exist for a period exceeding three (3) months, the Buyer and the Seller shall agree on further steps in order to reach a mutually satisfactory solution. If no agreement is reached, either Buyer and Seller are entitled to withdraw from the contract/purchase order.

### **13. DISPUTE RESOLUTION**

- 13.1 The Buyer and the Seller shall exert all their efforts as to resolve and settle all disputes arising out of or in connection with the contract/purchase order in an amicable way.
- 13.2 Disputes that cannot be settled within 30 days after the day of serving the notice to the other contracting party in an amicable manner, shall be finally settled by the the Court of Arbitration of the Chamber of Commerce of the Czech Republic and the Agrarian Chamber of the Czech Republic ("Court of Arbitration") in accordance with its Code of Procedure and Rules by three arbitrators. The contracting parties shall fulfil duties imposed on them by the arbitrators' award.
- 13.3 The arbitration proceedings shall be conducted in the Czech language.
- 13.4 Unless the Buyer specifies otherwise, the bringing a dispute in the Court of Arbitration in accordance with this article 13 does not entitle the Seller to suspend/stop the performance under given contract/purchase order.

### **14. FINAL PROVISIONS**

- 14.1 Legal relations between the contracting parties not expressly provided for in the respective purchase contract and in these T&C shall be governed by the Civil Code, in particular by provisions contained in § 2079 and the following, on purchase contracts.
- 14.2 Provisions contained in the T&C are subject to one-sided alterations to a reasonable extent by the Buyer. New T&C shall be published on the Buyer's website. The Buyer shall notify the Seller thereof in writing at the address of the Seller 's registered office. The Seller is entitled within 3 days to serve a 2-month notice, which starts to lapse on the first day of the month following the month in which the notice is served to the Buyer. If the contract is concluded for a fixed period of time that is shorter than the notice period, the contract shall cease on the last day the fixed period.
- 14.3 The Seller has been made familiar with the wording of T&C and therefore, by mutual agreement of the contracting parties, an application of § 1753 of the Civil Code is excluded.
- 14.4 In accordance with § 1765 of the Civil Code, the Seller assumes the risk of circumstance alterations. Prior to concluding the contract, the parties considered in full economic and factual situations and are fully aware of circumstances influencing the contract, as well as circumstances that may occur after conclusion of this contract.
- 14.5 Where the Seller fulfils its duties arising from the respective contract/purchase order through a subcontractor, the seller shall make the subcontractor familiar with the T&C.

**These General Business Terms and Conditions come into effect as at 23/4/2014 and replace the general terms and conditions issued earlier.**