

TOSHULIN, a.s.

Commercial Terms and Conditions No. 01/2019 of TOSHULIN, a.s.,

Having its registered office in Hulín, Wolkerova 845, postcode 768 24, Czech Republic, Comp. Reg. No.: 255 10 851, registered in the Commercial Register kept by the Regional Court in Brno, Section B, file No. 2455

1. Introductory provisions

These Commercial Terms and Conditions of TOSHULIN, a.s., having its registered office in Hulín, Wolkerova 845, District of Kroměříž, postcode 768 24, Czech Republic (hereinafter referred to as "**TOSHULIN, a.s.**"), cover the rights and duties of the contracting parties and the legal relationships arising from a contract for work concluded in accordance with the provisions of Sections 2586 et seq. of Act No. 89/2012 Coll., the Civil Code, as amended (hereinafter referred to as the "**Civil Code**"), or a general contract for work concluded in accordance with the provisions of Section 1746 (2) of the Civil Code between TOSHULIN, a.s. as the contractor, on one hand, and the client, on the other hand, (hereinafter referred to as "**Client**") (hereinafter referred to as "**Contract for Work**").

In the case of any contradiction between the provisions of the Contract for Work and those of these Commercial Terms and Conditions, the provisions of the Contract for Work shall prevail over the provisions of the Commercial Terms and Conditions. These Commercial Terms and Conditions shall, in turn, prevail over those statutory provisions which are not of a coercive nature.

2. Validity of an Offer to conclude a Contract for Work

Unless agreed otherwise by the contracting parties or unless provided for otherwise in the Offer, an Offer to conclude a Contract for Work (hereinafter referred to as "**Offer**") shall remain valid for a period of 30 days after the date when this Offer is received by the addressee thereof.

3. Performance of a work

TOSHULIN, a.s. shall perform the work at its own expense and own risk within the period of time agreed in the Contract for Work; where this period of time is not specified exactly, the work shall be performed within an appropriate period of time taking into account the nature of the work. This period of time shall be extended with the period, during which the Client is in default of providing the necessary cooperation to perform the work or fulfilling any of its duties under the Contract for Work and these Commercial Terms and Conditions. The Client undertakes to accept the performed work based on a completion notification given by TOSHULIN, a.s.

The Client is obliged to notify TOSHULIN, a.s. of any and all circumstances that affect or are likely to affect the fulfilment of its obligations under the Contract for Work (e.g. the Client is obliged to report on the non-readiness of the assembly area, etc.) immediately after becoming aware of such circumstance. The Client is responsible for any damage possibly suffered by TOSHULIN, a.s. as a result of any late notification concerning the above mentioned facts.

When performing the work, TOSHULIN, a.s. shall proceed independently and shall not be bound by any instructions from the Client. TOSHULIN, a.s. is entitled to outsource the work. If the work is outsourced, TOSHULIN, a.s. shall remain liable to the same extent as if the work was performed by TOSHULIN, a.s.

4. Items intended for the performance of the work

Any items provided by the Client for the purpose of performing the work shall be sent to TOSHULIN, a.s. without any undue delay following the conclusion of the Contract for Work. Any items provided by the Client for the purpose of control tests must be sent to TOSHULIN, a.s. sufficiently in advance of the agreed final date of these tests. The price of these items shall be deemed to be included in the price for the work and the price for the work shall be deemed not to be reduced by the price of such provided items.

In case the Client fails to provide the relevant items in time, TOSHULIN, a.s. shall be entitled to:

- a) Purchase these items on behalf and at the expense of the Client. The Client shall be subsequently obliged to reimburse their purchase price and any necessary expenses related to their purchase, without any undue delay after being requested to do so by TOSHULIN, a.s.;
- b) Interrupt the performance of the Contract for Work based on a default by the Client until the relevant items or the necessary cooperation are provided. The period of time agreed for the performance of the work shall be extended by the duration of default by the Client.

The Client shall bear the risk of damage to the items purchased for the performance of the work and shall remain their proprietor until they become an integral part of the subject-matter of the work as a result of their incorporation. TOSHULIN, a.s. shall be obliged to return to the Client, within 1 month after the completion of the work or after the fulfilment of the obligation to perform the requested work, any and all items supplied by the Client that were not used for the performance of the work. Any ancillary costs shall be borne by the Client.

5. Method of performing the work

TOSHULIN, a.s. is obliged to notify the Client, without any undue delay, of the inappropriate nature of any items supplied by the Client or of the instructions provided by the Client with regard to the performance of the work, where such inappropriateness could have been

identified based on due care. In the event that the inappropriate items or incorrect instructions hinder the due and proper performance of the work, TOSHULIN, a.s. shall be obliged to interrupt the performance of the work to the necessary extent, until the relevant items are replaced or until TOSHULIN, a.s. receives modified instructions from the Client, or until TOSHULIN, a.s. receives a written notification confirming that the Client insists that the work is performed with the use of the items supplied and/or according to the instructions given. The period of time agreed for the performance of the work shall be extended by the duration of the necessary interruption of the performance of the work. In addition, TOSHULIN, a.s. shall be entitled to reimbursement of costs related to such interruption or with the use of inappropriate items until their inappropriateness could have been detected.

Provided that its obligations are fulfilled in accordance with the previous paragraph, TOSHULIN, a.s. shall not be responsible for any impossibility to complete the work and shall not be liable for any defects in the completed work caused by the inappropriate items or incorrect instructions, in the event that the Client insisted in writing on their use in the performance of the work. If the work cannot be completed, TOSHULIN, a.s. shall be entitled to the price agreed in the Contract for Work.

After the subject-matter of the work is completed, the preliminary test shall be performed in the registered office of TOSHULIN, a. s. This preliminary test shall verify the compliance of the subject-matter of the work with the contract. If the preliminary test is performed successfully, the Client shall be obliged to accept the subject-matter of the work in the Place of Handover, if no other period is specified by the contract, within 2 months after the successful completion of the preliminary test; the particular date shall be determined by TOSHULIN, a. s. In the case of any violation of this obligation, the Client shall be obliged to pay TOSHULIN, a. s. the contractual penalty amounting to 0,05% of the total price for the work for each and every commenced week of the Client's delay; however, 5% of the price for the work at the maximum. In addition to the agreed contractual penalty, the Client shall be obliged to reimburse the Contractor for all arisen loss, in its full amount, especially the expenses related to the storage, manipulation, extra costs related to the transport, to the idle hours of the employees and people tasked by TOSHULIN, a.s., salary extra expenses including the travel expenses, accommodation and boarding costs, overtime work, etc.

6. Fulfilment of the obligation to perform the work

TOSHULIN, a.s. shall fulfil its obligation to perform the work upon the proper completion and handover of the subject-matter of the work to the Client at the agreed location (hereinafter referred to as "**Place of Handover**").

If the Place of Handover was not agreed in advance and the Contract for Work provides for the obligation of TOSHULIN, a.s. to arrange for the delivery of the subject-matter of the work, the handover of the subject-matter of the work shall take place upon its delivery to the first carrier who will transport it to the place of destination.

If the Place of Handover or the obligation of TOSHULIN, a.s. to arrange for the delivery of the subject-matter of the work is not provided for in the Contract for Work, the handover shall take place at the location where the work was performed in accordance with the Contract for Work. If such a place is not defined in the Contract for Work, the handover shall take place at the location of which the Client was already notified or should have been, at the time of conclusion of the Contract for Work, aware of as the place where the work would be performed by TOSHULIN, a.s.

In the situations which are not clearly covered by the previous paragraph of this Article, the handover of the work shall take place at the registered office or place of business of TOSHULIN, a.s., provided that the notification of this place has been delivered to the Client in due time.

7. Price for the work and the payment thereof

The Client undertakes to pay the price for the work under the following terms:

- 35% of the price within 14 days after the conclusion of the Contract for Work (after the date of signing of the Contract for Work by both the Client and TOSHULIN, a.s.),
- 65% of the price through a documentary letter of credit.

The documentary letter of credit, in consistence with the previous paragraph, shall be irrevocable and available for TOSHULIN, a.s. within 14 days after the signing of the Contract for Work. The payment shall be conditional upon the presentation of an invoice issued by TOSHULIN, a.s. requesting the payment of the price for the work or a part thereof, and upon the handover of the delivery note by TOSHULIN, a.s. signed by the Client, proving that the subject-matter of work was handed over to the Client in accordance with the previous Article.

If the Contract for Work provides for the obligation of TOSHULIN, a.s. to deliver the work to the Client and if a part of the price for the work is due and payable after the acceptance of the work by the Client from the carrier, the Client is obliged to pay the agreed part of the costs for the work within the agreed time limit, even if the work has not been delivered within this period of time, but this situation is caused solely by circumstances falling under the responsibility of the Client.

In the event that, after the conclusion of the Contract for Work, TOSHULIN, a.s. and the Client agree on any modification of the work and do not stipulate the impact of such modification on the price for the work, the Client is obliged to pay at least the price of the work as agreed in the Contract for Work. If the modification of the work (taking into account the scope of the possible various inevitable activities, necessary costs related to the performance of the work and the procurement of the items required for the performance of the work) results in increased costs which must be necessarily paid by TOSHULIN, a.s. for the performance of the modified work, the agreed price for the work will be increased with such costs.

8. Reservation of ownership

The Client shall acquire ownership to the work upon its acceptance. Until that time, the Client is not entitled to freely dispose of the work, whether legally or effectively, except for using the work to manufacture components, products or other outputs, in accordance with the exercise of the Client's legitimate business activities; under no circumstances the Client is entitled to sell the work to a third party. In addition, the Client is not entitled to interfere in any way in the hardware and/or software provided with the work at the time of its delivery to the Client, without the previous written consent of TOSHULIN, a.s.

In the case, if the Client does not pay properly the price for the work or a part thereof, TOSHULIN, a. s. shall be entitled to make an intervention to the subject-matter of the work, including the so-called remote switching-off in order to disable its proper utilization. In such a case, the Client is not entitled to claim against TOSHULIN, a. s. any compensation of loss, including lost profits, or any other damage. TOSHULIN, a. s. shall be obliged to put the subject-matter of the work into operation within the adequate period, after the price for the work is paid properly and after the adequate advance payment related to the actual expenses for putting the subject-matter of the work into operation is paid.

9. Installation of the subject-matter of work

If the Contract for Work stipulates the obligation of TOSHULIN, a.s. to install the subject-matter of the work, TOSHULIN, a.s. is entitled to carry out such installation with its own staff or outsource it to a third party. The installation is not included in the price for the work and will be carried out at the Client's expense.

The Client shall be obliged to enable the installation commencement no later than within 30 days, after the subject-matter of the work is delivered to the place of installation. If the Client does not comply with the conditions for installation of the subject-matter of the work notified in advance or if it does not enable installation of the subject-matter of the work, the Client shall be obliged to pay TOSHULIN, a.s. the contractual penalty amounting to 0,05% of the total price for the work for each and every commenced day of the violation of its obligation. In addition to the contractual penalty, the Client shall be obliged to reimburse TOSHULIN, a.s. for all arisen loss, in its full amount, especially the expenses related to idle hours of the employees and tasked people, salary extra expenses (including the travel expenses, accommodation and boarding costs, etc.).

10. Liability for defects; warranty

TOSHULIN, a.s. shall be liable for defects in the work existing at the time of handover of the subject-matter of work. TOSHULIN, a.s. shall not be responsible for any defect in the work caused by the use of an item provided to TOSHULIN, a.s. by the Client for the purpose of its use in the event that TOSHULIN, a.s., in spite of due care, could not have recognized the inappropriateness of such an item, or in the event that TOSHULIN, a.s. notified the Client of this fact and the Client insisted on further use of the item. In addition, TOSHULIN, a.s. shall not be liable for any defect caused by complying with inappropriate instructions given by the Client, in the event that TOSHULIN, a.s. notified the Client of the inappropriateness thereof and the Client insisted on their compliance, or in the event that TOSHULIN, a.s. was not able to recognize such inappropriateness.

TOSHULIN, a.s. provides the Client with warranty for the quality of the work and guarantees that the work will be, throughout the warranty period, fit to use for the usual purpose or will retain its usual properties. The warranty period shall be 12 months after the handover of the work to the Client or 3,800 operating hours of the subject-matter of the work, and shall expire after these 12 months or after the subject-matter of the work has been in operation for 3,800 hours; however, the warranty period shall expire no later than 16 months after the subject-matter of the work has been shipped from TOSHULIN, a.s. If the shipping of the subject-matter of the work is delayed for reasons attributable to the Client, the aforesaid maximum warranty period shall commence on the day following after the date of occurrence of the event which resulted in the delayed shipping.

If, at any time during the warranty period, the subject-matter of the work no longer meets the requirements specified in the previous paragraph of this Article, the Client shall only be entitled to request that TOSHULIN, a.s. provides, free of charge, replacement for the damaged part of the subject-matter of the work and repairs the subject-matter of work. This shall not apply if:

- (a) The damaged part of the subject-matter of the work is used in the usual manner during the operation of the subject-matter of the work and its service life during the operation of the subject-matter of the work is shorter than the warranty period hereunder,
- (b) The damaged part of the subject-matter of the work was exposed to a detrimental effect, which is incompatible with the proper use of the subject-matter of the work,
- (c) The damage was caused by the Client, or by a third party, or by force majeure,
- (d) If the Contract for Work requires TOSHULIN, a.s. to carry out the installation of the work, and the work was not accepted at the place of installation to be carried out by TOSHULIN, a.s. or by a third party, which is responsible for the installation, in intact and complete packaging,
- (e) The installation and/or repair of the subject-matter of the work was not carried out by TOSHULIN, a.s. or by a third party designated by TOSHULIN, a.s.,
- (f) The subject-matter of the work and parts thereof were not stored in appropriate space prior to and during the installation, if the Contract for Work requires TOSHULIN, a.s. to carry out the installation of the subject-matter of the work,
- (g) The Client failed to protect the subject-matter of the work or parts thereof against loss, destruction or damage,
- (h) The Client did not use the subject-matter of the work or a part thereof in consistence with the instructions given by TOSHULIN, a.s., which are explicitly indicated in the operating manual,
- (i) The damaged part of the subject-matter of the work is not delivered by the Client at its expense to TOSHULIN, a.s., and
- (j) The Client failed to request in writing the delivery of the replacement for the damaged part of the subject-matter of the work during the warranty period.

In the case of the Client's conduct at variance with the agreed way of treatment and use of the subject-matter of the work and/or at variance with the usual professional care, as it is – among others – described above, if the immediate improvement is not provided even based on the invitation of TOSHULIN, a. s., TOSHULIN, a. s. shall be entitled by its one-sided decision, according to its own consideration, to cancel, limit or to shorten the granted warranty to the subject-matter of the work as the whole, and this becomes effective on the day of the delivery of such a decision to the Client.

11. Notification of defects

Any and all defects in the subject-matter of the work must be notified to TOSHULIN, a.s. in writing, without any undue delay after the Client has detected or should have, under due care, detected such defects. The Client is, in particular, required to monitor the products manufactured with the subject-matter of the work. Otherwise the Client shall not be entitled to demand from TOSHULIN, a.s. the payment of any claim arising from the liability for defects. In such a case, TOSHULIN, a.s. shall also not be liable for any damage related to the operation of the subject-matter of the work.

12. Limitation of damage

The responsibility of TOSHULIN, a.s. for the damage which the Client may suffer due to a violation of any legal or contractual obligations by TOSHULIN, a.s., including the total amount of all agreed contractual penalties, shall be limited to the amount of 10% of the price for the work without VAT. The Client shall not be entitled to demand the payment of any loss, contractual penalty or another performance beyond the aforesaid amount, if the damage is not caused intentionally. The aforesaid amount is also considered to be the maximum possible height of the foreseeable damage.

13. Confidentiality agreement

Any and all facts of commercial, production and technical nature, which the contracting parties have made accessible to each other in connection with the Contract for Work, shall be subject to trade secret; the contracting parties undertake not to publish, disclose to third parties or use for their own benefit or for the benefit of a third party such information, directly or indirectly, when fulfilling their obligations arising from or in connection with the Contract for Work. Unless agreed otherwise by the contracting parties, they shall be obliged to keep confidential all facts and circumstances they learned about in connection with the Contract for Work also after the date of expiry of other rights and duties arising from the Contract for Work. In such a case, the contracting parties are obliged to return any confidential information received or to destroy such information with full record, as the case may be. The contracting parties are also obliged to see to it that good reputation of the other contracting party is not damaged. A violation of these obligations shall give rise to a liability to pay damage.

14. Protection of transfers of personal data to countries outside of the EU/EEA

Should the performance of the Contract for Work include any transfers of personal data to countries outside of the EU/EEA within the meaning of the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and on repealing of the Directive 95/46/EC (General Data Protection Regulation), before the execution of the Contract for Work, TOSHULIN, a.s. and the Client shall sign the Standard Contractual Clauses for the Transfers of Personal Data to Third Countries (Controller-to-Controller Transfers) or adopt any other appropriate safeguard pursuant to Articles 45 to 47 of the General Data Protection Regulation available at that time.

15. Final provisions

The rights and duties and the legal relationships arising from the Contract for Work concluded between TOSHULIN, a.s. and the Client shall be governed by these Commercial Terms and Conditions upon the effective date of the Commercial Terms and Conditions, i.e. upon their signing by both TOSHULIN, a.s. and the Client, provided that they were not signed upon the conclusion of the Contract for Work referring to them. Unless provided otherwise, the rights and duties as well as the legal relationships arising from the Contract for Work and from these Commercial Terms and Conditions shall be governed by the laws of the Czech Republic, including relationships arising from a violation of the Contract for Work and/or violation of these Commercial Terms and Conditions.

For the conclusion of the Contract for Work, the contracting parties exclude the application of Section 1740 (3) and Section 1751 (2) of the Civil Code, which provide that a contract is concluded even if the expressions of will by the contracting parties are not fully concordant.

These Commercial Terms and Conditions replace in their full scope all previous General Commercial Terms and Conditions of TOSHULIN, a.s., which were approved and signed by TOSHULIN, a.s. and the Client.

TOSHULIN, a.s. and the Client agree the competence of general courts to hear all disputes arising from the contractual relationship concluded between TOSHULIN, a.s. and the Client and in connection with it in such a way, that general courts of the Czech Republic are competent to decide a possible dispute, while the general court determined according to the registered office of TOSHULIN, a.s. has the local competence to hear the legal case.