

# TRADING TERMS AND CONDITIONS OF TENZA cast, a. s.

## I.

### Preamble

- 1.1. These trading terms and conditions (hereinafter as "**Terms and Conditions**") govern the relationship between TENZA cast, a. s., having the registered office in Adamov, Mírová 2, Post Code 679 04, ID: 293 70 931, registered in the Commercial Register organized by the Regional Court in Brno, Section B, File 6710 (hereinafter as "**Customer**") and the supplier of works or goods or the provider of service (hereinafter as "**Contractor**"), if both the Customer and Contractor have agreed so in the Contract concluded thereof.
- 1.2. These terms and conditions are the terms and conditions in the meaning of Section 1751 of Act No. 89/2012 Coll., Civil Code, as amended (hereinafter as "**Civil Code**"). They form an integral part of the Contract concluded between the Customer and Contractor (hereinafter as "**Contract**") provided this Contract contains a reference to these Terms and Conditions.
- 1.3. The Contract may be concluded orally or in writing, in any form allowed by the applicable law. The Contract shall prevail in the event of a conflict between the Contract and these terms and conditions.
- 1.4. These terms and conditions are to regulate the rights and obligations of Customer and Contractor to such the extent that is not governed directly by the Contract.
- 1.5. Provisions of these terms and conditions apply to contracts with various types of performance. If any provision of these terms and conditions is entirely or partially inapplicable for a given type of performance due to its nature, then it shall be applied only to the extent that is applicable and the rest shall be applied in an appropriate way.
- 1.6. The parties agree that provisions of Sec. 1799 and Sec 1800 of the Civil Code shall not be applied.
- 1.7. Acceptance of an offer with an amendment or variation shall be excluded.

## II.

### Subject of the Contract

- 2.1. The Contract is aimed to execution of works, supply of goods or provision of service as specified in the Contract (hereinafter as "**Subject of the Contract**"). The purpose of subject of the Contract may constitute a further use for manufacture of components for automotive industry or direct sales for the automotive industry without customization, which the Contractor is aware of.
- 2.2. According to conditions specified in the Contract and also according to these terms and conditions, the Contractor agrees to properly perform subject of the Contract towards the Customer; and the Customer agrees to receive the properly-provided performance and pay the agreed price for it. The Contractor further agrees to comply with all the obligations specified by the Contract and terms and conditions thereto.

## III.

### Price and its Maturity

- 3.1. The price is always determined upon mutual agreement between the parties; while using a particular amount or budget in the Contract, or also by a reference to the attached price list. Agreement about the price can also include a discount program.
- 3.2. Unless expressly specified otherwise in the Contract, the price also includes value-added tax. Value added tax shall be charged according to the applicable legal regulations.
- 3.3. Except the cases in which the price is determined by a budget, the price is fixed and the highest possible; it includes all costs of the Contractor related to subject of the Contract and its performance; the Contractor

is not entitled to charge any additional costs. If the price is determined by a budget, then the budget must not be exceeded.

- 3.4. The agreed price may be increased only upon a written amendment to the Contract concluded between the parties. If the parties agree to provide performance beyond the Contract value, then both the price and the extent of this (higher) performance shall be determined by a written amendment to the Contract concluded between the parties. In case of failure to adhere with the procedure according to this section, the Contractor is not entitled to get reimbursed for of any additional works, performance provided beyond the Contract value or any amount exceeding the originally agreed price.
- 3.5. In case of lower level of works (cancelled works); the price shall get reduced by such the works, even without any amendment. The cancelled works shall be evaluated according to the itemized budget. If it is not possible to do so, then they shall be evaluated according to their normal value.
- 3.6. If the Contractor must do corrective, repeated or additional works beyond the subject of this Contract due to improper performance of subject of the Contract, due to performance in conflict with the Contract terms and conditions or in conflict with the legal regulations or also due to performance done by other methods that do not lead to proper and timely provision of performance, then the Contractor is not entitled to be paid the price for execution of these works.
- 3.7. The price shall be paid in the ways and deadline dates specified in the Contract. If the due date is not specified in the Contract, then this is payable within 30 days following the date of proper completion and handover of the subject of Contract.
- 3.8. The Contractor shall charge the cost by using a tax document that shall be given to the Customer together with subject of the Contract, but no later than 10 days prior to the maturity date of the price. Any different due date specified in the tax document shall be disregarded; the parties always proceed according to the Contract or these terms and conditions. The Customer pays the price by using transfer to the bank account of the Contractor which is specified in the relevant tax document.
- 3.9. The tax document must contain all the particulars of the tax document pursuant to Act No. 235/2004 Coll., Value Added Tax, as amended; it must also include a detailed specification of the subject of Contract. Each tax document shall include copy of the delivery note or transfer protocol as an amendment. Or it can also contain a summary of works agreed by both parties. If a tax document is not issued properly, the Customer is entitled to return it to the Contractor within the due period. In this case, the new maturity period will run up from the date of delivery of proper and fault-free tax document. In case of delay in delivery of the tax document, the maturity date shall be extended by the time of delay.
- 3.10. Payment of the price, whether fully or partially, does not have the effect of debt or its rest admission.
- 3.11. In the event of Customer's delay in payment of the price or its part, the Customer shall provide the Contractor with an interest payment of such the delay amounting to 0.01% of the outstanding amount for each day of delay.
- 3.12. The Customer is entitled to count any of receivables behind the Contractor against own debts toward the Contractor; even the receivables which have not yet been payable toward the debts which have already been due. The Contractor provides consent to do so. The Contractor is entitled to count his receivable amount for the Customer only with the prior consent of the Customer.
- 3.13. The Contractor is entitled to move forward any of his receivables arising out of this Contract or having a base in this contractual relationship only after written consent of the Customer.

- 3.14. The obligation of the Customer to pay the price is meant as satisfied on the date of debiting the relevant amount from the Customer's bank account, in favour of the bank account of the Contractor mentioned in the tax document (invoice).

#### **IV.**

##### **Provision of Performance**

- 4.1. Places of production, processing or preparation for handover and acceptance of the subject of Contract are the Contractor's business premises, unless otherwise determined by the Contract. Place of handover and acceptance of the subject of Contract is the address of the Customer, unless otherwise specified by the Contract.
- 4.2. The Contractor is obliged to perform subject of the Contract in accordance with the Contract and trading terms and conditions; and also according to the applicable laws and current regulations.
- 4.3. While performing subject of the Contract, the Contractor is bound by the instructions of the Customer, both written instructions and oral ones. The Contractor is entitled to perform the subject of Contract by him/herself, using own employees or delegate subject of the Contract to other workers.
- 4.4. The Contractor declares that he/she is aware of all relevant legal regulations related to subject of the Contract and its performance; the Contractor agrees to comply with these regulations, perform subject of the Contract and related works in accordance with these regulations; he/she agrees to cooperate only with persons who are sufficiently competent and authorized to such performance; he/she also agrees to ensure professional management of the performance of the Contract subject.
- 4.5. Hereby, the Contractor assumes full responsibility toward the Customer for complying with all legal regulations and specified obligations, both for him/herself and for employees and other workers. If anyone applies toward the Customer any claim arising as a result of performance of subject of the Contract or in connection with it, then the Contractor agrees to pay the Customer the full amount of the financial claim applied, but also compensation for damages, all other claims arising on the basis of applicable legal regulations and any other liabilities incurred to the Customer in connection with such claim applied; this must be done within three days following the call of the Customer for the payment. In the same manner and in the same period, the Contractor shall compensate the Customer with any damage caused to the Customer by conduct of persons referred to in the first sentence.
- 4.6. The Contractor must perform subject of the Contract within the period specified in the Contract. The Contractor is obliged to perform individual parts of subject of the Contract in the deadlines of time schedule if this is included in the Contract. If the deadlines of performance of subject of the Contract are not established in the Contract, then we consider the deadlines of 10 days after the conclusion of the Contract.
- 4.7. If the Contract requires passing tests for the subject of performance, then the successful passing of the test is meant as the condition for fulfilling subject of the Contract and its acceptance by the Customer. The tests must be performed in the manner specified in the Contract and according to the conditions therein.
- 4.8. If subject of the Contract or a part of it show a non-compliance with the instructions of the Customer or if it is performed in conflict with contractual obligations, then the Contractor shall upon request of the Customer solve the shortcomings and defects within Customer-specified period of time. In case of breaching the obligation by the Contractor, the Customer is entitled to have remedied these deficiencies and defects by a third person at the expense of the Contractor.
- 4.9. In case of circumstances or hidden obstacles that prevent from proper performance of subject of the Contract, or if the Customer is in delay with performance of obligations and this delay prevents from proper performance of subject of the Contract, then the Contractor is obliged to make the Customer immediately informed of these circumstances (in writing). Such note must contain description of the

circumstance in question. In case of non-compliance with the procedure specified in the previous sentence, the specified circumstance has no impact on obligations of the Contractor according to the Contract and these terms and conditions; in particular the obligation to perform subject of the Contract within an agreed time.

## **V.**

### **Handover of the Subject of Contract**

- 5.1. Contractor's obligation to perform subject of the Contract is fulfilled by its proper and timely completion and handover to the Customer. Subject of the Contract shall be deemed to have been duly completed if it does not show any defects and unfinished parts at the time of acceptance and if the successful tests were carried out (if they are required). Subject of the Contract must be performed in the quantity, quality and design specified by the Contract and terms and conditions.
- 5.2. Subject of the Contract must meet all standards applicable in the territory of the European Union for subject of the Contract at the time of delivery to the Customer. It must also be performed in compliance with all legal regulations that apply to the subject of Contract at this moment. The Contractor is obliged to provide subject of the Contract without legal faults.
- 5.3. The Contractor shall always hand over subject of the Contract to the Customer in the address of the Customer, unless the parties agree otherwise in the Contract. The process of handover and takeover must take place at normal operating hours of the Customer. The involved parties shall prepare a written protocol of the procedure of handover and takeover of the subject of Contract; the protocol shall include signatures of authorized representatives of both parties, or subject of the Contract shall be passed with a delivery note. Protocol or delivery note will include documentation to subject of the Contract and also other documents arising from the Contract, terms and conditions or legal regulations.
- 5.4. The Contractor shall provide subject of the Contract with a suitable packaging for the purposes of further handling to avoid damage or deformation during handling and transport. The Contractor is obliged to wrap subject of the Contract and assure appropriate packaging necessary for protection and preservation of subject of the Contract. In connection with his/her obligations, the Contractor has no right for any other financial or other performance under this paragraph. Terms and conditions related to packaging of subject of the Contract may also be specified in the Contract.
- 5.5. Costs of transportation related to subject of the Contract to the place of handover are borne by the Contractor.
- 5.6. The Customer is not obliged to accept subject of the Contract and pay the price for it if subject of the Contract shows any defects or unfinished works. In such case, subject of the Contract is considered as unfulfilled (incomplete); the parties shall act in accordance with Section 4.8.
- 5.7. Ownership right of the subject of Contract and the risk of damage to the subject of Contract moves from the Customer on the date of acceptance of subject of the Contract.
- 5.8. In case of delay in completion of the subject of Contract, the Contractor shall provide the Customer with a penalty of 0.5% of the subject of Contract for each day of delay.

## **VI.**

### **Guarantee for Quality**

- 6.1. Contractor's liability for faults of subject of the Contract shall be governed by relevant provisions of the Civil Code, unless specified otherwise.
- 6.2. Hereby, the Contractor assumes responsibility for quality of subject of the Contract and therefore he/she guarantees to the Customer that subject of the Contract will have the characteristics specified in the Contract, terms and conditions and all relevant technical standards and legal regulations that relate to

subject of the Contract. He/she also guarantees that subject of the Contract will be suitable for use in the purpose agreed in the Contract (otherwise in a usual purpose); this all for the period of 24 months following the date of handover of the subject of Contract to the Customer (hereinafter as "**Warranty Period**"), unless it is specified otherwise in the Contract (hereinafter as "**Guarantee**").

- 6.3. The Customer is entitled to apply any claims of faults detectable during inspection of subject of the Contract; even if subject of the Contract is not checked out at the time of handover. The Contractor is responsible for a defect on the subject of Contract at the time when the risk of damage to the subject of Contract comes to the Customer, even if the defect becomes apparent after that time. The obligations of the Contractor that arise from the guarantee in relation to quality of subject of the Contract are not affected by that. Contractor is also responsible for any fault that occurs after transferring the risk of damage to property if it is caused by breaching obligations of the Contractor.
- 6.4. Right of the Customer which is related to faults of subject of the Contract may be awarded in a lawsuit, regardless of when the Customer reports of the faults related to subject of the Contract. Therefore, it may be awarded even if the Customer did not complained about the fault without any undue delay after he/she found out (or had the opportunity to find out) the fault; regardless of whether the fault is obvious or hidden. The Court will provide the Customer with the right of obvious faults of subject of the Contract even if the Customer took over subject of the Contract without any reservation. According this section, the term Court also means an arbitration court attached to the Economic Chamber of the Czech Republic and Agricultural Chamber of the Czech Republic, if this is to arbitrate a dispute, in accordance with Section 10.2. of these terms and conditions.
- 6.5. In case of faults on subject of the Contract, the Customer shall be entitled at its option to exercise the following rights (claims): solving a defective condition (delivery of substitute performance, delivery of missing performance, solving legal faults in performance or correction of the performance), reasonable discount related to the price of subject of the Contract or withdrawal from the Contract. The Customer shall provide the Contractor with a report of the faults on subject of the Contract. The report shall include information about which of the above-mentioned claims the Customer applies for. If the Customer does not mention the claim in the report of faults of the subject of Contract, then it is understood that he/she applies for the claim for delivery of substitute performance. Customer may modify a claim without having the consent of the Contractor until settlement of the complaint.
- 6.6. Within 5 days following receipt of the report and according to the previous section, the Contractor shall satisfy the claims of the Customer or provide him/her with a written notice saying that he/she does not recognize the complaint (settlement of the complaint). In case of a notice of non-recognition of the complaint, the Contractor is obliged to indicate a reason why the claim is not recognized. If the Contractor fails to satisfy the claims of the Customer within the time specified or if the Contractor fails to deliver a reasoned written notice of such non-recognition of the claim, then he/she is considered as being delayed with the settlement of the claim. The Contractor is also considered as delayed with settlement of the claim if he/she does not recognize a legitimate claim, starting with the due date following delivery of the notice according to the previous section.
- 6.7. In case of risk of delay, especially in case of risk of delay of the Customer related to performance of obligation to deliver the goods based on contracts with third parties, then the Customer is entitled to have the faults in subject of the Contract solved at the expense of the Contractor by using the third party or by using own service. Or, the Customer can also provide delivery of a substitute performance by using a third party or on his/her own. In such the case, the Customer shall pay the Contractor the cost involved, as well as the difference between the price of substitute delivery and the price of performance that should have been provided by the Contractor. The right of the Customer related to compensation for damage and reimbursement of any contractual penalty remains unaffected. The Customer is also entitled to proceed according to this section in case of Contractor's delay with settlement of the complaint.

- 6.8. In case of delay in settlement of the complaint, the Contractor shall provide the Customer with a contractual penalty of 0.5% of the Contract subject price, e.g. the subject in which delay in solving the faults occurred. This amount is to be paid for each day of such delay.

## **VII.**

### **Claims related to Breach of Contract**

- 7.1. In case of Contractor's delay with termination of subject of the Contract or with solving (elimination) of faults of subject of the Contract or with settlement of the complaint (even of only partially done), then the Customer is entitled to withdraw from the Contract without any further obligation.
- 7.2. If the Contract is breached by the Customer, the Contractor is entitled to successively require the following claims in a specified order as they go one after another; namely the case of solving a defective condition within reasonable time period and withdrawal from the Contract. The Contractor is entitled to apply these claims after he/she used a written notice sent to the Customer to expressly inform him/her of Contract breach and after he/she determined a reasonable time period for solving any breach of that kind.
- 7.3. If the Contractor fails to notify the Customer in writing about breach of the Contract, in accordance with the previous section of the Contract (within fifteen days after he/she found out such the breach or after he/she should have found out such the breach), then the Contractor may exercise his/her claims only upon consent of the Customer or use the right for a discount related to offset the receivable of the Customer.
- 7.4. Sections 7.2 and 7.3 shall be used in similar ways for the cases of breaching other obligations of the Customer in relation to the Contract.
- 7.5. When withdrawing from the Contract, the Customer is entitled to decide according his/her choice that the parties:

a) will return to each other only such performances in which the other party is in delay with provision of counter-performance. It means that the parties do not return a performance for a delivered and fully paid subject of the Contract.

b) will mutually return to each other all performances related to the cancelled Contract. The Contractor shall give the Customer back the price for subject of the Contract within 10 days following termination of the Contract. In case of delay in returning the price for subject of the Contract, the Contractor shall provide the Customer with a penalty of 1 % of the debt for each day of such delay.

The Customer shall return to the Contractor subject of the Contract within 10 days following the refund of the full price of subject of the Contract. The Customer is not obliged to return subject of the Contract to the Contractor (according to the Contract cancelled) before the Contractor provides the Customer with the price of the affected subject of the Contract in the full amount. Obligation of the Customer related to returning subject of the Contract to the Contractor is considered as fulfilled at the moment when the Customer allows the Contractor to use subject of the Contract in the address of the Customer. The Contractor is responsible for transport costs related to subject of the Contract.

- 7.6. The Customer is obliged to make a decision, according to the previous section. He/she shall send it out to the Contractor in writing within 3 days after termination of the Contract. Writing form (pursuant to this section) shall be maintained even in a case in which the task is done via e-mail. If the Contractor fails to make any decision according to the previous section, then it is considered that he/she has chosen a procedure outlined in section 7.5, Letter b).

- 7.7. The Customer is also entitled to withdraw from the Contract in case of bankruptcy of the Contractor, in case of termination of a supplier's insolvency proceeding due to lack of assets or in case of Contractor's entering in the state of liquidation or applying for liquidation.
- 7.8. The withdrawal comes in effect at the moment of delivery of the written notice related to the withdrawal addressed to the other contracting party.
- 7.9. If the Customer achieved a right to withdraw from this Contract, he/she may do so within 1 year from the date of this right coming into effect. If the Customer notifies the Contractor that he/she wants to remain in this Contract relationship despite the breach caused by the Contractor, he/she may change this decision at any time.
- 7.10. In case of withdrawal from the Contract by the Customer, the Customer may withdraw from the Contract in respect of the entire performance even if it has partly been performed by the Contractor.

## **VIII.**

### **Tests of the Subject of Contract**

*Provisions of this Article related to the trading terms and conditions shall be applied only in such the event when the parties have the agreed Contract including the provisions of such testing or testing subject of the Contract (hereinafter as "**testing**"). Any arrangements relating to product samples are to be used in such the event when the testing process also includes producing of product samples.*

- 8.1. Successful results of testing mean a prerequisite for completion and acceptance of subject of the Contract. The Customer is not obliged to take over subject of the Contract in which complete testing has not been carried out or whose testing has not been successful. Such kind of subject of the Contract is considered as unfinished.
- 8.2. If the process of testing includes the procedure of product sampling, the Contractor is obliged to provide the Customer with samples of products under the conditions specified in the Contract. Together with product samples, the Contractor is obliged to provide the Customer with documentation to subject of the Contract as well as the protocol of the first samples, including technical specification and drawing according to which they have been made. Product samples must conform to the Contract.
- 8.3. The Contractor shall wrap the product samples or make any other kind of packaging them for the purpose of further handling. The Contractor is obliged to make adequate protection of the product samples for the purpose of their transport to avoid any damage (packaging or other ways of doing so). There shall be a delivery note or acceptance protocol signed by the parties in relation to hand over and take over of the product samples. If the Contractor refuses to sign the delivery note or acceptance protocol, the Customer is not obliged to take over product samples saying that the performance is not assured due to fault of the Contractor.
- 8.4. The Contractor provides the Customer with product samples in a free of charge manner, unless agreed in the Contract otherwise. The Customer becomes the owner of the product samples at the moment of their receipt.
- 8.5. The Customer is entitled to consume the product samples. He/she is not obliged to return these samples to the Contractor, even in case of effects stated in Sec. 7.5. Letter b) related to these terms and conditions.
- 8.6. Any other testing conditions are always specified in the Contract.
- 8.7. For the purpose of proper testing, the Contractor shall provide the Customer with all necessary assistance; in particular he/she shall give explanations, answer questions and so on within as short time as possible.

- 8.8. According to the test results, the Customer is entitled to make his/her written claims relating to adjustment of parameters of the Contract. This can be done repeatedly.
- 8.9. The Contractor acknowledges and agrees that the process of testing is a condition for continuation of the contractual relationship of the relevant Contract; the Customer is not interested in this contractual relationship if being prevented from this testing according to the conditions specified in the Contract and this article of the trading terms and conditions.

## **IX.**

### **Discretion**

- 9.1. The Contractor acknowledges that any matters, background materials, procedures, documents and information ("**confidential information**") which have been or will be passed to him/her by the Customer in relation with performance under the Contract, or any matters, background materials, procedures, documents and information with which he/she got familiarized or will familiarize in relation with performance under the Contract, represent the trade secret of the Customer. The Customer has the exclusive right to use such confidential information. He/she can especially grant permission for such use and determine the conditions of such use. The Contractor undertakes to treat such confidential information in a manner that guarantees absolute confidentiality in relation to the third parties.
- 9.2. The Contractor is obliged to maintain trade secrecy even after termination of the contractual relationship and for the time of duration of facts constituting the trade secret. Only the Customer may get the Contractor rid of this obligation, by using a written statement.
- 9.3. According to this Article, the Contractor shall pay the Customer a penalty of CZK 100,000 for each case of breach of the obligation, even repeatedly.

## **X.**

### **Final Provisions**

- 10.1. These trading terms and conditions and the Contract shall be governed by the Civil Code. Any annexes form an integral part of the Contract.
- 10.2. Any disputes arising out of this Contract and those in connection with this Contract shall be decided by the Arbitration Court related to the Economic Chamber of the Czech Republic and Agricultural Chamber of the Czech Republic in accordance with the relevant rules and regulations. The disputes shall be decided by one arbitrator designated by chairman of the Arbitration Court. The proceedings are held in Brno.
- 10.3. Contracting parties undertake to cooperate and provide each other with all information necessary for proper performance of their obligations. Contracting parties are obliged to inform the other party of any facts that are or may be important for proper performance of this Contract.
- 10.4. The Contractor acknowledges that he/she may be a subcontractor to the automotive industry. The Contractor also acknowledges that any fault in subject of the Contract, delay in the process of termination of subject of the Contract, delay in solving the faults of subject of the Contract or other breach of the Contractor's obligations relating to subject of the Contract, its parameters and continuity of supplies related to subject of the Contract may result in interruption or cessation of production at the level of the main Contractor in the automotive industry or directly at the relevant manufacturer, while having all resulting consequences, including damage to property whose amount can be enormous; especially in such the cases when it results in need of stopping production or calling the vehicles for repair.

The Contractor is aware of his/her responsibility for any damages described above in this section; e.g. the damages incurred to the Customer due to breaching obligations of the Contractor; or also the damages in which the Customer can be asked for refunding due to the breach of Contractor's obligation.

The Customer hereby expressly warns the Contractor about possibility and risk of damage described above in this section in such cases if the Contractor fails to meet his/her obligations related to the Contract.

- 10.5. The Contract may be modified only by using written amendments which shall be marked as the amendments, serially numbered and those which shall become an integral part of the Contract. Contractor takes the risk of a change in circumstances.
- 10.6. The parties agreed that any answer to the offer with the amendment or deviation in the meaning of Sec. 1740, par. 3 of the Civil Code is always considered as a counterproposal.
- 10.7. Any payment of contractual penalty in relation to the Contract or these terms and conditions shall not affect the right of the Customer for damage compensation. The Customer is entitled to receive payment of the contractual penalty regardless of whether he/she exercises his/her right of withdrawal from the Contract. The contractual penalty shall always be payable within three days following a Customer notice (call).
- 10.8. This Contract comes into force and effect upon signature of the parties.
- 10.9. Any case of invalidity of any provision of the Contract or these terms and conditions shall not affect validity of the remaining provisions. Parties participating in this Contract undertake to provide mutual assistance to each other in order to conclude an amendment to the Contract in such the cases where an invalid portion of the Contract or trading conditions is replaced by a new agreement; while respecting the period of one month after such the need occurs.