



# Purchase Terms and Conditions 09/20 of DIEFFENBACHER-CZ

## Table of Contents

1. Introductory Arrangements.....	1
2. Certain Rights and Obligations of the Contracting Parties in Relation to the Contract for Work .....	3
3. Some Rights and Obligations of the Parties Related to the Purchase Contract.....	4
4. Quality of Performance; Inspection of Quality of Performance.....	5
5. Place of Performance, Delivery and Delivery Conditions .....	8
6. Time of Performance; Delay by the Contractor; Contractual Penalty .....	10
7. Customer Rights related to Defects .....	11
8. Guarantee for Quality.....	12
9. Price of Performance, Payment by the Customer, Suspension .....	12
10. Certain Arrangements Regarding Possible Damage Caused by the Subject of Performance or by Infringement of Intellectual Property Rights .....	13
11. Force Majeure.....	14
12. Sending the Technical Staff of the Contractor to the Place of Assembly .....	15
13. Confidentiality.....	15
14. Right to Withdraw from the Contract .....	16
15. References and Advertising .....	17
16. Specifics of Law in Foreign Trade .....	17
17. Processing of Personal Data.....	18
18. Final Provisions.....	19

## 1. Introductory Arrangements

### 1.1

These Purchasing Terms and Conditions shall be applied to contractual relations between the business company of DIEFFENBACHER - CZ, Hydraulické Lisý, s.r.o., Business ID: 454 75 067, address of their registered office at Řípská 15, Brno; entered in the Commercial Register kept by the Regional Court in Brno, Section C, File 4741 (hereinafter also referred to as the “Customer”), on one side - and any other person (hereinafter also referred to as the “Contractor”), on the other side, on the basis of which the Contractor has undertaken to deliver agreed goods, work (subject of the work) or any other characteristic performance to the Customer (and possibly allow the Customer to acquire ownership rights thereof); while the Customer has undertaken to take over the performance and pay the agreed price for it. The Purchase Terms and Conditions are included in the Contract itself. Designation of the contracting parties for the purposes of these Purchase Terms and Conditions remains the same regardless of whether it is a purchase contract, contract for work or any different contract.

Unless otherwise agreed, it is sufficient that these Purchase Terms and Conditions are accepted by the Contractor in the time of the first business transaction between the parties, while these Purchase Terms and Conditions shall be applied to any further transaction between the Customer and the Contractor, without having to be accepted again. The established rules shall be created in this manner.



## 1.2

If the Customer is also in the position of a recipient of characteristic performance, these Purchase Terms and Conditions shall be applied regardless of the type of contract concluded between the Customer and the Contractor, even if an unnamed contract has been concluded.

## 1.3

The contract between the Customer and the Contractor shall always be governed by the law of the Czech Republic, with exclusion of the UN Convention on Contracts for International Sales of Goods (so-called Vienna Convention on the International Sales of Goods - CISG). The same applies to any legal relations related to the Contract, including relations arising from damage compensation, unjust enrichment, issues of validity of the Contract itself, etc.

## 1.4

Courts of the Czech Republic are competent to resolve legal disputes between the Customer and the Contractor, if these disputes concern relations under the Contract concluded between them or relations related to it (including relations arising from damage compensation, unjust enrichment, issues of validity of the Contract itself, etc.). Specifically, local jurisdiction of the Municipal Court in Brno, respectively the Regional Court in Brno, has been agreed, according to the substantive jurisdiction stipulated by Act No. 99/1963 Coll., Code of Civil Procedure or Act No. 292/2013 on special court proceedings. The Customer is also entitled to sue the Contractor at the place of registered office or residence of the Contractor.

## 1.5

Some specific rights and obligations of the parties in case of a contract for work are to be regulated by Part 2 of these Purchase Terms and Conditions. Some specific rights and obligations of the parties in case of a purchase contract are to be regulated by Part 3 of these Purchase Terms and Conditions. Any other parts of these Purchase Terms and Conditions are shared for all contracts; they also apply to a contract for work and a purchase contract, unless they are in direct conflict with the special provisions under Part 2 or Part 3 with respect to a type of contract. Simultaneous use of both arrangements is preferred; and special arrangements only apply to the extent in which they are directly contradictory.

## 1.6

The Contractor acknowledges that the performance he/she provides to the Customer may be used to create a final product which the Customer will subsequently provide to his/her customer or keep it for him/herself. Therefore, without the need to state this explicitly, the Contractor acknowledges that the performance provided by him/her may be further incorporated into the final product (hereinafter also referred to as the "functional unit") which may be subsequently delivered to a Customer's client, or it can simply be forwarded to the Customer's client without integration into the functional unit, which in both cases affects the time period of performance inspection, beginning of the warranty period, etc. At the same time, the Customer shall inform the Contractor that the Customer may delay provision of performance to his/her final customers in case of Contractor's delay with provision of performance under the Contract, which may result in damage. The customer him/herself is usually bound to his/her clients by the deadline for providing performance, as well as contractual penalties in case of delay.

## 1.7

Any changes or additions to the Contract concluded between the Customer and the Contractor must be made in writing or in another reusable form, such as an e-mail message (without any need of a guaranteed or qualified electronic signature), by a simple electronic confirmation of the other party's text proposal (so-called "clicking"), by other long-distance data transmission within the system in which the parties communicate with each other, etc. The same rules apply to legal proceedings aimed to termination of the Contract.



## 1.8

The Customer is entitled to withdraw its proposal for conclusion of the Contract until the Contractor accepts it, in such the sense that he/she concludes a relevant contract on the basis of the proposal, regardless of whether the proposal specifies a deadline date for such acceptance (conclusion of the contract).

## 1.9

For the purposes of the Contract and these Purchase Terms and Conditions, the place of use means a place where the subject of performance provided by the Contractor will be used for its purpose; and the place of performance means a place where the subject of performance is to be delivered by the Contractor. Unless otherwise specified by the Customer, the place of use is the Czech Republic and the place of performance is the Customer's registered office.

## 2. Certain Rights and Obligations of the Contracting Parties in Relation to the Contract for Work

### 2.1

Provisions of this part shall be applied if a contract for work has been concluded between the Customer and the Contractor.

### 2.2

If the Customer submits instructions or documents to the Contractor (in person, by post, electronically or otherwise), for example those in the form of drawings, technical documentation, etc., concerning the form, properties or characteristics of the subject of the work, which this subject of the work should have according to the Customer's request, the Supplier is obliged to follow this. The Contractor is also bound by the Customer's instructions regarding the manner of performing the work.

### 2.3

If the Customer provides the Supplier with items to perform the work or gives instructions on how to perform the work, the Contractor is obliged to notify the Customer in writing of any unsuitability of these items or instructions within seven days following the moment of receipt. The Customer will replace the provided items or instructions or will insist on them. In both the cases, the Contractor is obliged to follow the opinion of the Customer and to continue in production of the subject of the work according to the opinion of the Customer. The Customer declares that if he/she does not take any different opinion within 10 days from the moment of delivery of the notice by the Contractor, he/she means that he/she insists on the original items or instructions. This does not preclude their later reassessment.

### 2.4

The Customer is meant as the owner of the completed subject of work from the very beginning, while the Contractor is responsible for the risk of damage to the subject of the work until the moment of delivery or hand-over to the Customer or to a person designated by the Customer; the Contractor is obliged to protect the subject of the work from any damage, theft, loss, etc. The same applies for items which the Customer has provided to the Contractor for performance of the work.



## 2.5

In case of termination of the contract for work by withdrawal of one of the parties, the Contractor shall hand over to the Customer the unfinished subject of work and all items received from the Customer to perform the work. The Customer shall reimburse the Supplier for what the Customer has thus enriched with, while the amount will be reduced by previously paid advances or parts of the price of the work. However, the Customer is also entitled to declare (explicitly or in other words) that he/she will not use the subject of work and is not interested in continuing to own it. In such the case, the ownership of the subject of work shall pass to the Contractor; and the Contractor shall give back to the Customer all items that he/she has taken over from the Customer to perform the work, as well as all monetary performances received from the Customer; and the Contractor is no longer entitled to any monetary performance or settlement from the Customer.

## 2.6.

The Contractor shall always perform the work in person, unless the Customer expressly agrees to a specific other procedure.

## 2.7.

The work is meant as finished if it is completed without defects and if it is handed over to the Customer or a person designated by the Customer at the agreed place of performance, including all relevant documentation. Demonstration of ability of the subject of work to be used for its purpose is only necessary if the Customer or his/her client request it. This does not affect the obligation to perform any tests. Until the subject of work is in perfect condition, the Customer and a person designated by him/her are not obliged to take it over. If the Customer or a person designated by him/her takes over the subject of work without any reservations, this does not mean that any claims for defects (even those obvious) against the Contractor are lost; this is even more applicable if the subject of work shall be later a part of a functional unit.

## 2.8.

The Customer's rights related to defects in the work against the Contractor are as follows:

- a) The Customer is always entitled to get repair of defect on the work;
- b) The Customer is always entitled to repair of legal defects of the work;
- c) The Customer is always entitled to delivery of a new work or to delivery of a missing subject of the work;
- d) The customer is always entitled to a discount on the price of the work;
- e) If the defect in the work constitutes a material breach of the Contract, the Customer is entitled to withdraw from the Contract.

## 3. Some Rights and Obligations of the Parties Related to the Purchase Contract

### 3.1

Provisions of this part of the Purchase Terms and Conditions shall apply if a purchase contract has been concluded between the Customer and the Contractor.

### 3.2

The owner of the subject of performance is the Contractor until the moment of hand-over or delivery to the Customer or a person designated by the Customer. The Contractor bears the risk of damage to property until the same moment.



### 3.3.

If the Customer provides the Contractor with any items for production of the subject of purchase, the Contractor bears the risk of damage to the items until they are returned to the Customer by handing over or delivery. The provisions of paragraphs 2.2 and 2.3 apply here accordingly.

### 3.4.

In case of termination of a purchase contract by resignation of one of the parties, both parties will return everything they have provided to each other so far. If this is not objectively possible, cash refund (usual price) will be provided.

### 3.5.

Provisions of sec. 2 shall apply accordingly to the Customer's rights related to defects in the subject of purchase. 8.

## 4. Quality of Performance; Inspection of Quality of Performance

### 4.1

The Contractor is always obliged to provide the Customer with performance in quantities and with properties according to the Customer's specifications. If the Customer submits instructions or documents to the Contractor (in person, by post, electronically or otherwise), for example those in the form of drawings, technical documentation, etc., concerning the form, properties or characteristics of the performance, which this performance should have according to the Customer's request, the Contractor is obliged to follow this. The Contractor is obliged to notify the Customer in writing of any unsuitability of instructions or documents within seven days following their receipt. In such a case, the Customer will change his/her instruction or the base of it; or he/she will insist on them. In both cases, the Contractor is obliged to follow the opinion of the Customer and to continue in performance of the Contract according to the opinion of the Customer. The Customer declares that if he/she does not take any different opinion within 10 days from the moment of delivery of the notice by the Contractor, he/she means that he/she insists on the original instructions or documents. This does not preclude their later reassessment.

In any matters not specified by the Customer's specification, the performance must be of the highest quality and must show the characteristics necessary for the performance to be perfectly served by the Customer for the agreed purpose, or for the usual purpose if the purpose has not been agreed. Performance provided by the Contractor must correspond to the latest condition of technologies.

The Contractor is always obliged to bear the costs that need to be incurred in order for the subject of performance to achieve the appropriate quality and properties, even if the cost was not initially taken into account when determining the price of the subject of performance.



## 4.2

All services provided by the Contractor must meet the requirements imposed on them by the technical and legal regulations applied in the place of use.

If the place of use is in the Czech Republic, then these are mainly the requirements arising from:

- Act No. 102/2001 Coll. on product safety;
- Regulation (EC) No 1907/2006 of the European Parliament and the Council on chemicals, e.g. REACH;
- Directive 2014/34/EU - on products;
- Directive 2006/42/EC - on machineries;

or from regulations that replace those mentioned above. Unless otherwise stated, European and site-of-use standards shall be applied for the structures. Instruments and equipment must be operated in the metric system. Requirements imposed on the subject of performance by the above-mentioned directives must be met even though the directives are not applicable in direct manner.

The Contractor also guarantees the following (mainly):

- use of a new and perfect material;
- flawless construction and production;
- perfect function;
- ensuring the agreed technical performance data;
- compliance with quality and durability obligations;
- dimensioning the tanks, devices and pipes operating under pressure, according to the submitted technical documentation and in accordance with applicable standards and regulations of the Czech Republic or of the place of end use, unless the order prescribes something else.

## 4.3

The Customer shall check quality of performance without any undue delay, after receiving it from the Contractor. The fact that he/she fails to carry out the inspection immediately or does not find out any defects during the inspection, or fails to report the defects immediately after the inspection, does not weaken his/her rights related to the defects (opposite legal provisions will not be applied).

If the performance provided by the Contractor shall become a part of another functional unit, the Customer may perform a quality check of the performance only at the time when the functional unit is finished, or double-check may be done (upon acceptance and completion of the functional unit). Check of quality of the performance can also be done in the form of a test run. If it is a performance that will be further provided to the Customer's client (either separately or as a part of a functional unit), the quality check of performance by the Customer's client has the same importance as the check done by the Customer him/herself; and it is taken into account that the check will be carried out later than if it had been carried out by the Customer him/herself. The results of inspections done by the Customer are binding for the Contractor.

## 4.4

The Contractor is responsible for the fact that the performance provided by him/her can be used immediately for its purpose or for incorporation into another functional unit even in such the sense that the delivery of the performance will always include foundation bolts, other fasteners for machinery and equipment, couplings, discs of V-belts, V-belts including belt covers, protective devices and equipment for environmental protection according to the requirements of a respective place of use; and finally, in case of pipe connections and transfer culverts, the Contractor shall always supply the relevant opposite flanges for possible connections. This arrangement shall be applied only for such types of performance which are relevant as for their nature. These elements are already included in the price of performance.



## 4.5

The Customer is entitled at any time to visit the premises where the Contractor prepares the subject of performance for the Customer, and to check the ongoing condition of it; or the Contractor may also check preparation of performance for the Customer in any other way (request a progress report, photo documentation, etc.), whereas the Contractor is obliged to provide the Customer with immediate cooperation in this respect (access to the place of preparation of the subject of performance, sending him/her a report on the progress, sending him/her a photo-documentation, etc.). If the Customer finds out any deficiencies, he/she may give the Contractor corrective instructions which the Contractor must follow. If the correction is not made within a reasonable period of time, the Customer may withdraw from the Contract if he/she thinks that in case of non-compliance with the instructions a performance that does not reach the required qualities would be delivered, or that there can be some delay in delivering the subject of performance. Failure to perform the inspection according to the first sentence, as well as failure to provide the described cooperation, means substantial breach of the Contract by the Contractor.

## 4.6

The Contractor is always obliged to carry out tests of the subject of performance at his/her own expense if this is objectively possible due to the nature of the subject of performance. The Customer is always entitled to order the Contractor to perform tests upon his/her own initiative. The tests have no effect of hand-over / take-over / delivery. It is only a part of the quality check (even the continuous one). Records from the performed tests shall be always handed over by the Contractor to the Customer, as these are a part of the technical documentation; both the cases shall be applied for confirmation / certificate / attestation of a person who performs the tests. The Contractor shall always notify the Customer of the tests in advance, at least ten days in advance. Even a client of the Customer may also participate in the tests. The Customer may take over the subject of performance even without performing the tests. In such a case, absence of the test is not an obstacle in delivery of the subject of performance (execution of the work, purchase and sale, etc.).

## 4.7

Vessels, devices and pipes that are operated under pressure must always be inspected and these must be inspected by a competent inspection authority at the place of production, at the expense of the Contractor; and they must comply with the European and Czech regulations or the European regulations and the regulations of another place of use. Certificates of these authorities must be submitted to the Customer without any delay and they must become a part of the technical documentation.

## 4.8

The Contractor undertakes to manufacture and, in case of Customer's request, to supply spare parts to the subject of performance for at least ten years following hand-over of the perfect subject of performance to the Customer or a person designated by him/her.

## 4.9

To fulfil the obligations arising from the Contract, the Contractor may use subcontractors only upon prior written consent of the Customer.



## 5. Place of Performance, Delivery and Delivery Conditions

### 5.1

Unless the Contract stipulates otherwise, the place of performance is the address of the Customer.

### 5.2

The Contractor fulfils his/her obligation to hand over / deliver the performance to the Customer only if he/she directly hands over the performance to the Customer or a person designated by the Customer or if he/she delivers it and the Customer or a person designated by him/her takes over the performance. Any mere hand-over of the performance to the carrier is not considered to be the hand-over of the performance to the Customer; in this case the performance is handed over only when the carrier or a holder of the postal license directly delivers the performance to the Customer. Likewise, the performance cannot be handed over in such the manner that the Contractor only allows the Customer or a person designated by the Customer to use the subject of performance in a certain place, unless the Customer expressly accepts this, or by the manner that the Customer or a person designated by him/her actually takes possession of the subject of performance. The Contractor is obliged to provide unloading of the subject of performance at the place of performance, at his/her own expense.

### 5.3

The Contractor is responsible for the costs of transport of the subject of performance to the place of performance to the Customer (he/she shall arrange such transport by him/herself), including all related fees and duties; and he/she is obliged to arrange the relevant administrative acts associated with international movement of the subject of performance to the place of performance.

### 5.4

At the latest when handing over the subject of performance or delivering it to the Customer or a person designated by him/her, the Contractor is obliged to hand over / deliver the handover documentation related to the subject of performance. This means the delivery note and the packing sheet. In addition to the performance designation, this hand-over documentation must contain the Customer's material, order and serial numbers (if provided to the Contractor), order position numbers, order date, quantity and type of packaging. The Contractor is responsible for consequences of incorrectly stated data.

The Contractor shall always prepare and, at the latest when handing over the subject of performance, he shall also hand over the complete technical documentation of the subject of performance to the Customer or a person designated by him/her. It must comply with legal regulations, in particular Directive 2006/42/EC - on machinery. The technical documentation must clearly and comprehensively define the spare parts. Upon Customer's request, the Contractor must indicate the subcontractors. The documents must be comprehensible and they shall contain the necessary cross-sectional and scattering drawings. When using catalogue documentation, all redundant texts that are not necessary to clarify the function of the respective parts must be removed or crossed out.

### 5.5

Any delay in handing over the documentation is considered as delay in handing over the subject of performance as such, unless it follows from the Customer's behaviour that he/she considers hand-over of the subject of performance to be complete even without handing over the documentation, either by explicitly declaring it or by absence of asking for the documentation within three years following the hand-over of the performance itself. In such the case, the performance is considered to have been duly delivered from the very beginning.





## **5.6**

For the purpose of transporting the subject of performance to the Customer, the Contractor is obliged to pack the subject of performance at his/her own expense so that there is no risk of its damage. If the Contractor receives an instruction from the Customer on how to pack the subject of performance, then the Contractor is obliged to comply with it. The packaging methods listed in the HPE directive are considered suitable. Prior to actual hand-over or delivery of the subject of performance, the Contractor is obliged to contact the Customer and request consent to the method and date of delivery, method of packaging and designation of the subject of performance (package label, etc.). The Contractor shall await the Customer's consent or other instructions. The Contractor is then obliged to follow them.

## **5.7**

It is always necessary to pack small parts and particularly sensitive parts in boxes/crates. All unpackaged parts must be provided with protective coating, unless they have been fitted with final varnish/coating. Bare parts must be treated with a preservative product in such a way that sufficient protection is ensured for at least one year following the date of delivery. All electrical equipment must be waterproofed in polyethylene.

## **5.8**

If the Contractor requests return of packaging materials, he/she must state this separately in writing. In this case, the return will be carried out at the expense and risk of the Contractor. If such instructions are missing, the Customer is entitled to dispose of empty packaging materials in the waste at the expense of the Contractor. The same applies to use of disposable packaging materials.

## **5.9**

If the loading rates of the relevant carrier or the owner/administrator of the relevant roads/railways are exceeded, or the loading rates of the tarpaulin truck are exceeded, loading drawings with precise weight data must be submitted to the Customer in good time before the intended loading procedure. In case of non-compliance with this obligation, all resulting damages and losses shall be borne by the Contractor.

## **5.10**

In case of direct dispatch of the subject of performance to the Customer's client, the Customer shall prepare all sending documents, unless specified that it will be done by the Contractor in accordance with the Customer's instructions/regulations.

## **5.11**

If the Customer requests a certain method of transport of the subject of performance to the place of performance, the Contractor is obliged to comply with such request. The Contractor is obliged to load and straighten the transported subject of performance safely for the purposes of transport. Unless otherwise agreed, the Contractor shall arrange and pay for the insurance of the subject of performance for case of damage, loss or theft of the subject of performance during transport. The risk of damage to the subject of performance during transport is still borne by the Contractor.



## 6. Time of Performance; Delay by the Contractor; Contractual Penalty

### 6.1

The Contractor is obliged to duly provide the subject of performance within the agreed time, otherwise within a reasonable time.

### 6.2

Any Contractor's delay in performance is always considered as a material breach of the Contract.

### 6.3

In case of Contractor's delay in performance (delivery of goods, execution of work, provision of characteristic performance under an in nominate contract), a contractual penalty of 0.15% of the price of the subject of performance for each commenced day of delay is agreed in favour of the Customer. The right for compensation for damage is not affected. If the Contractor is in delay with submission of documentation, the price of the subject of performance as such (goods, subject of work, etc., depending on the nature of the contract) will be used to calculate the contractual penalty. Calculation of the contractual penalty shall be based on the price without VAT.

### 6.4

At the relevant time period, the Contractor must provide the performance in the appropriate quantity and quality. The Customer is not obliged to accept partial or unfinished performances. And on the other hand, if the Contractor performs more than he/she should, it is not automatically considered to be a contract in relation to the difference, unless the Customer objects to the difference with no interest in it even within three years of such provision of the excess performance. In such a case, the contract is considered to be concluded from the very beginning.

### 6.5

Upon request of the Customer, the Contractor must always inform the Customer no later than the next day about what stage of performance he/she is in (progress of production, etc.) and what is the specific time schedule for further progress. This also applies in case of a complaint. If the Contractor fails to respond to the first or subsequent second inquiry of the Customer within the specified period of time and does not respond within three days following the third inquiry, then the Contractor is obliged to pay the Customer a contractual penalty of CZK 5,000 for each commenced day of delay in relation to performance of the obligations, starting on the fourth day following the third inquiry in the sequence.

### 6.6

If the Contractor thinks that there is a risk of delay in providing the performance, he/she is obliged to inform the Customer about it in writing.



## 7. Customer Rights related to Defects

### 7.1

The rights arising from defective performance that the Customer has towards the Contractor are stipulated by law, unless these Purchase Terms and Conditions or the Contract stipulate specific different conditions.

### 7.2

Irrespective of other rights of the Customer, the Customer always has the option according to which he/she can rectify any defect of performance by him/herself or with a third party, while the related costs will be subsequently reimbursed by the Contractor. The Customer declares in advance that this may be the case, in particular, if it is a defect in the subject of performance provided by the Contractor, e.g. the subject of performance which later became part of the functional unit delivered by the Contractor to his/her client while such the client raised a complaint. Even in these cases, however, the Customer may order the Contractor to send his/her own technologies to resolve the matter to the place where the defective performance is located at that time, even if the subject of performance is already in a different place than where the Contractor originally delivered it. The Contractor is responsible for costs related thereto.

### 7.3

If the Customer chooses the right to rectify the defect by repair or to eliminate legal defects, the Contractor is obliged to inform the Customer within seven days following such exercise of the right of defects by the Customer about how long it will take to rectify the defect. However, the Contractor is always obliged to rectify the defect within a period appropriate to the nature of the defect in question, no later than within 40 days following the Customer's exercise of the right to rectify the defect. If the Contractor fails to inform the Customer in time about the time period of rectification of the defect or if the Contractor fails to rectify the defect as such in time, or if it is obvious that he/she cannot rectify the defect in the chosen way, the Customer may withdraw from the Contract or choose any other rights related to the defects. Any delay in communicating the information about the time of rectifying the defect, as well as the delay in rectifying the defect itself, is a material breach of the Contract.

### 7.4

Provisions of Sec. 7.3. Shall be applied similarly for the case where the Customer chooses the right to deliver a new performance instead of the defective one or to deliver a missing performance.

### 7.5

The Customer is always also entitled to compensation for damage caused by a defect in the performance delivered by the Contractor, even in addition to the right related to a specific defect.

### 7.6

If a Customer's client asserts any claims for defects against the Customer and these defects consist at least partly in the performance provided by the Contractor, the Customer has the right to require the Contractor to remedy it at his/her own expense within a reasonable time, but no later than within 40 days; or the Customer's right may be satisfied by the Customer him/herself while the Contractor will reimburse the incurred costs. If the Customer first chooses a variant according to which the Contractor is obliged to resolve the complaint, who however fails to do so within the deadline, the Customer may switch to the second variant (to be solved by him/her at the Contractor's expense) or exercise other rights related to the defects.



## 7.7

The Customer has the right to request that the Contractor sends his/her own equipment at his/her own expense in order to satisfy the Customer's right to performance defects, to the place where the subject of performance is located (typically in order to remedy the defect by repair).

## 8. Guarantee for Quality

### 8.1

The Contractor provides a guarantee for quality of the performance delivered by him/her. The guarantee period is 24 months, unless a longer agreed period is individually agreed. Expiration of the guarantee period shall be calculated from the time of hand-over or delivery of the performance to the Customer or a person designated by him/her and from termination of the subsequent test operation if performed. If the performance provided by the Contractor becomes a part of a functional unit, then the expiration of the guarantee period shall be calculated from completion of the functional unit and termination of the subsequent test operation if performed. If such a functional unit is to be delivered to the Customer's client, or if the performance provided by the Contractor does not become a part of the functional unit but it will be delivered as such to the Customer's client, the guarantee period expiry shall be calculated from the time of handing over to the Customer's client and the end of subsequent test operation if performed. Duration of the test operation (run) must be proportionate to the nature of performance.

### 8.2

The fact that the subject of performance does not retain the properties it is supposed to have for the period of the quality guarantee (the properties which it should have had at the time of hand-over and retain these) is considered as a defect and the Customer is entitled to claims for defects.

### 8.3

If the Customer notifies the Contractor of the defects in the subject of performance during the guarantee period, such notification of the defects is always considered as timely done, regardless of whether the defect is obvious or hidden, and regardless of whether the defect was already obvious upon delivery or occurred later. Timely notification of a defect of the subject of performance is also considered to be if made within 15 days from the end of the guarantee period, if the defect was found in the last 15 days following the guarantee period. The Customer's rights related to defects in performance have already been described elsewhere in these Purchasing Conditions, especially in sections 2.8., 7.2., 7.3. and 7.4. In other cases, the legal regulation will be applied.

## 9. Price of Performance, Payment by the Customer, Suspension

### 9.1

Unless otherwise agreed, the agreed price is always complete, binding and final, whether determined by an exact amount or budget, including all costs on the side of the Contractor, such as the costs of handing over or delivering the performance to the Customer, any duties (duties shall be paid by the Contractor), costs of packaging the subject of performance, preservation and delivery of all elements according to Sec. 4.4., etc.

### 9.2

Unless otherwise agreed, the price shall be expressed as that one including statutory VAT. Unless otherwise agreed, the price shall be stated in Czech crowns (CZK).



### 9.3

Maturity period of the price shall be governed by the contractual agreement, not by the statement in an invoice. The Customer is not obliged to pay the price until the Contractor demonstrably delivers an invoice with the relevant price of performance by e-mail to the e-mail address: fakturace@dieffenbacher.cz. The invoice must contain a unique identification of the performance for which it is issued; and it must contain the number of the contract concluded between the Customer and the Contractor (or the order number).

### 9.4

Without the consent of the Customer, the Contractor must not assign his/her receivables from the Customer to other persons.

### 9.5

It has been agreed that 10% of the agreed price of the subject of performance may be retained by the Customer until the end of the quality guarantee period so that this amount can serve to satisfy the Customer's claims in case of defects of the subject of performance, damage caused by the subject of performance or defects caused by the Contractor him/herself, or other claims of the Customer against the Contractor. This does not apply if the Contractor provides a bank guarantee in favour of the Customer in an appropriate value and hands over the original of the bank guarantee document to the Customer.

### 9.6

Until the performance by the Contractor is completed and handed over to the Customer in perfect condition, including documentation, the Contractor shall not be entitled to payment of the price of the performance. If the subject of performance proves to be defective within the period after delivery, the Customer is not obliged to pay the price of performance until the satisfaction of the Customer's claims for defects.

## 10. Certain Arrangements Regarding Possible Damage Caused by the Subject of Performance or by Infringement of Intellectual Property Rights

### 10.1

If the subject of performance provided by the Contractor causes at least partial damage to the Customer, his/her client or any third party, the Contractor shall be liable for it. For this case, the Contractor must be insured up to the amount of the insurance indemnity of fifty million Czech crowns.

### 10.2

If anyone raises a monetary claim against the Customer, although the Contractor is liable for damage, the Contractor is obliged to pay the relevant claim amount upon the first request of the Customer. If the Customer decides to take legal action against the claim of a particular person, the Contractor shall reimburse the costs of legal representation and the costs of the relevant legal actions as such (in connection with which the Customer may request an advance payment from the Contractor for such costs), unless the Contractor does not agree with the legal actions and pays any claim of the Customer's client or third parties at the same time.



### 10.3

If the Customer claims for his/her receivable from the Contractor, with satisfaction of which the Contractor is in delay, the Contractor acknowledges that with regard to wording of §3 of Government Regulation No. 351/2013 Coll., the Customer is entitled to reimbursement of costs associated with assertion of a receivable in the amount of at least CZK 1,200 in connection with the call addressed to the Contractor. If the receivable is not satisfied even with this request, the matter will be handed over to a Customer's legal representative, with which the costs associated with claiming the receivable and thus the Customer's right to their compensation will further increase.

### 10.4

The Contractor is responsible for ensuring that the subject of performance does not interfere with the rights of other persons related to intellectual property (copyrights, patent rights, etc.). Provisions of section 10.1. on insurance and section 10.2. Shall be applied here similarly.

## 11. Force Majeure

### 11.1

Force Majeure events are such events or circumstances the origin of which lies entirely outside the sphere of influence of a Contracting Party concerned while the Contracting Party cannot in no way foresee, influence or overcome such the event without manifestly disproportionate costs. Events or circumstances of force majeure include, for example, fire, flood, earthquake, emergency measures taken by public authorities to protect life and health of the population within the scope of this public authority, war, terrorist attack, collapse of society, general anarchy, etc.

However, such events or circumstances of force majeure are relevant only if:

(a) the event or circumstance in question makes it immediately impossible for the Contracting Party concerned to provide the agreed performance properly and in good time;

and simultaneously if

(b) the affected Contracting Party notifies the other Party within seven days following occurrence of the event/ occurrence of force majeure event.

If an event or circumstance of force majeure occurs only when a Contracting Party is already in delay with fulfilment of its obligation, force majeure shall no longer be taken into account. The affected Contracting Party shall also notify the other Contracting Party of the fact that the event or circumstance representing force majeure has already ended or is not continuing, also within the period of seven days.

### 11.2

In case of an event or circumstance of force majeure on the side of the Contractor, the period of performance by the Contractor shall be postponed by the period run from the time of notification of the event or circumstance of force majeure until the actual disappearance of the event or termination of force majeure, unless the Customer decides to withdraw from the Contract upon his/her right to do so.

### 11.3

The Contractor assumes the risk of a change of circumstances pursuant to Section 1765 of Act No. 89/2012 Coll.



## 12. Sending the Technical Staff of the Contractor to the Place of Assembly

### 12.1

Upon the Customer's request, the Contractor shall send at his own costs the sufficiently qualified technical personnel to the place of assembly / installation of the entire functional unit, especially if the performance provided by the Contractor is to contribute to creation of the functional unit as such.

### 12.2

All costs incurred by the Contractor's personnel at the place of assembly / installation of the entire functional unit shall be borne by the Contractor (telephone charges, material collection, travel costs to gain materials, etc.).

### 12.3

The Contractor and his/her representatives are not entitled to accept agreements directly with the Customer's client.

### 12.4

All communication addressed by the Contractor to the Customer's staff in connection with this procedure must always be sent as a copy to the Customer's registered office; or in case of electronic communication to the relevant management of the Customer at his/her registered office, not only at the assembly / installation site.

## 13. Confidentiality

### 13.1

The Contractor is obliged to maintain in strict secrecy all commercial or technical information and documents made available by the Customer, those tangible or intangible - including illustrations, drawings, plans, samples, models, dies, matrices or calculations - regardless of whether the Customer provides them for execution of an order or if the Contractor makes them or have them made according to the Customer's data.

These must not be made available to third parties without expressed written consent of the Customer, neither for preview nor fully available; these must not be published or passed on; they remain the sole property of the Customer or become so from the moment the Supplier begins to create them; and these may be used or consumed for production only on the basis of the Customer's instructions, but not for other purposes, especially for production of goods for third parties or for providing services to third parties. Their reproduction or business use is permissible only with prior consent of the Customer.

This obligation to maintain confidentiality applies even after settlement of a contract between the Customer and the Contractor; it shall lapse if and to the extent that the knowledge contained in these documents and information becomes demonstrably generally known to the public otherwise than due to breach of obligations by the Contractor.



## 13.2

Upon a Customer's request or without a request after termination of the Contract, the Contractor must hand over all business and technical documents and information related to the Contract to the Customer. If the Contractor has stored these documents and information in electronic form, it is necessary to delete this data after handing it over to the Customer on the repositories where the Contractor has placed it so far.

## 13.3

The Customer reserves all rights - especially ownership and copyright - to all commercial or technical documents and information that he/she has made available or that generally arose in connection with the Contract.

## 13.4

The Contractor must not use or offer or supply to third parties those products that have been manufactured in accordance with commercial and technical documents and information or data of the Customer or with help of his/her tools or instruments acquired in this way.

## 13.5

The Contractor is obliged to treat orders and contracts concluded with the Customer and all related business and technical details as the trade secret.

# 14. Right to Withdraw from the Contract

## 14.1

Both parties are entitled to withdraw from the Contract if stipulated in the contract, Purchase Conditions or the law.

## 14.2

It is agreed that if the performance provided by the Contractor is logically divisible into several elements or phases, where the individual elements or phases of the performance provided by the Contractor can be divided into elements or phases separately usable from the Customer's point of view, then the Customer is entitled to withdraw from the Contract even to the extent of some such elements or phases, if he/she has the right to withdraw, regardless of whether they are to be provided as performance to the Customer in the future or vice versa, even if such elements, phases or subject of performance as such do not directly meet the definition of partial performance. However, the Customer is always entitled to withdraw from the Contract in its entirety.

## 14.3

If the Customer is in uncertainty as to whether the Contractor is able to meet his/her obligations, the Customer is entitled to withdraw from the Contract or first request provision of security and withdraw from the Contract only if no security has been provided.





## 14.4

The Customer is entitled to withdraw from the Contract even if the Contract between him/her and his/her client has expired and if the performance provided by the Contractor should have contributed to fulfilment of the given obligation of the Customer towards the client.

## 14.5

Other reasons for the right to withdraw from the Contract are not affected for the Contracting Parties.

## 15. References and Advertising

### 15.1

The Contractor may refer to the business connection with the Customer in his/her advertising, references, etc. only with prior written consent of the Customer.

## 16. Specifics of Law in Foreign Trade

### 16.1

In relation to individual contracts and individual subjects of performance, the Contractor must provide the Customer with the following data in good advance time:

- indication of whether the subject of performance shall be covered by an export permit from the Czech Republic onwards and also indication of the relevant item number of the list according to the Czech export law;
- indication of possible registration of the Contractor's product according to the US-CCL and the corresponding list number;
- indication of whether the subject of the Contractor's performance pursuant to Regulation EC No. 428/2009 on dual-use shall be covered by an export permit and the corresponding item number of the list;
- statistical number of the subject of performance;
- weight of the subject of performance;
- country of origin of the subject of performance;
- country of creation of the subject of performance.

### 16.2

The Contractor declares that he/she does not support any direct or indirect trade or other links with terrorists, terrorist associations or other criminal or enemy organisations. In particular, the Contractor shall ensure, by appropriate organizational measures, the implementation of Regulations EC 2580/2001 and 881/2002, as well as the corresponding US-American or other relevant provisions, in particular by appropriate software systems.



## 17. Processing of Personal Data

### 17.1

The Customer is in the position of the controller of personal data in relation to the personal data obtained from the Contractor in connection with the Contract. This is about personal data of individuals. If the Contractor is a natural person, then it is directly about the personal data of the Contractor. If the Contractor is a legal person, then these are personal data of persons representing the Contractor (members of a statutory authority, employees, etc.).

### 17.2

The Customer processes exclusively the personal data necessary for conclusion of the Contract, for its performance and for eventual enforcement of claims thereof, as well as for keeping accounting and tax records. These are, in particular, the name, surname, contact e-mail address or telephone number, or the registered office of a natural person doing business and his/her business ID number.

### 17.3

Personal data are processed by the Customer for the duration of the Contract and for the period of three years from its fulfilment, or for the period until settlement of all mutual obligations of the Contracting Parties.

### 17.4

The Customer protects the personal data as much as possible using modern technologies that correspond to the up-to-date level of technical development. He/she has taken and maintains all possible (currently known) technical and organizational measures to prevent any misuse, damage or destruction of your personal data. Only selected employees and collaborators of the Customer (accounting specialist, legal representative, etc.) have access to the personal data and only to such an extent that the Customer can properly fulfil his/her obligations under the contracts, or enforce them, and also fulfil legal obligations in the field of accounting and taxation.

### 17.5

Within the intentions of Regulation No. 2016/679 of the European Parliament and of the Council, so-called GDPR, the personal data subject has the right for information on personal data processing, right to access personal data, right to personal data portability, right to restrict personal data processing or also right to be forgotten.



## 18. Final Provisions

### 18.1

If any provision of these Purchasing Conditions proves to be invalid or ineffective, the Purchasing Conditions and the Contract as a whole shall not be affected by that.

### 18.2

In case of a conflict between the Czech version of the Contract or these Purchase Conditions and their version in another language, the Czech version shall prevail.

### 18.3

Contractual penalties do not affect the right to compensation for damage caused by breach of obligation for which contractual penalties have been agreed.