

# General Purchase Terms and Conditions of SPS servis a programování strojů, s.r.o.

## 1. Validity of the General Purchase Terms and Conditions

For all relationships between SPS Servis a programování strojů, s. r. o., with its registered office at Bakov nad Jizerou, Husova 415, postcode 29401, identification number 26453452, registered in the Commercial Register maintained by the Municipal Court in Prague, section C, file No .83275 (hereinafter referred to as "SPS") and the seller as a supplier, arising from or in connection with the order of SPS, these General Purchase Terms and Conditions will apply, unless otherwise agreed in writing.

## 2. Orders and contract execution

1. Contracts (orders and their acceptance) as well as any changes and additions thereto are binding for SPS, if they have been issued in writing and signed by the SPS.
2. In the case of making orders in writing, an order is accepted and the contract is concluded at the moment when the order confirmation is delivered to SPS electronically or duly signed by the supplier.
3. Execution of a contract based on acceptance of an offer or another proposal for establishment of a contract with a deviation will not be permitted, even if it is a deviation that does not significantly amend the originally agreed conditions. The same applies to agreeing on any changes hereto or to entering into partial contracts corresponding hereto.
4. Unless an order is confirmed as received to SPS within 30 days of the issue thereof, SPS reserves the right to withdraw the order.

## 3. Contract form and contents

1. Unless otherwise agreed in writing in advance, any contract concluded with SPS must be made in writing and signed by representatives of both parties. All changes to the documents resulting from the performance of the subject-matter of the contract must also be agreed in writing. This also applies to the requirement for such changes to be agreed in writing.
2. The supplier and SPS agree that business customs will not be given priority over the provisions of legislation that is not peremptory. **Application of Sections 1799 and 1800 of Act No. 89/2012 Coll, the Civil Code, as amended, regarding boilerplate contracts**, will also be excluded.
3. Unless otherwise agreed, any contracts with SPS will include an inquiry from SPS, negotiation protocols, General Purchase Terms and Conditions, as amended, technical specifications, internal regulations of SPS as well as the requirements of SPS for sustainable development in business relationships with business partners (the Code of Conduct for Business Partners), requirements on suppliers with regard to compliance with ethical standards and declarations regarding social rights and industrial relations in SPS. If the General Purchase Terms and Conditions are not attached to the offer along with the SPS's requirements for sustainable development in business relationships (the Code of Conduct for Business Partners), the supplier's requirements with regard to compliance with ethical standards and declarations regarding social rights and industrial relationships in Volkswagen, they can also be found at [www.sps-mb.cz](http://www.sps-mb.cz).
4. The supplier operating on the premises of SPS is bound to comply with the requirements for protection of the environment and working environment, occupational health and safety according to internal regulations of SPS. The supplier is bound to request these requirements before commencing work in SPS's premises and/or its detached workplaces

#### **4. Confidentiality**

1. The supplier will treat the contract and all commercial and technical information related to the performance thereof as trade secret of SPS.
2. The supplier may refer to its business relationship with SPS in its advertisement only if SPS agrees with it in writing in advance.
3. The confidentiality obligation according to this clause applies regardless of whether the contract has been entered into and for any and all information acquired during the ordering phase, as well as after the contract has expired.

#### **5. Technical documents and production means**

1. SPS reserves title and intellectual property rights to all images, drawings, calculations, technical descriptions and other materials as well as models and templates (hereinafter “technical materials and production means”), which SPS makes available to the supplier. Technical materials and production means may not be disclosed to third parties without the express prior written consent of SPS. The same applies to articles manufactured using these technical materials and production means; these articles may only be delivered to SPS.
2. If for any reason the contract is not entered into or the transaction is not realised, the technical materials and production means must be returned to SPS.
3. These technical documents and production means are intended solely for the fulfilment of the contract entered into, and after the contract ends they must be promptly returned to SPS even without a request for their return.
4. Articles developed or improved by SPS in cooperation with the supplier may only be supplied to SPS.
5. The Supplier is required to examine SPS’s enquiry and the data contained therein to determine its accuracy, completeness, and feasibility and to consider in the offer all costs that could arise in connection with fulfilment of the supply. The supplier is bound to specify potential deficiencies in the offer. By submitting the offer, the Supplier accepts the risks related to the ability to fulfil the supply for the agreed price for the purpose specified in SPS’s enquiry.
6. In connection with the work for SPS, the supplier will, upon request, submit to SPS all documents and certificates necessary for further export both within and outside the European Union.

#### **6. Subcontractors**

1. Upon SPS’s request the supplier (in the case of use of subcontractors for part of its delivery) will submit to the SPS the list of its subcontractors including the scopes and specifications of their activities. The supplier is bound to notify SPS of subsequent changes in the subcontractors and as for written approval. SPS may request a subcontractor change in justified cases.
2. In the case of violation of the liabilities defined in this clause, SPS will be entitled to withdraw from the contract with immediate effect or terminate the contract.

#### **7. Performance**

1. The place of performance will be Bakov nad Jizerou, Husova 415, Czech Republic, unless SPS designates another place of performance.
2. Performance must correspond exactly to the agreed conditions and must be executed within the defined time frame.
3. SPS will not be bound to accept partial performance or performance exceeding the scope. Performance completed prior to the the agreed deadline is possible subject to written approval from SPS.
4. The supplier will assume liability for the risk of changed circumstances.

## 8. VIII. Payment terms

1. A condition for the maturity of the supplier's receivables is that SPS must have verifiable and formally correct tax documents.
2. All correspondence, delivery notes, bills, invoices etc., must at all times indicate the full order number; otherwise it will not be possible to expedite the processing of individual documents, to which SPS draws particular attention in the interest of both parties.
3. In the event of faulty performance, SPS will be entitled to withhold any payment, even if entitlement to it has arisen from another legal reason, until proper performance is provided.
4. The supplier may not assign or pledge its receivables towards SPS unless otherwise agreed in writing.
5. SPS is entitled to reimburse a part of the obligation corresponding to the Czech VAT claimed by the supplier to the account of its tax manager. SPS is bound to notify the supplier of this procedure.
6. Upon request from SPS, the supplier will be bound to prove that it is the owner of the account, to which payments are to be transferred in accordance with the contract concluded with SPS, or of any other account it uses for business transactions with SPS. Until demonstrable proof thereof is provided, SPS will be entitled to withhold any payments.
7. The supplier is required at the SPS's request to disclose the balance of open accounting items created from the bilateral business relationship, which are contained in the Supplier's accounting documents by the decisive date, and if necessary the Supplier will be required to clear up and approve discrepancies with the status contained in the SPS's accounting.

## 9. Retention right and setting off

SPS's right to exercise a retention right in relation to the supplier and SPS's right to set off mutual receivables against each other must not be restricted.

## 10. Transport - Costs - Transfer of risk

1. SPS hereby reserves the right to specify required transport routes and methods as well as means of transport and packaging methods.
2. **INCOTERMS** (as amended) conditions effective at the moment of execution of the contract will be used as delivery conditions.

## 11. Force majeure

1. Any circumstances which occur after the parties enter into the contract due to unforeseen events or events that the parties to the contract are unable to reverse, such as epidemic, pandemic, natural disasters or wars will be regarded as force majeure circumstances. The party which becomes unable to fulfil their contractual obligations must immediately notify the other party in writing of occurrence and termination of such circumstances and provide evidence that such circumstances have had a major effect on such party's ability to fulfil contractual obligations. Occurrence of scrap material, delayed sub-deliveries and labour strikes cannot be regarded as force majeure circumstances and do not give rise to any entitlement to extension of a confirmed delivery time.
2. If force majeure prevents SPS from receiving the performance at an agreed location, SPS will be exempt from delay of acceptance for the duration of such obstacle, as well as from entitlements of the supplier to consideration or reimbursement of losses. For the duration of such obstacle, the supplier will be bound to store the goods at its own costs and risk.
3. If any of the specified unforeseen circumstances last longer than 6 months for performance for which the time limit does not exceed 1 year or longer than 9 months for performance for which the time limit exceeds 1 year, SPS will be entitled to withdraw from the contract. In such case, the supplier will be required to refund any amounts paid by SPS along with any accrued interest in the amount set by applicable legislation regarding late payment interest.

## 12. Liability and warranty

1. Unless otherwise agreed regarding liability for due and timely performance, the supplier will assume liability in accordance with applicable legislation.
2. In the event of delay or defects in the supply, the supplier will compensate SPS for any resulting damage (direct or indirect) as well as any other loss thus incurred.
3. The warranty period for machines will be 24 months from the moment of acceptance without reservations. The warranty period for replacement parts will be 24 months of their installation, however, maximally 30 months from the delivery date. For other goods and services, the warranty term is 24 months of the delivery thereof. For complete equipment, the date as of which the warranty period is to be counted will be the date of delivery of the last part of the entire set of equipment. If the supplier performs installation, the warranty period will be counted as of the date when the entire equipment is accepted to be put into operation without reservations.
4. Elimination of defects will consist either in their repair or replacement of defective parts. If, after being prompted, the supplier fails to remove the defects in a proper and timely fashion, SPS may remove, or have the defects removed at the supplier's expense, without prejudice to the defect liability claims of CNC SPS. If this is not possible, SPS will have the right to withdraw from the contract. The withdrawal will take effect upon vain lapse of an additional time limit. Minor defects or defects the removal of which may not be delayed will be removed by SPS themselves, whereas the supplier is bound to reimburse to SPS the actual cost thereof. If specific parts need to be replaced or repaired, the warranty period will be extended by the time required for the replacement or the repair.
5. When a complaint has been settled, the the costs incurred as a result of the defect of the equipment, consisting of production downtime costs and payroll costs covering the company's workers involved in the removal of the defect will be billed to the supplier.

## 13. Contractual penalties

1. If a supply is not duly provided within the set time limit, the supplier will pay SPS a contractual fine of 0.5 % of the total price of the performance for each commenced week in default, however, not more than 5 % of the total price of the performance. SPS will be entitled to set off a receivable due to unpaid contractual penalty against the supplier's receivable for payment of the price of the performance.
2. Payment of the contractual penalty and late payment interests will not affect the SPS's entitlement other potentially higher damages. The obligation to pay a contractual fine will remain in effect even after expiry of the contract.

## 14. XIV. Governing law and place of jurisdiction

1. The contract as well as any legal relationships arising from any breach thereof will be governed by the laws of the Czech Republic, whereas the application of Sections 1726, 1728, 1729, 1740 (3), Section 1757 (2) and (3), Section 1765 and Section 1950 of Act No. 89/2012 Coll., the Civil Code, as amended, will be excluded.
2. The use of the provisions of private international law, such as the UN Convention on Contracts for the International Sale of Goods, is hereby excluded.
3. Any dispute arising out of or in connection with this contract will be settled by the court of the Czech Republic in whose jurisdiction the registered office of SPS is located.

## 15. Notice of termination

In any of the following situations, SPS will be entitled to terminate the contract with immediate effect or withdraw from it:

- a) the supplier has halted payments;
- b) insolvency or similar proceedings have been commenced against the supplier;
- c) the supplier entered liquidation;

- d) the supplier has terminated one of its activities, without which the performance of the subject of the contract is not possible;
- e) the supplier has failed to perform the subject of the contract in due time and manner;
- f) the Supplier directly or indirectly gives or promises to give a bribe or a different illegitimate advantage to an employee or a representative of SPS;
- g) the supplier breaches any other obligation stemming from documents which according to these Purchase Terms and Conditions are binding for the supplier, such as obligations relating to environmental protection or stemming from the requirements of SPS for sustainable development in business relationships (the Code of Conduct for Business Partners) and the supplier fails to eliminate such breach within an additionally provided time limit for compliance;
- h) the Supplier is effectively sentenced for a criminal act in compliance with Act No. 418/2011 Coll., on criminal liability of legal entities and proceedings against them, as amended;
- i) a member of the supplier's statutory body or a natural person conducting business is lawfully convicted of a criminal offence the facts of which are associated with the subject of their business activities.

## 16. Special provisions

1. The supplier must comply with all environmental legal regulations.
2. The supplier hereby undertakes to have an established quality assurance system.
3. If the supplier acquires access to personal data of natural persons, the supplier will be required to comply with valid personal data protection legislation and to process such personal data solely for the purposes stipulated in the contract (the defined purpose). The supplier is bound to ensure that its employees and co-workers gain access to personal data only in the extent absolutely necessary and is bound to bind them in writing to comply with data protection legislation and to instruct them about the obligation to comply with such legislation. Upon request, the supplier will be required to prove compliance. The supplier will ensure personal data protection at a level corresponding to the best and most modern technology. If personal data are processed by the supplier, then it will be necessary before the supplier gains access to such data to enter into a personal data protection agreement, a sample of which will be provided by SPS for such purpose. The supplier is bound to process personal data of which SPS or a contractual partner of SPS is the administrator only within the Czech Republic and/or within another EU member state or another state which is a member of the European Economic Area. Any deviations from these provisions will only be permitted if expressly agreed upon in writing between SPS and the supplier and will also be conditioned on arrangement of contracts for the particular purpose of personal data processing.

## 17. Effect

These General Purchase Terms and Conditions will come into force on 1 November 2020.

On behalf of the company:

SPS servis a programování strojů, s. r. o.

Pavel Janeček  
Company Executive