



GENERAL COMMERCIAL TERMS AND CONDITIONS - CONTRACTS OF WORK

INTRODUCTORY PROVISIONS

1. These General Commercial 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 "Contractor"), of the one part, and the customer (hereinafter referred to as the "Customer"), of the other part, established between these entities in connection with the conclusion of a Contract of Work (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 Contractor on the following website: <http://www.witkowitz.cz/ke-stazeni>

The Parties have agreed that the Contractor is entitled to amend, change or cancel these Terms and Conditions unilaterally. However, the Contractor shall inform the Customer of any such changes by sending an e-mail to the Customer'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 Customer disagrees with an amendment to the Contractor's Terms and Conditions, the Customer 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 public law.
5. Contrary or deviating terms and conditions of the Customer shall apply only with the express consent of the Contractor.

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 Contractor 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 Contractor is signed by the Customer and delivered back to the Contractor,
 - b) the draft contract as counter-proposed by the Customer is signed by the Contractor and returned to the Customer, or
 - c) the Contractor does not receive from the Customer a written notice of rejection of the draft contract as proposed by the Contractor within 3 days of delivery of such draft contract to the Customer.If the Customer 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 Customer's counterproposal the Contractor does not sign and deliver such counterproposal to the Customer.
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. In line with the provisions of Section 1899 of the Civil Code, any relief of the assignor shall not apply. The Contractor 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 Contractor have no obligation under the Contract to deliver the work to a specific place, the delivery of the work agreed to in the Contract shall take place by handing over to the Customer at the Contractor's registered seat (Place of Delivery). The Contractor shall comply with the obligation to deliver the work to the Customer by delivering the agreed and properly marked work as the Customer's work to the Customer at the Place of Delivery or by allowing the Customer to dispose of the work at that place. The Customer shall take over the work agreed to under the Contract, which it shall confirm by signing the Contractor's delivery note.
11. The Work shall be handed over to the Customer in individual pieces, unpacked and unprotected against corrosion and other atmospheric influences, unless otherwise provided in the Contract.
12. The Contractor shall deliver the work within the delivery term to be agreed to in the Contract by the Parties. The Contractor shall be entitled to deliver the work in partial deliveries, possibly even before the agreed time of performance, and the Customer shall not be entitled to refuse such partial or early performance. Facts and events which the Contractor 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 work shall be deemed completed upon handed over to the first carrier for transport to the Customer. In the case of the Customer's own delivery of the work, delivery shall be deemed completed upon handover to the Customer at the place specified in the Contract or at the Place of Delivery.
14. The person to whom the work is to be handed over shall prove that he is authorised to take over the work in behalf of the Customer, otherwise the work shall not be handed over to such person. The Customer agrees to take over the work within the period specified in the Contract, based on the Contractor's e-mail/telephone invitation to take over the work (hereinafter also referred to as the "Invitation"). If the Customer fails to take over the work within the period specified in the Invitation, the delivery of the work shall be deemed to have been made and the work shall be deemed to have been deposited upon expiry of the last day of such period. Failure to take delivery of the work within 30 days as of the work was deposited shall be considered a substantial breach of the Contract by the Customer and the Contractor shall be entitled to withdraw therefrom. For the storage of work, the Customer shall pay to the Contractor a storage fee at the current price for each calendar day of storage. The above-mentioned provision is without prejudice to the Contractor's right to compensation for damage incurred (in particular, costs incurred for cancellation of the original transport, charges for detention, etc.).
15. Should the Customer not take over the work within 30 days as of the expiry of the period specified in the Invitation, the Contractor is entitled to sell the work at the Customer'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 Contractor shall give the Customer an alternative period of time to take over the item, which shall not be shorter than 10 days.
16. Along with the work, the Contractor shall deliver any and all documents enabling the work to be taken over and handled, as well as other documents and papers specified in the contract.
17. In the event that the Contractor arranges the transport of the work for the Customer abroad, the transport of work 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 Contractor's right to charge (invoice) the purchase price arises on the day the work is delivered, unless otherwise specified in the Contract.
19. Should the Customer fail to settle the debts arising from the Terms and Conditions or the Contract in a timely manner, the Contractor has the right to postpone the deadlines for the period of delay of the Customer. The Contractor's rights arising from the Customer's default shall not be affected.
20. The moment of delivery of the work to the Customer is decisive for compliance with the delivery terms by the Contractor. If the work cannot be delivered in time through no fault of the Contractor, the delivery periods and deadlines set out in the Contractor's notice of readiness for delivery shall apply, and if the Customer fails to take over the work within the period specified therein, the last day of such period shall be deemed to be the date of delivery of the work and the work shall be deemed to have been deposited and the Contractor shall be entitled to sell the work at the Customer's expense in an appropriate manner in accordance with section 15.
21. Should the Contractor's agree to the Customer's request for changes in the concluded Contract, the Contractor has the right to postpone the delivery date for the period from the conclusion of the Contract until the approval of the change request.
22. The weight data declared by the Contractor are decisive for the delivery of the agreed quantity of the work. Delivery of the agreed quantity of the work is deemed to be delivery of the work within a tolerance of + to 5% of the quantity agreed to in the Contract, unless the otherwise stipulated in the Contract.
23. The limitation period according to the agreement between the Parties is 3 years.

PRICE OF WORK AND PAYMENT TERMS

24. The price of the work is stipulated in the Contract. The price does not include special packaging which may be charged as a separate item.
25. The basis for payment of the purchase price for the work 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 work 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.
26. 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.
27. In the event of a change in the specification of the work after the conclusion of the Contract, the Contractor has the right to change the agreed purchase price of the work.
28. If the Contractor determines that there are circumstances that reduce the reliability of the Customer's payments, especially if the Customer's account is blocked or if insolvency or enforcement proceedings are initiated against the Customer, the Contractor is entitled to unilaterally change the agreed payment terms and as a result, in particular, not to deliver the unpaid work until the purchase price for the work is paid, or until the Customer provides sufficient security or confirmation as agreed with the Contractor. If the Customer refuses to provide such security or assurance to the Contractor, the Contractor may withdraw from any outstanding contract. If the Contractor withdraws from any unfulfilled contract for the reasons stated in this paragraph, the Customer shall compensate for any damage incurred by the Contractor and loss of profit within 15 days as of the date of receipt of the statement of account.
29. In addition to the foregoing, the Contractor shall be entitled to withdraw from any contract not yet performed or to suspend individual deliveries of work or other performance to the Customer for such period as:
 - a) the Customer is in default in the payment of any monetary debt to the Contractor (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 Contractor from the Customer (both not yet due and overdue) from any and all contractual relations concluded with the Customer exceeds in its aggregate the credit limit set for the Customer by the Contractor, 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 Customer, payments before delivery of work, etc.). The Contractor agrees to keep the Customer informed about the current status of its credit limit.

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

30. Suspension of deliveries of the work under this article of the Terms and Conditions shall not be considered a breach of the Contractor's obligations (it is not a delay on the part of the Contractor) arising from the Terms and Conditions and the contract and the Customer is not entitled to withdraw from the contract in such a case, nor to assert any claims against the Contractor (including claims for damages). After the reasons for suspension of the delivery of the work 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 Contractor. 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 Customer shall reimburse the Contractor for any and all costs incurred in connection with the performance of the subject of the Contract.
31. Before the due date of the purchase price, the Customer agrees to pay to the Contractor also VAT in the statutory amount, unless otherwise stipulated in the Terms and Conditions or the work is delivered in reverse charge.
32. In the event that the work is delivered to the Customer to another EU Member State, while the transport of the good is provided by the Customer, 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 Customer is obliged to deliver to the Contractor documents proving the transport of the work 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 the good was carried out, otherwise the Contractor is entitled to cancel the invoice issued without VAT and charge the purchase price with a new invoice including VAT.

WARRANTY

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

RIGHTS ARISING FROM IMPROPER PERFORMANCE

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

MISCELLANEOUS PROVISIONS

47. Should the Customer make default in payment of the purchase price of the work delivered, the Customer shall pay to the Contractor a contractual penalty amounting to 0.1% of the amount due for each day of delay. Should the Customer make default in accepting the work within the agreed delivery date, the Customer agrees to pay to the Contractor a contractual penalty amounting to 0.1% of the value of the work affected by the delay for each day of delay. The payment of the contractual penalty shall not affect the Contractor'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.
48. The total amount of damage compensation which the Contractor is liable for and to which the Contractor 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 Customer 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 Contractor is not liable at all for loss of profit. This provision shall not apply to compensation for damage caused intentionally.
49. The Parties agree that, in accordance with Section 1765(2) of the Civil Code, the Customer assumes the risk of changes in circumstances that may occur after the conclusion of the Contract. The Parties further agree that the Customer is entitled to withdraw from the Contract only if the Contractor is in delay with the delivery of the work by more than 2 months compared to the date agreed to in the Contract.
50. 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 Customer, 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 Customer pursuant to this provision is not limited in terms of time.
51. Without the prior written consent of the Contractor, the Customer shall neither assign any claim against the Contractor 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 Contractor's claim against the Customer arising from the Terms and Conditions, the Contract or any other contractual relationship between the Contractor and the Customer.
52. 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 work specified in the Contract.
53. 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 Contractor. Further, the items (e.g. pallets, packaging, samples, etc.) or documents handed over to the Contractor by the Customer for delivery of the work shall be returned to the Customer only if the Customer has agreed to this in the Contract or in the written purchase order.

FINAL PROVISIONS

54. 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.
55. The Contractor, 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.
56. The Contractor informs the Customer about the processing of personal data in the Information about the Personal Data Processing document published on <http://www.witkowitz.cz> in the GDPR section that is also available at the Contractor's registered seat.
57. Contracts concluded in accordance with these Terms and Conditions shall be governed solely by the laws of the Czech Republic. 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 Contractor has its registered seat.
58. 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 Mechanica, 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. Hutní montáže, a.s., with its registered seat at Ruská 1142/30, Vítkovice, 703 00 Ostrava, company registration No. 155 04 140
7. GEARWORKS a.s., with its registered seat at Vítkovice 1141, 703 00 Ostrava, company registration No. 258 77 933
8. VÍTKOVICE HAMMERING a.s., with its registered seat at Ruská 2887/101, Vítkovice, 703 00 Ostrava, company registration No. 278 07 088
9. NOEN, a.s., with its registered seat at Václavské náměstí 772/2, Nové město, 110 00 Prague 1, company registration No. 025 601 598
10. 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