



## GENERAL COMMERCIAL TERMS AND CONDITIONS - PURCHASE CONTRACT

### INTRODUCTORY PROVISIONS

1. These General Purchasing Terms and Conditions (hereinafter referred to as the "Terms and Conditions") regulate the relationships between any company of the WITKOWITZ Group specified in Annex A hereto (hereinafter referred to as the "Seller"), of the one part, and the customer or buyer (hereinafter referred to as the "Buyer"), of the other part, established between these entities in connection with the conclusion of a Purchase Contract, service agreement or similar contracts (hereinafter referred to as the "Contract" or "Purchase Order").
2. The content of the Contract consists of the individual provisions of the Contract or the relevant Purchase Order, other contractual terms and conditions set out in the Contract or the relevant Purchase Order, as well as special general terms and conditions. Individual parts of the Contract shall apply in the following descending order in case of mutual conflict:
  - provisions of the Contract or the respective Purchase Order;
  - arrangements contained in other documents referred to in the Contract;
  - these Terms and Conditions;
3. These Terms and Conditions referred to in contracts as per Section 1751 of the Act No. 89/2012 Coll., the Civil Code, as amended (hereinafter referred to as the "Civil Code"), shall be published by the Seller on the following website: <http://www.witkowitz.cz/ke-stazeni>

The Parties have agreed that the Seller is entitled to amend, change or cancel these Terms and Conditions unilaterally. However, the Seller shall inform the Buyer of any such changes by sending an e-mail to the Buyer's e-mail address specified in the header of the Contract. The updated wording of the Terms and Conditions shall always be available on the above-mentioned website. The Contractor shall have the right to disagree to such unilateral amendments of the Terms and Conditions within 14 days as of receiving the notice of such amendment in the same manner as the notice was delivered, otherwise it shall be deemed to agree to the amendment. If the Buyer disagrees with an amendment to the Seller's Terms and Conditions, the Buyer shall be entitled to withdraw from the Contract.
4. These Terms and Conditions apply only to entrepreneurs as defined in the provisions of Section 420 of the Civil Code, or to legal entities under the public law.
5. Contrary or deviating terms and conditions of the Buyer shall apply only with the express consent of the Seller.

### AGREEMENT CONCLUSION

6. The precondition for the Contract conclusion is reaching consent in all aspects. Should consent in all aspects not be expressly reached between the Parties, the Contract is not considered concluded. Until the Contract is concluded, the Seller reserves the right to terminate the contract negotiations.
7. Acceptance of a draft contract with an amendment or variation that changes any terms of the draft contract shall be deemed to be a separate proposal, i.e. Section 1740(3) of the Civil Code (the "Civil Code") shall not apply. The Contract is concluded at the moment when the acceptance of the draft contract becomes effective, i.e. at the moment when:
  - a) the draft contract as proposed by the Seller is signed by the Buyer and delivered back to the Seller,
  - b) the draft contract as counter-proposed by the Buyer is signed by the Seller and returned to the Buyer, or
  - c) the Seller does not receive from the Buyer a written notice of rejection of the draft contract as proposed by the Seller within 3 days of delivery of such draft contract to the Buyer.If the Buyer submits its own terms and conditions along with the acceptance of the draft contract (offer), which differ, even partly, from the wording of the Contract, the Contract shall be deemed not to have been concluded; the same shall apply if within 3 days as of receipt of the draft contract in the wording of the Buyer's counterproposal the Seller does not sign and deliver such counterproposal to the Buyer.
8. By the procedure as per Section 1895 et seq. of the Civil Code, the Contract can be assigned only with the consent of the Parties. The above-mentioned provision shall also apply when the Contract is to be assigned partly or to several assignees. Pursuant to the provisions of Section 1899 of the Civil Code, any relief of the assignor shall not apply. The Seller has the right to reject the performance under the terms and conditions specified in Section 1936 of the Civil Code.

### CONTRACT FORM AND CONTENTS

9. The contract shall be entered into in writing. If the Contract is entered into in any other form, the Contractor shall not be bound by the content of the Contract concluded verbally. The Contract may only be changed in writing. The Parties have agreed not to apply the provisions of Section 582(2) of the Civil Code, according to which invalidity of the written form of a legal act agreed to amend the Contract may only be claimed if no performance has been provided. According to the express covenant of the Parties, it shall apply that such invalidity may be claimed at any time.

## SETTLEMENT OF DEBTS UNDER THE CONTRACT AND THE RIGHT TO PURCHASE PRICE SETTLEMENT

10. The manner of product shipment is established in the Contract. Should the Seller have no obligation under the Contract to deliver the goods to a specific place, the delivery of the goods agreed to in the Contract shall take place by handing over to the Buyer at the Seller's registered seat (Place of Delivery). The Seller shall comply with the obligation to deliver the goods to the Buyer by delivering the agreed and properly marked goods as the Buyer's goods to the Buyer at the Place of Delivery or by allowing the Buyer to dispose of the goods at that place. The Buyer shall take over the goods agreed to under the Contract, which it shall confirm by signing the Seller's delivery note.
11. The goods are delivered to the Buyer in individual pieces, unpacked and unprotected against corrosion and other atmospheric influences, unless otherwise provided in the Contract.
12. The Seller shall deliver the goods within the delivery term to be agreed to in the Contract by the Parties. The Seller shall be entitled to deliver the goods in partial deliveries, possibly even before the agreed time of performance, and the Buyer shall not be entitled to refuse such partial or early performance. Facts and events which the Seller cannot change or avoid even with all due care that can be required and which imply a significant change in the conditions for the delivery, such as war, strike, commercial, monetary and political measures of the competent authorities, natural events, uncaused delays due to traffic disruption, congestion or accidents, unforeseeable problems at customs crossings and other events of force majeure according to Section 2913(2) of the Civil Code. In all of the above cases, the Parties shall agree on an alternative delivery date.
13. When the goods are to be delivered by a carrier, the delivery of the goods shall be deemed completed upon handed over to the first carrier for transport to the Buyer. In the case of the Buyer's own delivery of the goods, delivery shall be deemed completed upon handover to the Buyer at the place specified in the Contract or at the Place of Delivery.
14. The person to whom the goods are to be handed over shall prove that he is authorised to take over the goods in behalf of the Buyer, otherwise the goods shall not be handed over to such person. The Buyer agrees to take over the goods within the period specified in the Contract, based on the Seller's e-mail/telephone invitation to take over the goods (hereinafter also referred to as the "Invitation"). If the Buyer fails to take over the goods within the period specified in the Invitation, the delivery of the goods shall be deemed to have been made and the goods shall be deemed to have been deposited upon expiry of the last day of such period. Failure to take delivery of the goods within 30 days as of the goods have been deposited shall be considered a substantial breach of the Contract by the Buyer and the Seller shall be entitled to withdraw therefrom. For the storage of goods, the Buyer shall pay to the Seller a storage fee at the current price for each calendar day of storage. The above-mentioned provision is without prejudice to the Seller's right to compensation for damage incurred (in particular, costs incurred for cancellation of the original transport, charges for detention, etc.).
15. Should the Buyer not take over the goods within 30 days as of the expiry of the period specified in the Invitation, the Seller is entitled to sell the goods at the Buyer's expense in an appropriate manner. Based on the agreement of the Parties, the sale to a person authorised for waste management is also considered to be an appropriate method. In the case of an intended sale, the Seller shall give the Buyer an alternative period of time to take over the item, which shall not be shorter than 10 days.
16. Along with the goods, the Seller shall deliver any and all documents enabling the goods to be taken over and handled, as well as other documents and papers specified in the contract.
17. In the event that the Seller arranges the transport of goods for the Buyer abroad, the transport of goods shall be governed by INCOTERMS 2020 and binding international conventions (CMR, CIM, SMGS, etc.), depending on the type of transport used (truck, wagon, etc.).
18. The Seller's right to charge (invoice) the purchase price arises on the day the goods are delivered, unless otherwise specified in the Contract.
19. The Parties agree on the reservation of title, whereby all delivered goods shall remain the property of the Seller until the full payment of the purchase price by the Buyer. The Buyer shall inform the third party to whom the goods will be subsequently delivered of the reservation of title. The risk of damage to the goods, accidental loss and destruction of the goods passes to the Buyer by the goods acceptance upon delivery; should the Buyer make default in accepting the goods, the risk of damage to the goods, accidental loss and destruction of the goods passes to the Buyer upon the expiration of the time limit set by the Seller for the acceptance thereof according to the Terms and Conditions. In the event of the Buyer's default in payment of the agreed purchase price, the Seller is entitled to withdraw from the Contract and take back the unpaid goods at the Buyer's expenses. In order to take the possession of the unpaid goods, the Buyer shall provide the Seller with an unlimited access to the premises or buildings where the goods are stored, loading and collection thereof. Any and all possible costs and damage in connection with the of unpaid goods and their possible dismantling shall be borne by the Buyer.
20. If the Buyer fails to settle the debts arising from the Terms and Conditions or the Contract in a timely manner, the Seller has the right to postpone the deadlines for the period of delay of the Buyer. The Seller's rights arising from the Buyer's default shall not be affected.
21. The moment of delivery of the goods to the Buyer is decisive for compliance with the delivery terms by the Seller. If the goods cannot be delivered in time through no fault of the Seller, the delivery periods and deadlines set out in the Seller's notice of readiness for delivery shall apply, and if the Buyer fails to take over the goods within the period specified therein, the last day of such period shall be deemed to be the date of delivery of the goods and the goods shall be deemed to have been deposited and the Seller shall be entitled to sell the goods at the Buyer's expense in an appropriate manner in accordance with section 15.
22. Should the Seller's agree to the Buyer's request for changes in the concluded Contract, the Seller has the right to postpone the delivery date for the period from the conclusion of the Contract until the approval of the change request.
23. The weight data declared by the Seller are decisive for the delivery of the agreed quantity of goods. Delivery of the agreed quantity of goods is deemed to be delivery of the goods within a tolerance of + to 5% of the quantity agreed to in the Contract, unless the otherwise stipulated in the Contract.
24. The limitation period according to the agreement between the Parties is 3 years.

## PURCHASE PRICE AND PAYMENT TERMS

25. The purchase price is indicated in the Contract. The price does not include special packaging, which may be charged as a separate item.
26. The basis for payment of the purchase price for the goods is an invoice which shall contain the details as for a tax document (hereinafter referred to as the "invoice"). The purchase price for the delivered goods is due in 14 days as of the invoice date, unless otherwise stipulated in the Contract. The same maturity period is agreed for other monetary debts agreed to in the Terms and Conditions or in the Contract.
27. The Parties agree to the mutual issuance of tax documents in electronic form in accordance with the provisions of Section 26 of the Act No. 235/2004 Coll. on Value Added Tax, as amended.
28. In the event of a change in the specification of the goods after the conclusion of the Contract, the Seller has the right to change the agreed purchase price of the goods.
29. If the Seller determines that there are circumstances that reduce the reliability of the Buyer's payments, especially if the Buyer's account is blocked or if insolvency or enforcement proceedings are initiated against the Buyer, the Seller is entitled to unilaterally change the agreed payment terms and as a result, in particular, not to deliver the unpaid goods until the purchase price for these goods is paid, or until the Buyer provides sufficient security or confirmation as agreed with the Seller. If the Buyer refuses to provide such security or assurance to the Seller, the Seller may withdraw from any outstanding contract. If

the Seller withdraws from any unfulfilled contract for the reasons stated in this paragraph, the Buyer shall compensate for any damage incurred by the Seller and loss of profit within 15 days as of the date of receipt of the statement of account.

30. In addition to the foregoing, the Seller shall be entitled to withdraw from any contract not yet performed or to suspend individual deliveries of goods or other performance to the Buyer for such period as:
- a) the Buyer is in default in the payment of any monetary debt to the Seller (regardless of the legal title of its creation) from any of the contractual relations between them, or
  - b) the amount of all monetary receivables of the Seller from the Buyer (both not yet due and overdue) from any and all contractual relations concluded with the Buyer exceeds in its aggregate the credit limit set for the Buyer by the Seller, provided that the Parties do not agree within 5 days after exceeding this limit to modify the agreed payment terms (e.g. provision of additional collateral with a bank guarantee of the Buyer, payments before delivery of goods, etc.). The Seller agrees to keep the Buyer informed about the current status of its credit limit.

If the Seller withdraws from any outstanding contract for the reasons stated in this paragraph, the Buyer shall compensate for any damage incurred by the Seller and loss of profit within 15 days as of the date of receipt of the statement of account.

31. Suspension of deliveries of goods under this article of the Terms and Conditions shall not be considered a breach of the Seller's obligations (it is not a delay on the part of the Seller) arising from the Terms and Conditions and the contract and the Buyer is not entitled to withdraw from the contract in such a case, nor to assert any claims against the Seller (including claims for damages). After the reasons for suspension of the delivery of the goods are no longer applicable, the Parties shall agree on a new delivery date to replace the original delivery date, taking into account the current production and logistics capacity of the Seller. Should they fail to reach an agreement on a new delivery date within 10 days after settlement of all receivables concerned, the Contract shall be terminated without further delay and the Buyer shall reimburse the Seller for any and all costs incurred in connection with the performance of the subject of the Contract.
32. Before the due date of the purchase price, the Buyer agrees to pay to the Seller also VAT in the statutory amount, unless otherwise stipulated in the Terms and Conditions or the goods are delivered in reverse charge.
33. In the event that the goods are delivered to the Buyer to another EU Member State, while the transport of goods is provided by the Buyer, who has a valid VAT number from another EU Member State and which is specified in the contract (the "intra-community performance", or exempt performance with a right to deduct VAT), the Buyer is obliged to deliver to the Seller documents proving the transport of goods from the Czech Republic to another EU Member State (e.g. CMR, CIM, etc.) no later than on the fifth day of the calendar month following the month in which the transport of goods was carried out, otherwise the Seller is entitled to cancel the invoice issued without VAT and charge the purchase price with a new invoice including VAT.

#### **WARRANTY**

34. The Seller provides to the Buyer a warranty for defects in the goods for 6 months as of delivery of the goods to the Buyer. The Seller does not assume any warranties or liability to a greater extent than as set out in these Terms and Conditions.
35. The Seller is not liable for defects arising after the transfer of the risk of damage to the goods to the Buyer without the fault of the Seller, for defects resulting from improper storage, handling, use, as well as for defects caused by the Buyer or a third party.

#### **RIGHTS ARISING FROM IMPROPER PERFORMANCE**

36. The Seller agrees that the goods delivered shall meet the specification set out in the relevant technical standards agreed to in the Contract.
37. In the event that the Buyer makes modifications to the goods (additional cuts, coatings, etc.), its rights from improper performance after such modification of the goods shall cease with respect to defects relating to or related to the properties or parameters of the goods specified in the relevant technical standards (agreed in the Contract), which were or could have been affected or influenced by the subject modification of the goods. The Buyer's rights from improper performance shall further cease if the Buyer has acted contrary to the Seller's instructions for cleaning, storage or use of the goods, if such instructions were received from the Seller.
38. Corrosion of the goods shall not be considered a defect of the goods, unless it is agreed in the Contract that the Seller shall protect the goods against such corrosion.
39. The Buyer shall inspect the delivered goods (according to the accompanying documents) immediately upon receipt. The Buyer shall deliver a written notice (hereinafter referred to as "complaint") of the existence of apparent defects of the goods found during the inspection of the goods to the Seller without undue delay, but no later than 3 days as of the moment of receipt of the goods. The Buyer shall deliver the complaint of hidden defects to the Seller without undue delay after the discovery thereof, but no later than 6 months after the delivery of the goods, or within 6 months as of the moment when the goods are considered delivered. The Seller is entitled not to recognize subsequently detected defects if the Buyer could have discovered them during the acceptance of the goods.
40. The Buyer shall notify the Seller without undue delay after such a defect becomes apparent.
41. Complaints for defects shall always be made in writing, referring to the Contract (purchase order), the delivery note, the variable symbol of the invoice - tax document relating to the goods claimed, the characteristics of the defect, or how the defect becomes evident, and must be accompanied by documents proving the complaint legitimacy. If the Buyer does not notify the defect of the goods within the time limit set out in the Terms and Conditions, its rights from the defects of the goods shall become null and void.
42. Complained goods shall be stored separately at the place of discovery of the defect until the complaint is settled and any disposal of these goods that could make it difficult or impossible to verify the claimed defects is not allowed without the prior written consent of the Seller.
43. When claiming the goods, the Buyer shall allow the Seller to check the condition of the claimed goods at the place specified in the previous paragraph of this article of the Terms and Conditions, otherwise the Buyer's rights from the defective performance of the goods shall expire.
44. In the event that the Seller accepts the complaint of defect as justified, it shall decide at its own discretion on the method of elimination of the defect by repair or delivery of replacement defect-free goods within the period agreed to with the Buyer. Upon agreement with the Buyer, the complaint can also be resolved by providing a reasonable discount on the purchase price; the Buyer is not entitled to any other claims for defects.
45. Incorrect quantities shall be considered improper delivery when the actually delivered quantity of goods does not match the quantity stated in the delivery note. If the Seller delivers a higher quantity than originally agreed upon, the Contract shall be considered entered into for the excess amount, unless the Buyer has refused it without undue delay.
46. The Seller is entitled to decide on the basis of the submitted documents on the validity of the submitted complaint. The Seller shall notify the Buyer, usually within 15 business days as of receipt of the complaint, whether it accepts the complaint or for what reasons it rejects it.

47. In the event that a professional or expert assessment of the complaint is necessary, the processing of the complaint shall be extended by the time required for processing of the professional or expert assessment. If the Buyer has an expert opinion prepared without the prior consent of the Seller, it shall no longer be entitled to reimbursement of its costs.

#### **MISCELLANEOUS PROVISIONS**

48. Should the Buyer make default in payment of the purchase price of the goods delivered, the Buyer shall pay to the Seller a contractual penalty amounting to 0.1% of the amount due for each day of delay. Should the Buyer make default in accepting the goods within the agreed delivery date, the Buyer agrees to pay to the Seller a contractual penalty amounting to 0.1% of the value of the goods affected by the delay for each day of delay. The payment of the contractual penalty shall not affect the Seller's right to damages in full. The Parties represent and warrant that the amount of the contractual penalty thus agreed is reasonable; for this reason, Section 2051 of the Civil Code shall not apply for the purposes of the Contract.
49. The total amount of damage compensation which the Seller is liable for and to which the Seller may be obliged as a result of breach of obligations under or in connection with the Contract, shall not exceed for all damage incurred by the Buyer on the basis of the Terms and Conditions, the Contract or in connection therewith an amount equal to 20% of the total purchase price agreed to in the Contract, but the Seller is not liable at all for loss of profit. This provision shall not apply to compensation for damage caused intentionally.
50. The Parties agree that, in accordance with Section 1765(2) of the Civil Code, the Buyer assumes the risk of changes in circumstances that may occur after the conclusion of the Contract. The Parties further agree that the Buyer is entitled to withdraw from the Contract only if the Seller is in delay with the delivery of the goods by more than 2 months compared to the date agreed to in the Contract.
51. The Parties consider the contents of these Terms and Conditions, the Contract, as well as all facts of their mutual relationship, unless they are facts or information commonly available in public registers (e.g. commercial register, land register, etc.) as confidential information and trade secrets. The Buyer, therefore, agrees to keep such information confidential and to do everything necessary to protect it and prevent the misuse thereof. The confidentiality obligation of the Buyer pursuant to this provision is not limited in terms of time.
52. Without the prior written consent of the Seller, the Buyer shall neither assign any claim against the Seller arising from the Terms and Conditions or the Contract to a third party, nor encumber such claim with a third party's right, nor may such claim or any other claim be set off with the Seller's claim against the Buyer arising from the Terms and Conditions, the Contract or any other contractual relationship between the Seller and the Buyer.
53. The Declaration of Conformity pursuant to the Act No. 22/1997 Coll. on technical requirements for products and amending certain laws, as amended, has been issued for the goods specified in the Contract.
54. The provisions of Section 2598(2) of the Civil Code regulating the liability for the accepted materials, billing and returning of unprocessed materials shall not apply. The unprocessed materials remain with the Seller. Further, the items (e.g. pallets, packaging, samples, etc.) or documents handed over to the Seller by the Buyer for delivery of the goods shall be returned to the Buyer only if the Buyer has agreed to this in the Contract or in the written purchase order.

#### **FINAL PROVISIONS**

55. The conclusion of the Contract shall supersede any and all prior negotiations, correspondence and oral, implied or written agreements insofar as they relate to the content of such Contract and are not expressly referred to in the Contract.
56. The Seller, as the controller of personal data to be provided hereunder or which it shall have an access to based on this contractual relationship, agrees to process such personal data in accordance with legal regulations, in particular, the Act No. 110/2019 Coll. on personal data processing and the Regulation (EU) 2016/679 of the European Parliament and of the Council of April 27, 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.
57. The Seller informs the Buyer about the processing of personal data in the Information about the Personal Data Processing document published on <http://www.witkowiitz.cz> in the GDPR section that is also available at the Seller's registered seat.
58. Contracts concluded in accordance with these General Terms and Conditions shall be governed solely by the laws of the Czech Republic, excluding the UN Convention on Contracts for the International Sale of Goods (Communication of the Federal Ministry of Foreign Affairs No. 160/1991 Coll.). Disputes arising under the Terms and Conditions or the Contract shall be finally heard by the courts of the Czech Republic in accordance with the procedural and substantive law of the Czech Republic, whereas the local competent general court in the first instance shall be, in accordance with § 89a of the Code of Civil Procedure, the court in whose district the Seller has its registered seat.
59. These General Commercial Terms and Conditions become valid and effective on 27 October 2021.



## ANNEX A

### WITKOWITZ GROUP COMPANIES

1. WITKOWITZ, a.s., with its registered seat at Ruská 83/24, Vítkovice, 703 00 Ostrava, company registration No. 079 93 293
2. WITKOWITZ ENVI a.s., with its registered seat at Ruská 1142/30, Vítkovice, 703 00 Ostrava, company registration No. 045 28 131
3. Witkowitz Mechanics, a.s., with its registered seat at Pohraniční 3017/11, Vítkovice, 703 00 Ostrava, company registration No. 075 64 813
4. VÍTKOVICE ENERGETICKÉ STROJÍRENSTVÍ a.s., with its registered seat at Pohraniční 3017/11, Vítkovice, 703 00 Ostrava, company registration No. 069 77 731
5. VÍTKOVICKÉ STROJÍRNY s.r.o., with its registered seat at Pohraniční 3017/11, Vítkovice, 703 00 Ostrava, company registration No. 021 47 173
6. VÍTKOVICE HAMMERING a.s., with its registered seat at Kotkova 384/4, Vítkovice, 703 00 Ostrava, company registration No. 278 07 088
7. NOEN, a.s., with its registered seat at Václavské náměstí 772/2, Nové město, 110 00 Prague 1, company registration No. 025 601 598
8. Witkowitz Atomica a.s., with its registered seat at Václavské náměstí 772/2, Nové město, 110 00 Prague 1, company registration No. 090 01 638