

## **FANS, a.s. General Terms of Trade to the Contract for Work**

Set down in accordance with the provisions of Act No. 1751, No. 89/2012 Coll., the Civil Code,  
as amended

### **Preamble**

#### **General Terms of Trade (VOP)**

- A.** Stipulate the conditions under which an individual contract for a Work (hereinafter referred to only as the contract) pursuant to the provisions of Section 2586 and subsequent sections of the Civil Code, as amended, is concluded on the basis of a confirmed written contract for Work or based on acceptance of a written order, and furthermore
- B.** Define a part of the content of the concluded contract for Work. Provisions concluded in an individual contract for Work shall enjoy priority over different wording of General Terms of Trade (VOP).
- C.** Provisions in VOP and the terms and conditions of the offer shall enjoy priority over non-mandatory provisions of the generally binding legal regulations in force.

#### **I. Conclusion of the Contract for Work**

- 1. An individual contract for Work is concluded upon its written draft being signed by the contracting parties or upon delivery of an unconditionally approved and confirmed order from the contractor to the FANS.
- 2. The subject matter of the contract is performance of Work (structures, building and installation Work) or services. The subject matter of the contract may be dependent on the order, if the contract is being concluded on the basis of an accepted order. The contractor undertakes to perform the scope of Work according to the terms and conditions agreed in the contract. The contractor may implement any changes in performance of the Work proposed by the FANS only after these will be properly ordered in writing and their price agreed. Possible changes in the Work performance shall be arranged in an amendment to the contract or by an accepted change to the order.

#### **II. Delivery Period**

- 1. The contractor undertakes to perform the Work within the deadlines stipulated in an individual contract for Work. Commencement of Work shall be understood as its actual performance at a building site or a Workplace, recorded in the site diary or the assembly log. Completion of Work shall be understood as its acceptance by the FANS, without defects and outstanding Work, as confirmed by the signing of a handover protocol by both parties.
- 2. If the contractor will perform the Work in stages, a report on Work completion of the relevant stage shall be made after the completion of each stage of Work. Completion of the stage shall be understood as execution of all Work up to a given date, subject to the time schedule. Additional changes in the performance of Work shall not entitle the contractor to prolong the period for Work completion, unless the parties agree otherwise. Possible changes in the delivery period shall be agreed in an amendment to the contract.

#### **III. Obligations of the Contractual Parties**

- 1. The FANS undertakes:
  - a) to hand the project documentation over to the contractor as agreed by the parties
  - b) to hand over the building-site or Workplace to the contractor as agreed

- c) to determine an area to establish a building site for the contractor
  - d) to determine dumping grounds for dug out earth, installation and storage areas and driving routes within the premises for the contractor
  - e) to ensure the possibility of using electricity, water and other utilities for contractor's Work for a reimbursement
  - f) to supply necessary co-operation to the contractor
  - g) to accept the properly completed Work and to pay an agreed price for it.
2. The contractor undertakes:
- a) to perform the Work to the highest standard, subject to the project documentation or technical specifications in compliance with the relevant legal regulations and technical standards
  - b) to adhere to written instructions of the FANS in accordance with modifications and changes in the implementation of Work
  - c) to inform FANS of any and all local conditions limiting or preventing the execution of Work at latest before the initiation of the Work process, and to warn FANS against improper material and instructions in the course of executing the Work
  - d) to carry out additional Work (a reduced amount of Work) demanded in writing subject to an order by an authorized employee of the FANS
  - e) to hand over the Work to the FANS at the handover time and place
  - f) to ensure installation, operation, and maintenance of the relevant facilities and equipment of the building site pursuant to a specific contract with the FANS
  - g) to make functionality tests or inspection of the Work in the presence of the FANS
  - h) to invite the FANS in writing to initiate negotiations relating to the acceptance of Work at least 5 days prior to the date of the Work completion
  - i) to hand over documentation of actual Work execution, the relevant certificates of quality and Work completeness as well as the relevant proclamations to the FANS at the time of Work completion
  - j) to hand the finished Work over to the FANS at once or in stages, as agreed with the FANS
  - k) to restore the Working premises used by him into their original state on the day of Work completion and to carry out the required landscaping.
  - l) to bear the risk of possible changes in circumstances affecting the execution of Work, as per s. 1765 of the Civil Code, especially any changes connected with increased expenses.

#### **IV. Price of Work**

1. The fixed contractual unit prices and quantities, subject to the bill of quantities approved by the contractor, will be the bases for determination of the price of Work.
2. In accordance with Price Act No. 526/1990 Coll., in valid wording, a total price is agreed for performance of the Work and it is always indicated in the order, or more precisely in the contract. The price shall always include possible customs expenses, and it is exclusive of VAT that will be added by the contractor corresponding to statutory rate.
3. The contractual parties are entitled to demand an increase or reduction of the total price solely in the form of a written draft amendment to the contract, only in the case of changes in quantity or modification of the subject matter or the contract. The agreed fixed contractual unit prices are constant, valid also for possible amendments to the contract. The price in an amendment to the contract shall be calculated as a sum of multiples of fixed unit prices and the quantity, where the quantity shall be agreed on by the authorized representative of the contracting parties before commencement of the implementation of the additional Work (a reduced amount of Work) by way of making and entry in the building site diary or the assembly log.

#### **V. Payment terms**

1. The contractor is obliged to invoice the cost of the Work only after the date of the handover of Work by a handover protocol of the Work with the confirmation of the removal of defects and arrears, unless otherwise agreed.

2. Each invoice must be issued in 2 hard copies and has to contain the following particulars:
  - a) the business name and the address of contractor, tax registration no. and company registration no.
  - b) the business name, address, account no. and identification code of the banking institution, to which the billed sum is to be transferred
  - c) FANS contract no. / FANS order no.
  - d) own numerical identification
  - e) the date of issue and due date
  - f) information on whether the invoice is a monthly or the final bill. If continuous invoicing is concerned, the invoice has to be accompanied by a summary of the invoicing history, which part of Work is being invoiced - divided according to name and quantity of Work (or a reference to the relevant and approved sheet of the actually performed Work)
  - g) the invoiced price structured as follows: price exclusive of VAT, the tax rate 21 % or possibly 5 %, and the price of customs duties, if applicable
  - h) list of attachments
  - i) indication that this is a duplicate billing, if applicable.
3. The final invoice for the execution of the Work in question shall be enclosed with the handover protocol, signed by the FANS (i.e. building or technical supervisor) and removal of defects and arrears, otherwise the invoice will not be paid and shall be returned to the contractor. A list of operations (List of Works), signed by the FANS, must be enclosed to any partial invoice.
4. Any invoice without the particulars according to paragraph 2 of this contract article, or in variance with the contents of the List of Works, shall entitle the FANS not to pay and to return the invoice back to the contractor with mention of the given reasons. Maturity of an invoice begins to run from the date of receipt of the corrected invoice by the FANS.
5. The maturity of the invoice is 30 days after its receipt by the FANS if not agreed otherwise in the contract. The invoice shall be considered as paid on the date on which the invoiced amount was debited from the account of the FANS.
6. The contracting parties have agreed on payment by bank transfer to the contractor's account.

## **VI. Contractual Penalties, Withdrawal from the Contract**

1. In the case of failure to meet the deadline for the execution of Work, i.e. completion of Work activities in compliance with the contract, the FANS shall be entitled to charge the contractor a contractual penalty amounting to 0.6 % of the total price of the execution of Work per each day of delay, however no more than 20 % of the cost of Work for the entire period of delay.
2. In case of failure to meet the deadline for the Work completion of the relevant stage, the FANS shall be entitled to charge the contractor a contractual penalty amounting to 0.5 % of the price, equaling the sum of prices of all previous stages and the relevant stage, per each day of delay, however no more than 20 % of the price of Work for the entire period of delay.
3. In the case of the FANS's delay with invoice payment, the contractor shall be entitled to charge the FANS a contractual penalty amounting to 0.035 % of the due amount per each day of delay, however no more than 5 % of the price of Work for the entire period of delay.
4. In case of the contractor's delay in removing obvious defects and arrears, discovered during the handover of the Work, the FANS shall be entitled to charge the contractor a contractual penalty amounting to 0.5 % of the price of Work per each day of delay, however no more than 20 % of the price of Work for the entire period of delay.
5. In case of the contractor's delay in removing the claimed hidden defects, discovered during the guarantee period, the FANS shall be entitled to charge the contractor a contractual penalty amounting to 0.5 % of the price of Work per each day of delay.

6. Contractual penalties shall be paid by the liable party on the basis of a proper bill submitted by the entitled party, substantiated by relevant conclusive evidence. The contractual penalties must not be put on the same accounting document containing the monthly billing.
7. Should the contractor fail to respond to a written notice of the FANS regarding the removal of defects and arrears of the Work and does not remove the defects of the Work or poor quality within 14 days from the day of its delivery, the FANS shall be entitled to authorize a third party to remove the defects or to carry out the remedies of defects himself and charge the cost incurred to the contractor at the full amount. In this case the FANS shall also be entitled to withdraw from the contract. This withdrawal shall be effective upon its delivery to the other contracting party.
8. The FANS is also entitled to withdraw in cases of substantial breach of contract:
  - a) if the contractor did not take-over the site, or didn't start respective Works within 7 days from the term set,
  - b) if the contractor failed to comply with the specification or conditions of the offer in execution of the Work, although he was notified by the FANS and failed to redress within an additional time period,
  - c) if the contractor fails to comply with the prescribed quality in performance of the Work, although he was notified by the FANS and failed to redress within an additional time period,
  - d) the contractor is in delay with execution of the Work according to individual stages arranged, or in delay with completion of the Work by more than 20 calendar days,
  - e) insolvency proceedings were initiated against the contractor and he is declared bankrupt.
9. The contractor is entitled to get paid for operations executed at the time of withdrawal notice delivery, however only if they are of high quality, functional, and of economic benefit to the FANS. The decision on this is made exclusively by the FANS. Contractual parties are obliged to make a settlement within 30 days from the date of effect of the withdrawal. The withdrawal is in effect upon delivery of a written notification of withdrawal to the contractor.
10. In case of the FANS's withdrawal from the contract by reason of insolvency proceedings against the contractor, the FANS is entitled to a discount of 15 % of the price of the Work. Claims of the FANS for compensation of damages on the grounds of failure to comply with the contract by the contractor shall not be affected thereby.
11. The FANS is entitled to demand payment of a contractual penalty from the contractor in the amount set below, in case the contractor, his employees or persons who perform the Work commits an offence against the organizational directives of the FANS or his investor
 

a) Consuming or bringing in alcohol	up to CZK 50,000.00
b) Smoking at a banned place	up to CZK 50,000.00
c) Gross or repeated violation of occupational health and safety rules	up to CZK 50,000.00
d) Traffic offence	up to CZK 10,000.00
e) Smuggling materials out of the site where Work	
f) is performed without proper permission	up to CZK 10,000.00
g) Failure to secure the grounds	up to CZK 10,000.00
h) Entering with an invalid card or another person's card	up to CZK 10,000.00
i) Loss of magnetic entrance or other cards (subject to the investor's price list)	
j) Other sanction penalties in compliance with the FANS, a.s. Price List	
12. If the criminal act of theft is established by investigating authorities as having been perpetrated by the contractor, his employee, or a person executing the Work, relating directly to the operation within the premises of the FANS or his investor, where the contractor is executing the Work, the FANS is entitled to ask the contractor to pay a contractual penalty up to the amount of CZK 100,000.00.

13. The FANS is entitled to set off the amount of the contractual penalty awarded to the contractor unilaterally against the price for execution of the Work, which the contractual penalty relates to.
14. Claims for damage compensation made by the FANS or the contractor will not be affected by provisions no. 1-5, 11 and 12 of Article VI, i.e. the contractual parties undertake to pay for damages incurred in addition to the contractual penalty.

## **VII. Transfer of Ownership and Risk of Damage to the Work, Liability for Defects, Guarantee**

1. The FANS is the owner of the Work from the beginning of its execution, unless the owner is the investor directly. Ownership rights to the material are transferred to the FANS by its integration in the Work.
2. The contractor bears the risk of damages to the Work during the execution of Work and this risk is then transferred to the FANS upon handover and acceptance of the Work. The FANS is not obliged to accept Work showing defects and arrears.
3. The contractor shall be liable for defects of Work, if he failed to examine carefully the assignment accepted from the FANS or local conditions of the site for defects that he was able to determine and should have discovered and notified the FANS of, within reasonable diligence that could be required from him.
4. The contractor is liable for defects of the Work at the time of its handover to the FANS and for defects occurred during the guarantee period, as well as for quality decrease during the guarantee period. In case defects to the Work exist, the FANS shall be entitled to demand and the contractor shall be bound to provide rectification of the defect free of charge. In case of demonstrably reduced quality of Work, including reduced Work performance, the contractor is, upon agreement with the FANS, obliged to grant to the FANS a discount from the price of Work or, if possible, a replacement with new parts.
5. The contractor shall rectify evident defects and arrears, discovered during the handover of Work, by an agreed deadline or within 15 days from the day of the FANS's claim.
6. The contractor shall rectify hidden defects of the Work, discovered in the course of the guarantee period, within 15 days from the complaint of the FANS, unless a different date was agreed.
7. If it concerns a defect, which prevents the facility from functioning or limits the operation of another technological facility, the contractor shall be bound to commence defect rectification within 24 hours from the written report of the defect.
8. Should the FANS claim a hidden defect of the Work, he shall be obliged to make a complaint about in writing to the contractor. The contractor shall communicate his viewpoint of the complaint in writing to the FANS, or arrange a meeting to discuss the complaint between the contracting parties within 3 business days from receiving the complaint. A defect has to be rectified within 15 days from notification, unless otherwise agreed by the parties. In the case the contractor fails to supply his viewpoint within 3 days or should he fail to rectify the defect within the relevant period of time, the FANS shall be entitled to assign the repair to another entity or carry out the repair himself and charge the costs to the contractor. This does not affect the obligations of the contractor resulting from the guarantee.
9. In case of a dispute relating to the acknowledgement of a hidden defect, the contracting parties have agreed to comply with the opinion of the relevant authorized expert.
10. The guarantee period for the performed Work is set from the day of signing of the handover protocol and protocol on redress of defects and arrears by both parties and its basic period is 60 months, unless otherwise agreed in the Contract. The guarantee period shall be extended in case of acknowledgement of a complaint regarding a hidden defect by the number of days, which shall pass from the date of the complaint until rectification of the hidden defects.



11. Confirmation of defect rectification may be signed on behalf of the FANS by:
  - a) an employee authorized with supervision
  - b) a person authorized to deal with technical issues.

#### **VIII. Provisions of an Operational and Organizational Nature**

1. The FANS, i.e. the company FANS, a.s., undertook to comply with the requirements of the CSN EN ISO 9001 and 14001 norm and OHSAS18001 standards ([www.fans.cz](http://www.fans.cz)). Therefore, the contractor shall be bound to supply products, perform the Work and provide services in a way that does not damage the environment and shall be obliged to use means of production and materials, which comply with the requirement for Work quality, occupational health and safety and environmental protection.
2. Starting with the takeover of the construction site or Workplace and ending with its handover to the FANS, the contractor shall observe organizational, safety, fire prevention, hygiene and ecological intra-company rules, directives, notices and instructions of the plant or company, where he implements the Work, this mainly on the premises of the facilities, which are directly affected by the Contract performance.
3. The contractor has to hand over and update a list of his own employees, or employees of his sub-contractor, for the purposes of training these in occupational safety. Without undergoing this training, the contractor shall not be entitled to enter the relevant construction premises. He shall be responsible for statutory regulations relating to employing foreigners and persons without state citizenship not being breached on his part and the part of his sub-contractors. The contractor shall be liable for his employees and employees of his sub-contractors having a valid medical examination.
4. For the execution of the Work, the contractor shall be bound to assign only such employees, as have all necessary training, certificates and work examinations. During the execution of the order, he shall use only equipment with valid inspection records, meeting all relevant regulations. Documents shall be handed over before the commencement of Work activities.
5. The contractor shall keep a construction site diary or assembly log on a daily basis, from commencement of the Work until its completion. In the construction site diary, he shall record information about the progress of Work and all important and decisive circumstances relating to the Work and performance of the contract. The construction site diary shall be available at the Workplace to the FANS, who has the right to note his requirements and comments concerning Work performance in it and the contractor shall take notice of them. The construction site diary shall be kept with two carbon copies, of which one shall be handed over to the FANS in the course of the execution of Work, however at the latest upon the handover of the Work.
6. The contractor shall be bound to appoint a responsible person for communication with the FANS and name the manager, who shall be in charge of the execution of Work.
7. The contractor shall be obliged to determine which types of waste shall be produced and the amount of these as early as during preparation of the price offer for the execution of Work. The waste originator is the contractor, who shall arrange for the FANS at his own expense:
  - a) removal of the waste to an authorized facility
  - b) arranging of its disposal by an authorized facility
  - c) keeping records of the wastes produced during the execution of Work.
8. The contractor shall be liable for maintaining the confidentiality of all information obtained from authorized employees of the FANS and all information obtained during the determination and investigation of defects, malfunctions and emergencies on the premises where he performs the Work. All documentation provided to the contractor (blueprints, technical documentation, etc.) constitutes the intellectual ownership of the FANS. It has the nature of a business secret and must not be further divulged, provided to third parties or misused in any manner pursuant to

Section 2985 of the Civil Code without written consent of the FANS. The provisions of Section 2988 et seq. of the Civil Code apply to infringement or endangerment of the right to business secrets. Possible damages caused or inflicted by the contractor (or the persons authorized by him, coercive in the Work performance) to the property of the FANS or his investor, shall be resolved by the FANS with a report of damages and the contractor is bound to compensate these damages. The contractor's insurance may be used to cover these damages. The contractor shall also be liable for accidental damages incurred to the Work until it is handed over to the FANS.

#### **IX. Special Provisions**

1. These VOP of company FANS, a.s., along with attachments, terms and conditions of the enquiry (if these are specified), bill of quantities or the approved technical assignment, time schedule of execution (if it is specified or required) are an integral part of an individual contract of work. These attachments must have a number identical to that on the order.
2. The FANS reserves the right to inspect and/or test the quality and functionality of the Work (subject to the order) to make sure that it complies with the agreed contractual terms.
3. The FANS reserves the right to check the compliance schedule, delivery performance and quality at any time without written notice, the contractor / subcontractor is obliged to allow access to the authorized personnel of the FANS.
4. The contracting parties shall be bound to inform one another immediately in writing about any changes to their company name and address, as well as the possible transfer of their obligations under the contract to a different legal entity. The change in the company name (title of corporation) shall be noted down in an amendment to the contract.
5. The change in persons authorized to negotiate with regard to the contract shall be noted down in the amendment to the contract.
6. The rights and obligations from the contract cannot be transferred to another entity without the consent of the other party.
7. The rights and obligations of the contracting parties, which are not explicitly defined by the contract, shall be governed by the relevant provisions of Act no. 89/2012 Coll., the Civil Code, as amended.
8. The contract may be amended only in the form of mutually adopted amendments.
9. All correspondence relating to the legal acts under the contract, particularly changes or amendments, withdrawal notices or claims (complaints), shall be signed by authorized persons and sent by registered letter to the other contracting party. This does not exclude personal delivery of correspondence.
10. The contracting parties undertake to solve disputable matters by negotiation between authorized persons. If the dispute is not resolved even by negotiation on the level of statutory bodies or representatives within 30 days, a competent court shall resolve the matter.