## 

**Annex No. 2**

Terms and Conditions

**Preparation of the Investment Project File and the Preliminary Design/ Documentation for Acquisition of the Zoning Decision**

**TC/IPF+DZD/14/20**

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# DEFINITIONS

* 1. Unless the sense or meaning of individual provisions of these Business Terms and Conditions or definitions stated in the Contract (without annexes) indicates otherwise, the terms in these Business Terms and Conditions and in the Contract with a capital initial letter shall have the meaning given below:

|  |  |  |
| --- | --- | --- |
| **Bank Guarantee** | | the financial guarantee within the meaning of Section 2029 (1) of Act No. 89/2012 Coll., the Civil Code |
| **Price of the Work** | | the total sum of the Price for preparing the Investment Project File and the Price for preparing the Preliminary Design/ Documentation for Acquisition of the Zoning Decision |
| **Price of the Part of the Work** | | the amount which, according to Annex No. 4 to the Contract, the Client is obliged to pay for the Part of the Work handed over within some of the Partial Stages |
| **Part of the Work** | | the performance falling, according to the Performance Schedule, on a certain Partial Stage; if the Work is not divided into Partial Stages, then the Part of the Work shall mean the entire Work |
| **Day of Commencement of Work** | | the date marked in the Performance Schedule as the ”Day of Commencement of Work”, unless otherwise provided in the Contract |
| **Partial Stage** | | the time period specified in the Performance Schedule for the provision of a particular Part of the Work |
| **Work** | | shall mean the performance or its part, which means the preparation of the Investment Project File and the Preliminary Design/ Documentation for Acquisition of the Zoning Decision in accordance with the Contract |
| **Construction Documentation** | | the documentation, which, by its nature, serves for the construction of buildings pursuant to Act No. 183/2006 Coll., the Building Act, as amended |
| **Performance Schedule** | | shall represents a graphical representation of the anticipated procedure for the performance of the Work, consisting of the individual Partial Stages and attached to the Contract as Annex No. 5 |
| **Internal Guidelines of the Client** | | the internal guidelines of the Client, which are listed in the List of the internal guidelines of the Client or with which the Contractor was demonstrably acquainted, or with which the Contractor was obliged to become acquainted |
| **Contractor’s tender** | | the tender / bid of the Contractor as a participant in the tender procedure for the Public Contract |
| **Terms and Conditions** | | this document, which forms Annex No. 2 to the Contract |
| **Client** | | the contracting party, designated in the Contract as ”the Client” |
| **Detailed Schedule** | | the document specifying in more detail the Performance Schedule, acquired in accordance with the procedure and to the extent pursuant to Section 3.8 of the Terms and Conditions |
| **Documentation for Acquisition of the Zoning Decision (DZD)** | | the project documentation of the construction at the level of the Documentation for Acquisition of the Zoning Decision according to the internal guideline of the Client titled DG’s Directive No. 11/2006, as amended, and pursuant to Decree No. 499/2006 Coll. on the Documentation of Constructions, as amended, and corresponding to the requirements arising from Decree No. 503/2006 Coll., on more Detailed Regulation of the Zoning Decision-Making, Zoning Measure and Building Regulations, as amended |
| **Investment Project File** | | the documentation prepared in accordance with the Ministry of Transport’s Directive No. V-2/2012, as amended, which defines, factually and functionally, the requirements for the preparation and implementation of the project in the details necessary for the assessment and issuance of the MT’s opinion |
| **Protocol**  **on the Execution of the Work** | a written document proving the handover of the Work by the Contractor and its acceptance by the Client | |
| **Handover Protocol** | a written document issued in accordance with the Contract, proving that the Contractor has submitted and the Client has taken over all the performance pertaining to one Partial Stage as the relevant Part of the Work | |
| **Contract** | a contract for work concluded between the Contractor and the Client, which includes these Terms and Conditions | |
| **State** | Czech Republic | |
| **Subcontractor** | a supplier, who performs a part of the performance of the Contract instead of the Contractor, to the extent specified in Annex No. 8 to the Contract | |
| **SŽDC** | abbreviation of the Client's name before 1 January 2020 | |
| **Technical Conditions** | a summary of the documents forming Annex No. 3 to the Contract | |
| **Public Contract** | a public contract designated in the Contract as ”the Public Contract” | |
| **Tender Documentation** | a document marked in the Contract as ”the Tender Documentation” | |
| **Contractor** | the contracting party designated in the Contract as ”the Contractor” | |

# GENERAL OBLIGATIONS OF THE CONTRACTOR

* 1. The Contractor commits to execute the Work as follows:
     1. at its own cost and risk within the agreed term;
     2. in the manner specified in the Contract, the Tender Documentation and the Contractor’s tender and in compliance with all instructions given by the Client on the basis of the Contract;
     3. in accordance with generally binding legal regulations, Czech Technical Standards, Czech Standards, European Standards and other standards applicable to the performance of the Work, and with the internal guidelines of the Client, which relate to the Work in question;
     4. with professional care and taking into account the obligations arising for the Contractor from the provisions of Section 5 (1) of the Civil Code in relation to its subject of business and qualifications, the fulfilment of which the Contractor demonstrated to the Client before concluding the Contract, and in accordance with recognized business practice in the given field, and with the help of suitably equipped devices;
     5. in a manner enabling the issuance of all public authorizations and consents necessary for the commencement of the construction works in accordance with the documents specified in the Tender Documentation and prepared under the framework of the performance of the Work.
  2. The Contractor commits to hand over the individual documents specified in the Tender Documentation and prepared under the framework of the performance of the Work within the deadlines set according to the Performance Schedule.
  3. The Contractor commits to provide, at its own expense, all documents ensuring a comprehensive public hearing and securing all necessary underlying materials and certificates needed for issuing a zoning decision, or zoning approval, or a statement of the relevant building authority on the compliance of the proposed construction with spatial planning intentions pursuant to Act No. 183/2006 Coll., the Building Act, as amended, and pursuant to its implementing decree, including related implementing decrees and regulations, unless the Contract provides otherwise or unless the said decision, approval or statement is provided by the Client.
  4. The Contractor commits to respect changes in generally binding legal regulations, in the internal guidelines of the Client and in standards applicable to the Work in question, even if such changes occur during the execution of the Work and if these changes are to apply to the Work already being executed. A change in the internal guidelines of the Client is binding for the Contractor at the moment of the Contractor's demonstrable acquaintance with the relevant change, while The Client is obliged to inform the Contractor of such a change immediately. The change of the internal guidelines of the Client is considered to be an instruction (order) of the Client pursuant to the provisions of Section 2592 of the Civil Code and to be binding for the Contractor.
  5. The Contractor commits to submit the details about the measures and methods it proposes to adopt into the implementation of the Work, whenever requested by the Client. No substantial change of these measures and methods shall be made without prior notification to the Client.
  6. The Contractor commits to comply with the instructions issued by the Client, or by a person authorized by the Client, to the extent in which it follows from the Contract. The Contractor commits to notify the Client in writing in the event that any of the Client’s instructions or the content of a document binding for the Contractor would be in contradiction with the Contract or could jeopardize the execution of the Work or the purpose for which the Work is being executed, if the Contractor is aware of these facts or could be aware of them when exercising professional care. The Contractor is not entitled to withdraw from the Contract for the reasons set out in the provisions of Section 2595 of the Civil Code.
  7. The Contractor shall notify, without undue delay, any delay, obstacle or measure caused by or attributable to the Client or third parties (without fault of the Contractor), which prevents proper continuation or completion of the Work, or a part thereof, but no later than 28 days after the Contractor realized or should have realized the event or circumstance from which the Contractor is making the claim. The Client may, based on the Contractor’s suggestion and in justified cases, extend the notification period accordingly.
  8. The Contractor commits to ensure, at its own expense, all relevant authorizations to perform all work within the execution of the Work as the subject of its activity or business. The Contractor is obliged to ensure that selected activities, for which certain authorizations or qualifications are needed, are performed by individuals who have all required authorizations and have attained the required education to perform these activities. The Contractor must also have all other authorizations required for the performance of the activities related to the execution of the Work, by generally binding legal regulations, by the internal guidelines of the Client or by the Contract. The Contractor is obliged to ensure that all authorizations required by the Contract remain valid for the entire duration of the Contract. The acceptance of these obligations by the Contractor is considered, by the Client and by the Contractor, as a declaration within the meaning of the provisions of Section 5 (1) and Section 2912 (2) of the Civil Code.
  9. The Contractor shall keep the necessary records so that the Client, or a person designated by the Client, may, for a period of 10 years after handing over the Work, terminating the Contract or making the final payment, whichever occurs later, inspect these statements and records after prior notification. The Contractor shall ensure and be responsible for ensuring that the records and statements of all Subcontractors or third parties are kept so that their inspection can be properly performed by the entities according to the previous sentence. With respect to Section 1769 of the Civil Code, the contracting parties declare that the obligations of the Subcontractors pursuant to this Article are not stipulated as third party performance within the meaning of the stated statutory provision. The Contractor commits to ensure fulfilment of these obligations by not concluding a contract with any Subcontractor which does not commit to these obligations.
  10. The Contractor commits to provide the Client with all cooperation, including the submission of documents related to the performance of the contract, in the inspection of the Client or Subcontractors by supervisory authorities of the Czech Republic (SAO, SFTI, FA, MT, etc.), including in the inspections requested by the European Commission, the European Anti-Fraud Office or the European Court of Auditors, and commits to respect the procedure and methodology of the inspection determined by the Client or a person authorized by the Client, or an inspection authority, in particular the procedures laid down in the European Community rules for the protection of the European Communities' financial interests against fraud and other irregularities.
  11. The Contractor commits to conclude, within fifteen (15) days from the effective date of the Contract, and maintain, for the entire duration of the Contract, the insurance specified in Annex No. 7 to the Contract.
  12. Authorized persons of the Contractor, which are entitled to represent the Contractor according to Annex No. 6 of the Contract, must have knowledge of the Czech language to the extent enabling operational communication in the Czech language, or the Contractor is obliged to ensure a translator or interpreter for these purposes, at the Contractor’s own expense, within deadlines and as required so the execution of the Work is not disrupted. The abovementioned relates also to the persons authorized to perform the author supervision.
  13. All documents, that the contracting parties will submit to each other according to the Contract, must be in the Czech language or in the original language with their translation into the Czech language. For all official documents, such translation must be officially certified.
  14. If the Work is executed by more than one Contractor, in accordance with their joint tender, all Contractors shall be jointly and severally liable for the fulfilment of the obligations under the Contract. The Chief Contractor is specified in the Contract (hereinafter referred to as the Chief Contractor). The Chief Contractor declares that it is entitled to represent each of the Contractors, as well as all the Contractors together, in matters of the Contract and that it is also entitled to accept instructions and payments of the Client on their behalf. Only the Chief Contractor is obliged to issue tax documents for the Client - invoices for the activities performed in the case of execution of the Work by more Contractors, in line with their joint tender, i.e. the tax document shall state (identify) the Chief Contractor as the person or entity performing the economic activity, as the service provider (in accordance with Act No. 235/2004 Coll., on the Value Added Tax). The authorization of the Chief Contractor forms Annex No. 10 to the Contract. The authorization of the Chief Contractor must last for the entire duration of this Contract. Change of the Chief Contractor must be notified to the Client together with the consent of the other Contractors. The change of the Chief Contractor shall take effect with respect to the Client upon the lapse of the third business day following the delivery of the notification of such change. Bank details may be changed only in accordance with the procedure specified in paragraph 10.6.
  15. The Contractor commits to provide the Client with cooperation in preparing the explanation of the Client (in the position of the contracting authority within the tender procedure for the Construction, which includes project preparation P+R) at the request of the supplier for an explanation within the tender procedure for the Construction, namely within 3 business days from the Client's request, unless a longer period is specified by the Client.

# TERM OF PERFORMANCE

* 1. The Contractor commits to perform the Work in accordance with the Performance Schedule.
  2. The Contractor shall commence work no earlier than as of the Day of Commencement of Work. In the event of obstacles precluding the obligation of compensation for damage pursuant to the provisions of Section 2913 (2) of the Civil Code that prevent the commencement of the execution of the Work as of the Day of Commencement of Work, the Contractor is obliged to notify the Client of these obstacles immediately, and in the event of removal of the obstacles to commence the relevant work without delay. In the event that the Contractor has taken all actions to ensure the commencement of work as of the Day of Commencement of Work, but this commencement was prevented by circumstances or obstacles precluding the obligation of compensation for damage, the Contractor shall be entitled to change the Performance Schedule.
  3. The Contractor commits to complete the Work and each of the Partial Stages within the deadlines for completion set out in the Performance Schedule, whereby:
     1. it is considered that the moment of completion of the Partial Stage is the moment of fulfilment of all conditions for the issuance of the relevant Handover Protocol by the Client, and
     2. it is considered that the moment of completion of the Work is the moment of fulfilment of all conditions for the issuance of the Protocol on the Execution of the Work by the Client.
  4. The Contractor commits to immediately notify the Client of probable future events or circumstances that could adversely affect the execution of the Work, request additional work beyond the scope of the Work or delay the execution of the Work compared to the Performance Schedule. The Client may require the Contractor to submit an estimate of the expected impact of a future event or circumstances and/or a suggestion for a change in accordance with Article 14 of these Terms and Conditions.
  5. The Contractor has the right to an adequate extension of the deadline for handing over the Work or the relevant Part of the Work in the event that any of the following circumstances occurs:
     1. change of the Work according to Article 14 of these Terms and Conditions,
     2. circumstances establishing, according to the Contract, the right to an extension of the deadline pursuant to any article of these Terms and Conditions,
     3. if the Contractor is released from the obligation of compensation for damage pursuant to the provisions of Section 2913 (2) of the Civil Code,
     4. any delay, obstacle or measure caused by or attributable to the Client or third parties (without fault of the Contractor),

whereas the right to an adequate extension of the deadline for handing over the Work or the relevant Part of the Work arises only when the extension of the deadline is absolutely necessary and the Contractor proves objective reasons for the extension of the deadline.

* 1. If the Contractor considers that it has the right to extend the deadline for performance of some of the Partial Stages, the Contractor is obliged to notify the Client of these facts without delay, no later than fifteen (15) days after the moment when the Contractor learnt or could have learnt of the facts establishing this right and, at the same time, to submit to the Client a detailed justification of the presented right, i.e. all supporting arguments on which the abovementioned claimed rights are based. The arguments presented later shall no longer be taken into account and shall be regarded as if they were not raised.
  2. If the Contractor considers that it has the right to extend the period for performance of the Work or the relevant part of the Work, the Contractor is obliged to proceed in accordance with paragraph 2.7 of these Terms and Conditions and, at the same time, to submit to the Client a detailed justification of the presented right, i.e. all supporting arguments on which the abovementioned claimed rights are based.
  3. In the event that the right to extend the deadline for completion of some Partial Stage arises to the Contractor under the Contract, the Client commits to negotiate with the Contractor an adjustment of the Performance Schedule in the form of a written amendment to the Contract within seven (7) days of delivery of the Contractor’s request. The content of the amendment shall be an adjustment of the period of performance of the relevant Partial Stage by the period for which the circumstance establishing the right to extend the deadline for the completion of the relevant Partial Stage lasted. The content of the amendment shall also include a possible extension of the deadlines for the completion of the subsequent Partial Stages by a corresponding period.
  4. The Contractor commits that if it is clear from the procedure of performance of the Work that the Work or the Part of the Work will not be completed on time or that some of the deadlines for fulfilment of any of the Partial Stages in line with the Performance Schedule was not complied with due to the Contractor's delay in performing the Work, the Contractor commits to prepare and submit to the Client for acceptance the Detailed Schedule with an accompanying report describing the revised methods it intends to adopt in order to speed up the process of the Work performance and to meet other deadlines according to the Performance Schedule as much as possible. The Detailed Schedule shall contain a time specification of the procedure by which the Contractor intends to perform the Work.
  5. The Client is entitled at any time in justified cases to issue an instruction to the Contractor to suspend the progress of work on the Work or on the Part of the Work, while the Contractor is bound by this instruction. An instruction to suspend work in the event of a breach of the Contractor's obligations under the provisions of Section 2593 of the Civil Code shall also be considered a justified case, if this appears necessary to the Client for remediation and further performance of the Work in a proper manner.
  6. In the event that the Client instructs the Contractor to suspend the progress of work on the Work or on the Part of the Work, the Contractor commits to terminate all work on the performance of the Work or of the Part of the Work immediately, except work that cannot be postponed so that the Client or third parties do not suffer damage on their rights, especially on life, health, property or safety, and except work that is necessary from the perspective of compliance with the obligations laid down in generally binding legal regulations and public decisions.
  7. If the Contractor gets in delay with handing over any Part of the Work and/or incurs costs by following the Client's instructions and suspending the work on the Work and/or by resuming the work, the Contractor shall notify the Client thereof. In such a case, the Contractor shall be entitled to an extension of the deadlines of the Performance Schedule for a period corresponding to the period during which the execution of the Work was suspended due to the Client's instruction.
  8. If the suspension of work on the Work or on the Part of the Work is caused by the Contractor, the Contractor shall be obliged to compensate the Client for the damage that the Client demonstrably incurred or will incur in connection with the suspension of work. The Client shall notify the Contractor of the origin of this claim and of its amount immediately after the claim has arisen.
  9. The Contractor commits to resume work on the Work immediately after receiving the Client's instruction to resume work.

# PERSONAL DATA PROTECTION

* 1. Personal data of third parties, which the Contractor will process for the Client in accordance with this Contract for Work, shall be processed under the following conditions:
     1. The Contractor is obliged to ensure that the persons authorized to process the personal data commit to maintain confidentiality in respect of all the personal data processed by the Contractor in accordance with this Contract and also of security measures the disclosure of which would compromise the personal data protection.
     2. The Contractor is obliged to take all measures pursuant to Article 32 of the GDPR so as to ensure adequate security of the personal data.
     3. The Contractor may engage subcontractors in the processing only upon a prior written consent of the Client. If the consent is given, the Contractor commits to conclude a contract with these subcontractors that ensures compliance with the rights and obligations stipulated by this Contract, in particular with the obligation to maintain confidentiality and to ensure security of the personal data, and to provide sufficient guarantees that subcontractors implement the same technical and organizational measures.
     4. The Contractor is obliged to take into account the nature of the processing, to be of assistance to the Client through appropriate technical and organizational measures for the fulfilment of the Client’s obligation to respond to requests for the exercise of rights of entities under the GDPR.
     5. The Contractor is obliged to be of assistance to the Client in ensuring compliance with obligations pursuant to Articles 32 to 36 of the GDPR, while taking into account the nature of the processed information available to the Contractor. Where the nature of the matters requires that Contractor informs the Client, the Contractor shall inform the Client without undue delay.
     6. The Contractor is obliged to enable the Client and the person authorized by the Client to inspect, at the Contractor’s registered office and during regular business hours of the Contractor, compliance with the personal data processing obligations resulting from this Contract, even after termination of the stipulated processing period, i.e. after this Contract termination, namely within 3 months of its termination.
     7. After the termination of the personal data processing under this Contract, the Contractor is obliged to provide the Client with all the devices containing the personal data, if possible, and to delete all the personal data subject to processing from all the Contractor’s systems or databases, including deletion of all backup copies, except where storage is required by legal regulations or approved by a written consent of the Client.
     8. If the Contractor processes the personal data beyond the scope defined by the Contract or by substantiated instructions of the Client, with regard to such processing the Contractor is considered a “controller” within the meaning of the GDPR.

# AUTHORIZED PERSONS

* 1. Each of the contracting parties appoints an authorized person or persons, which are listed in Annex No. 6 to the Contract. The authorized persons shall represent the contracting party in the matters related to the performance of the Contract. Authorized persons of the Contractor include, inter alia, the persons specified by the Contractor in the Contractor's tender as members of the Contractor's professional staff, as well as the persons whom the Contractor suggested in the Contractor's tender for evaluation purposes and who have met the minimum qualification level. In the case of several authorized persons for the required position, Annex No. 6 to the Contract indicates the person who is authorized to act on behalf of the Contractor. If this indication is not stated, the person who is listed for the specific function in the first place shall be considered to be the person authorized to act. The authorized persons listed in Annex No. 6 to the Contract are not entitled to adjust the Contract by written amendments to the Contract, unless they are the statutory bodies of the contracting parties or persons otherwise authorized to act on behalf of the contracting party.
  2. The names and contact details of the authorized persons are listed in Annex No. 6 to the Contract. Each of the contracting parties is entitled to unilaterally change its authorized persons; however, it is obliged to notify the other contracting party of such a change in writing, no later than three (3) business days before the change takes effect. The change of the authorized persons shall take effect with respect to the other contracting party upon the lapse of the third (3rd) business day following the delivery of the notification of such change. The change of the authorized persons is not considered a change of the Contract. A necessary condition for the change of the authorized person who was specified in the Contractor's tender as a member of the Contractor's professional staff, and also of the person who was suggested by the Contractor for evaluation purposes in the Contractor's tender and who has met the minimum qualification level, is that the Contractor submits for this new authorized person, as a part of its notification of the change of the authorized person, the original documents or certified copies of the documents by which the Contractor proved the qualification of the authorized person within the tender procedure, to the same extent. If there is a change in the person whose practice and experience have been evaluated, such person can be replaced only by a person who meets at least the quality parameters (i.e. points evaluation) that the evaluated person to be replaced had. This person does not have to observe the level of experience and practice of the originally evaluated person, which was above the evaluated maximum.
  3. The persons who were specified by the Contractor in the Contractor's tender for the purpose of the evaluation and who have met the minimum level of qualification, as well as the persons who have replaced them in accordance with the above paragraph, must directly participate in the performance of the Work.

# IMPLEMENTATION OF PROJECT WORKS ON THE RAIL TRANSPORT ROUTE

* 1. The Contractor commits to ensure that in the event that a part of the work within the implementation of the Work is carried out on the rail transport route, all its activities on the rail transport route will be carried out under the direct and permanent guidance of an appropriate number of professionally and medically qualified employees and Subcontractors’ employees. These employees (managers) shall be obliged, upon request, to prove themselves with valid documents of competence to all authorized employees of the Client and to employees of the relevant public authorities. With respect to Section 1769 of the Civil Code, the contracting parties declare that the obligations of the Subcontractors pursuant to this Article are not stipulated as third party performance within the meaning of the stated statutory provision. The Contractor commits to ensure fulfilment of these obligations by not concluding a contract with any Subcontractor which does not commit to these obligations.
  2. Furthermore, in accordance with the relevant Internal Guideline of the Client, the Contractor commits to ensure that all its employees or employees of its Subcontractors, who will perform managerial work (i.e. act as managers), will have valid documents of competence (i.e. documents of professional competence issued on the basis of authorization pursuant to the provisions of Section 22 of Act No. 266/1994 Coll., on Railways, as amended; verification of medical fitness and training in safety regulations). The Contractor must prove its professional competence in the manner and to the extent stipulated by the SŽDC Zam1 guideline on professional competence and knowledge of persons in the operation of railways and rail transport, issued under file no.: 76107/2019-SŽDC-GŘ-10 of 18 December 2019, effective from 1 January 2020 as amended. The relevant internal guideline of the Client (SŽDC Zam1 guideline), which the Contractor is obliged to follow, is also stated in the General Technical Conditions. The Contractor commits to provide the Client with the documents of competence prior to the commencement of work on the Work and, in the event of any change, to submit copies of the relevant documents of competence without delay. Until the stated documents have been submitted to the Client, the Contractor may not perform work on the Work. With respect to Section 1769 of the Civil Code, the contracting parties declare that the obligations of the Subcontractors pursuant to this Article are not stipulated as third party performance within the meaning of the stated statutory provision. The Contractor commits to ensure fulfilment of these obligations by not concluding a contract with any Subcontractor which does not commit to these obligations.
  3. The Contractor is further obliged to ensure professional competence of the relevant specialists (for railway safety and signalling plant and communication equipment) and, at the request of the Client, to present a certificate of professional competence in electrical engineering pursuant to Section 10 of Decree No. 50/1978 Coll., on Professional Competence in Electrical Engineering, as amended; and for relevant specialists (for traction lines, high-current technology, electrical equipment, if this specialization is required in the professional requirements of the tender documentation) in addition to the certificate pursuant to Section 10 of Decree No. 50/1978 Coll. also a test certificate for a person with knowledge with a higher qualification according to Decree No. 100/1995 Coll., the Rules of Designated Technical Equipment, as amended, Annex No. 4, point 8, letter c), i.e. for the design of electrical equipment.
  4. The Contractor commits, in accordance with generally binding legal regulations and with the relevant Internal Guidelines of the Client, in particular the SŽDC Ob 1 Part II Guideline titled “Issuance of Permits to Enter Places Inaccessible to the Public. Pass for a Foreign Entity”, approved by the SŽDC GŘ on 17 March 2014 under file no.: S9717/2014-030, effective from 1 April 2014, as amended, to ensure that all individuals, who will move on the rail or in the perimeter of the rail in places inaccessible to the public during the performance of the Work, are allowed to enter these areas. The issuing entity is the directorate of the state organization of Správa železnic, Safety Department, the contact electronic address for submitting requests and for notifying changes and losses is: [prukazy@szdc.cz.](mailto:prukazy@szdc.cz) The relevant generally binding legal regulations and the Internal Guidelines of the Client, which the Contractor is obliged to follow, are specified in the General Technical Conditions.
  5. In the case of foreign technical employees and workforce, the Contractor commits to ensure that these are granted all relevant residence permits and work permits if such permits are necessary under Czech law. The Contractor is liable for the return of these employees to the place where they were hired or to their place of residence. In the event that any of these employees or their family members dies in the Czech Republic, the Contractor commits to ensure all measures necessary for their repatriation and to pay the costs associated therewith.
  6. The Contractor commits to inform all its employees of their obligation to be inspected by the Client for the purpose of finding out whether they are under the influence of alcohol or addictive substances when working in buildings and on operated rail route. The Contractor shall also bind its Subcontractors to the duty of informing their employees of this obligation. The inspection shall be performed by a breath test for the presence of alcohol and by a saliva test for the presence of addictive substances. The inspection shall be performed through the persons of the Client, specified in Annex No. 6 to the Contract. The positive result of the verification shall be immediately notified to the Contractor. In case of the positive result, the costs of the examination shall be borne by the Contractor. In the event of the positive result of the inspection, the Contractor's person concerned must not continue the activity performed and such person shall be revoked its “Pass for entry to the facilities and the operated rail transport route”. The inspection shall be performed in accordance with the guideline of the Client No. 120 file no. 36503/2017-SŽDC-GŘ-010 dated 3 November 2017, titled ”Compliance with the ban on smoking, consumption of alcoholic beverages and use of other addictive substances”, as amended.

# SUBCONTRACTORS

* 1. The Contractor commits to execute the Work, at least to the extent specified in the Contract, by its own means, provided that the Contractor is entitled to carry out the remaining scope of work through subcontracting. The Contractor commits to ensure contractually that the Subcontractor selected by the Contractor performs its part of the performance of the Work itself, without transferring it to another Subcontractor and without having it performed, pursuant to Section 2589 of the Civil Code, by a different Subcontractor under its personal guidance. With respect to the provisions of Section 1769 of the Civil Code, the contracting parties declare that this obligation of the Subcontractor is not negotiated as third party performance within the meaning of the said statutory provision. The Contractor commits to ensure fulfilment of this obligation by not concluding a contract with any Subcontractor which does not commit to this obligation.
  2. The Contractor is entitled to perform through the Subcontractor only such performance of the Contract which is specified for the relevant Subcontractor in Annex No. 8 to the Contract.
  3. Within the meaning of this article, own means shall mean that the Contractor must possess the machinery and equipment, materials, human and financial resources necessary for the performance of the relevant Part of the Work. For the purposes of this Article, the term “possess” shall mean that the Contractor or the parties forming a concern with the Contractor own the machinery, equipment and materials or are authorized to handle them based on another legal reason and the Contractor has human resources ensured by persons who are in an employment relationship to the Contractor or to the persons forming the concern with the Contractor. Work carried out by own means also includes work carried out by parties which together with the Contractor form a concern pursuant to Section 79 of Act No. 90/2012, on Commercial Companies and Cooperatives (the Business Corporations Act). The Contractor must prove the affiliation of these parties to the concern. Subcontractors’ obligations apply proportionally to parties forming the concern with the Contractor and the Contractor is entitled to use, within the performance of the Work, only those members of the concern which commit to fulfil such obligations in the same way as the Subcontractors.
  4. The Contractor shall be liable for the performance of all its Subcontractors and for the damage caused by them, as well as if it were the Contractor's actions or the damage caused by it. Unless otherwise specified:
     1. The Contractor is entitled, without further, to perform through the Subcontractors listed in Annex No. 8 to the Contract, in the scope of performance specified therein;
     2. The Subcontractors listed in Annex No. 8 to the Contract, their % share in the performance of the Work and the subject of their subcontracting shall not be changed or supplemented during the performance of the Work without the written consent of the Client made in the form of an amendment to the Contract; a necessary condition for the change of the Subcontractor, through which the Contractor demonstrated the qualification within the tender procedure, is that the Contractor submits, as a part of the request for approval, for the Subcontractor being newly approved, copies of documents proving that this new Subcontractor meets the qualification at least to the extent demonstrated within the tender procedure through the original Subcontractor; a necessary condition for the change of the Subcontractor, through which the Contractor demonstrated qualification within the tender procedure, is that the Contractor submits, as a part of the request for approval, for the Subcontractor being newly approved, originals or certified copies of documents proving that this new Subcontractor meets the qualification at least to the extent demonstrated within the tender procedure through the original Subcontractor;
  5. The Contractor commits to ensure that the Subcontractor holds relevant authorizations to perform the relevant work on the Work. The Contractor is also liable for the Subcontractor to ensure that selected work on the Work, which requires certain authorizations or educational attainment, is performed by individuals who have such authorizations and have attained the required education for the performance of these activities. The Subcontractor selected by the Contractor must also have all other authorizations required for the performance of activities related to the performance of the Work by generally binding legal regulations, the internal guidelines of the Client or the Contract. With respect to Section 1769 of the Civil Code, the contracting parties declare that the obligations of the Subcontractors pursuant to this Article are not stipulated as third party performance within the meaning of the stated statutory provision. The Contractor commits to ensure fulfilment of these obligations by not concluding a contract with any Subcontractor which does not commit to these obligations.

# HANDOVER AND ACCEPTANCE OF THE WORK

* 1. If the performance of the Work is agreed in parts, the Work shall be submitted to the Client by the agreed parts, provided that the Work is considered handed over, in accordance with the provisions of Section 2604 of the Civil Code, only by submitting the last Part of the Work and by signing the Protocol on the Execution of the Work pursuant to paragraph 8.8 of these Terms and Conditions. Parts of the Work shall mean the performance falling, according to the Performance Schedule, for a certain Partial Stage. The Handover Protocol shall be prepared for the submission of the Part of the Work.
  2. The Contractor is entitled to submit the Part of the Work before the deadline agreed in the Performance Schedule for the relevant Partial Stage, unless explicitly stated otherwise in the Contract.
  3. The Contractor commits to submit the Part of the Work, which it considers to be completed for its part, within the period agreed between the Contractor and the Client in accordance with the Performance Schedule or otherwise determined in accordance with the Contract. In case of doubt, the deadline set later, under the cooperation of both contracting parties in line with the Contract, shall prevail.
  4. Before handing over the Work, the Client must accept the Work in terms of content. Upon submission of the last Part of the Work, the Contractor shall submit the entire Work to the Client for acceptance. The Client shall take over the Work without reservations or shall raise, within thirty (30) business days from the submission of the last Part of the Work, all its reservations or comments on the submitted Work. If the Client does not raise any reservations or comments on the Work within the specified period, the contracting parties shall consider the first version of the Work to be accepted. Reservations and comments pursuant to this paragraph shall mean not only reservations within the meaning of the provisions of Section 2605 of the Civil Code, but also material requirements for the modification of the Work so it better suits the needs and intentions of the Client, but not changing the nature of the Work. The Client is also entitled to make reservations to individual Parts of the Work after they have been handed over to the Client. If the Client exercises this right, the procedure is similar. Such modifications are not considered to be extra work.
  5. If the Client raises reservations or comments on the first version of the Work pursuant to paragraph 8.4 of these Terms and Conditions within the specified period, the Contractor commits to make, without undue delay (within a period appropriate to the nature of the reservation), all necessary modifications to the Work according to the Client's reservations and comments and to submit the Work modified this way to the Client for acceptance as its second version.
  6. The Client commits to raise all its reservations or comments on the second version of the Work submitted in accordance with paragraph 8.5 of these Terms and Conditions within fifteen (15) business days of its delivery. If the Client does not raise any reservations or comments on the second version of the Work within the specified period or if the Client accepts the second version of the Work without reservations, the contracting parties shall consider the second version of the Work to be accepted. Paragraph 8.4 of these Terms and Conditions shall apply similarly to the Client's reservations.
  7. If the Client raises reservations or comments on the second version of the Work pursuant to paragraph 8.6 of these Terms and Conditions within the specified period, the contracting parties commit to enter into mutual negotiations, within five (5) business days after the delivery of the request of any contracting party for negotiations, in order to resolve their mutual disputes and ensure the acceptance of the Work.
  8. As soon as the Work is accepted, the Contractor may submit to the Client for signature the Protocol on the Execution of the Work signed by the Contractor. In such a case, the Client commits to sign the Protocol on the Execution of the Work and send it to the Contractor without undue delay.
  9. Fulfilment of the Contractor's obligations shall not be considered complete until the Protocol on the Execution of the Work has been signed by both the Contractor and the Client, stating the date on which the Contractor fulfilled its obligations under the Contract.
  10. The Work is deemed to be accepted and performed by the day of signing the Protocol on the Execution of the Work by both contracting parties, and only the Protocol on the Execution of the Work shall be the document of the final acceptance and execution of the entire Work; if the subject of the performance of the Work includes also ensuring the final zoning decision, then the final completion of the handover of the Work shall be the moment of entry into force of all zoning decisions or of the approval of project documentation for the construction by the Ministry of Transport of the Czech Republic, depending on which of these facts occurs later. However, the Contractor is always obliged to incorporate into the Work the changes resulting as requirements of the competent authorities in the proceedings prior to the issuance of the relevant zoning decisions or the approval by the Ministry of Transport.
  11. After the signing of the Protocol on the Execution of the Work by both contracting parties, the obligations of the contracting parties under the Contract which remain unfulfilled at this time or the nature of which implies that they should remain in force after the completion of the Work, remain in force.
  12. The detailed procedure for the acceptance of the Work is regulated by the General Technical Conditions.

# TOTAL PRICE OF THE WORK

* 1. The Price of the Work includes the complete Price for preparation of the Investment Project File and the Documentation for Acquisition of the Zoning Decision, which is stated in paragraph 3.3 of the Contract and in Annex No. 4 to the Contract, where the Price for preparation of the Investment Project File and the Documentation for Acquisition of the Zoning Decision is defined according to individual Parts of the Work corresponding to the individual Partial Stages according to the Performance Schedule.
  2. The Contractor confirms that it is able to perform the subject of the Public Contract for the price specified in paragraph 3.3 of the Contract and in Annex No. 4 to the Contract in full scope, and confirms that the price specified in paragraph 3.3 of the Contract and in Annex No. 4 to the Contract is the final and non-exceedable price which includes all work necessary for the proper completion and handover of the Work, and which may be changed only:
     1. in the event of a change in the amount of statutory value added tax (VAT), in which case the Price of the Work shall increase or decrease in a manner corresponding to the change in VAT,
     2. on the basis of a written agreement of the parties in accordance with Act No. 134/2016 Coll., the Public Procurement Act (hereinafter referred to as the PPA).
  3. The Price of the Work is the highest permissible price and includes all costs of performing the Work. The Contractor declares that it has read the entire content of the Tender Documentation and has not found any defects therein.

# PAYMENT TERMS

* 1. The Price of the Work shall be paid on the basis of a request in the form of a tax document. The Contractor is obliged to issue the tax document for the execution of the Part of the Work no earlier than on the day of signing the relevant Handover Protocol or the Protocol on the Execution of the Work, unless the Work is divided into Partial Stages, by the Contractor and the Client, and to deliver the tax document to the Client within fifteen (15) days of the day when the obligation to declare value added tax or to acknowledge the execution of the performance originated, and the Client commits to pay the amount in question in accordance with the conditions specified in this Article of the Terms and Conditions.
  2. Tax documents shall be issued according to the model (according to the SŽDC Guideline No. 41 as amended), which the Client shall send to the Contractor in electronic form.
  3. The Contractor shall prepare each tax document in three (3) printed originals and then once in electronic form. After the completion of the Work, the Contractor shall prepare and hand over the final tax document to the Client.
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  5. The maturity of the invoice - the tax document is, due to the nature of the obligation, i.e. the administrative complexity of the method of funding the transport infrastructure, sixty (60) days from the delivery of the proper tax document to the Client. The contracting parties consider this maturity period to be reasonable also with regard to the agreement on the ongoing payment of the Price of the Work, by which the parties deviated from the provisions of Section 2610 (1) of the Civil Code.
  6. The payment of the due amount is to be carried out as cashless bank transfer to the account specified by the Contractor in the given tax document. The amount is paid once credited to the account of the Contractor’s provider of payment services. Changing the Contractor’s bank details or adding new ones shall only be made on the basis of the Contractor’s request and, at the same time, by the contract amendment. Such request must be made in writing and solely via the Client’s data box from the Contractor’s data box (in case of legal entities) or by an officially certified document in case the Contractor is an individual, unless this Contractor has its own active data box as well.
  7. The tax document issued by the Contractor must meet all the requirements specified in the Contract or required by generally binding legal regulations, in particular Act No. 235/2004 Coll., on Value Added Tax, as amended, and Act No. 563/1991 Coll., on Accounting , as amended, and must also contain an attached copy of the signed Handover Protocol if it is a tax document for the Partial Stage, or the Protocol on the Execution of the Work if the Work is not divided into Partial Stages.
  8. In the case that the tax document does not contain the abovementioned requirements, the Client shall be entitled to send such document back to the Contractor for completion, without the Client defaulting on the payment thereof; the maturity period shall be restarted upon the repeated delivery of a duly completed or corrected invoice.
  9. The date of the performance of partial taxable transactions on tax documents issued by the Contractor shall always be, in the case of individual completed Parts of the Work, the day of signing the relevant Handover Protocol.
  10. The Contractor commits not to perform a unilateral set-off of the receivable and not to assign any receivable from the Client, or any part thereof, arising under the Contract to a third party without the prior written consent of the Client.
  11. The Client is entitled to use for a unilateral set-off also an uncertain receivable pursuant to the provisions of Section 1987 (2) of the Civil Code.
  12. The Contractor is not entitled to use a receivable of its co-debtor pursuant to the provisions of Section 1984 of the Civil Code for set-off against the Client.
  13. The Client may provide the Contractor with an advance payment as an interest-free loan for the execution of the Work. The Client is entitled to determine the total amount of the advance payment, the number and timing of instalments (if there is more than one), the currencies used, the maturity and other conditions of the advance payment in accordance with its possibilities to provide such advance payment.

# BANK GUARANTEE FOR PERFORMANCE OF THE WORK

* 1. The Contractor handed over the Bank Guarantee for the Performance of the Work to the Client prior to the conclusion of the Contract in accordance with the conditions set by the Client in the Contractor Guidelines (Tender Documentation). The Bank Guarantee for the Performance of the Work (hereinafter also referred to as “the Bank Guarantee”) shall ensure compliance with the contractual conditions, quality and deadlines for the performance of the Work. The Bank Guarantee shall be used by the Client as compensation for claims that might arise due to failure to fulfil the Contractor's obligations under the Contract.
  2. The Client is entitled to use the funds from the Bank Guarantee in the amount corresponding to the amount of the contractual penalty due, any unsatisfied debt of the Contractor to the Client, costs necessary to eliminate defects of the Work or any entitlement for a discount on the Price of the Work, damages caused by the Contractor's performance in violation of the Contract, or any amount which, in the opinion of the Client, corresponds to compensation for defective performance of the Contractor.
  3. The Bank Guarantee for the Performance of the Work shall be issued by a Czech bank or by another Czech party authorized to issue bank guarantees within its business, or by a foreign bank (credit institution) with its registered office in a Member State of the EU having its branch in the Czech Republic (hereinafter referred to as “the Czech Bank”), or by a foreign bank (credit institution) with its registered office in a Member State of the EU operating in the Czech Republic on the basis of the right to free movement of services (hereinafter referred to as “the foreign bank”) for the benefit of the Client as the beneficiary. If the Bank Guarantee is issued by the foreign bank, the Contractor must ensure that the Client's position in the case of drawing the Bank Guarantee and enforcing the Client’s rights under the Bank Guarantee is not less advantageous than in the case of drawing and enforcing the Bank Guarantee issued by the Czech Bank (i.e. in particular that the applicable law, the drawing procedure and the enforcement process are not less advantageous) and that the additional costs associated therewith are fully paid by the Contractor. This can be ensured, for example, by confirming the Bank Guarantee by a Czech bank. In this context, the Client reserves the right, in case of ambiguity, to request the Contractor to prove such facts, including the submission of the relevant documents.
  4. The Bank Guarantee must meet the following requirements:

1. The Bank Guarantee must be issued as irrevocable and unconditional, and the Czech bank or the foreign bank (i.e. the one that issued the Bank Guarantee) commits to perform without objections and on the basis of the first call of the beneficiary,
2. The Bank Guarantee shall be valid for at least the period of the performance of the Work specified in the Contract and further at least 2 months after the handover and acceptance of the Work.
   1. The Client shall be entitled to exercise the right to pay its claims from the Bank Guarantee pursuant to paragraph 11.2 of these Terms and Conditions in cases where:
3. The Contractor does not perform the Work in accordance with the conditions of the concluded Contract or has not fulfilled its obligations arising from the Contract; or
4. The Client withdraws from the Contract for reasons on the part of the Contractor; or
5. The Contractor does not pay to the Client for the damages or the contractual penalty, to the payment of which the Contractor is obliged, and which has been demanded from the Contractor by the Client under the Contract; or
6. The insolvency proceedings against the Contractor’s assets is in progress, under which a bankruptcy decision has been issued or a petition for insolvency has been denied on the grounds of the fact that the available assets are insufficient for the settlement of the cost of the insolvency proceedings, or the bankruptcy has been cancelled on the grounds of the fact that the available assets are totally insufficient, or because receivership has been established according to the special legal regulations.
   1. The Contractor shall ensure that the Bank Guarantee for the Performance of the Work will be valid and enforceable until the Protocol on the Execution of the Work has been signed by both the Contractor and the Client. If the conditions of the Bank Guarantee specify the date (”the expiry date”) when the obligations of the Czech bank or the foreign bank (i.e. the one that issued the Bank Guarantee for the Performance of the Work) expire and the Contractor has not acquired the right to receive the Protocol on the Execution of the Work by thirty (30) days before the date of termination of the Bank Guarantee, then the Contractor shall extend the validity of the Bank Guarantee accordingly until the Work is completed, all defects eliminated.
   2. The Client is also entitled to exercise the right under the Bank Guarantee in the cases where:
      1. The Contractor does not extend the validity of the Bank Guarantee for the Performance of the Work, in cases where the Contractor is obliged to do so under the Contract, and under these circumstances the Client may claim the full amount of the Bank Guarantee for the Performance of the Work,
      2. The Contractor does not pay to the Client the amount due as agreed between the parties or as decided by the party competent to decide on claims under the Contract in the event of such claims by the Client, within forty (40) days after such consent or decision,
      3. The Contractor does not fulfil an unfulfilled obligation within forty (40) days after receiving the Client's notification requesting the fulfilment of such obligation.
   3. The Client returns the guarantee document to the Contractor within twenty (20) days from the day when the Client and the Contractor signed the Protocol on the Execution of the Work.

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# OWNERSHIP RIGHTS AND USAGE RIGHTS

* 1. Ownership right to individual Parts of the Work and to all documents handed over by the Contractor to the Client on the basis of the Contract shall be acquired by the State at the moment of their handover by the Contractor to the Client and at the same time the Client acquires the corresponding right to manage pursuant to Act No. 77/1997 Coll., on State Enterprise, as amended.
  2. As for the results of the Contractor's activities in connection with the performance of the Contract, which are the Author's Work pursuant to the provisions of Section 2 of Act No. 121/2000 Coll., on Copyright, on Rights Related to Copyright and on Amendments to Certain Acts (the Copyright Act), as amended, the Contractor shall, pursuant to the provisions of Section 2634 of the Civil Code, provide the Client with the right to use such Author's Work as a whole or as individual parts thereof as of the date of creation of such Author's Work - a license, exclusive, irrevocable, allowing all ways of using the Author's Work, necessary for the fulfilment of the purpose of the Contract and the continuation of the performance following up to this Contract, and in a quantitative extent appropriate to this purpose, with a territorial scope defined by the territory of the Czech Republic and with time limited to the duration of proprietary copyrights to the Author's Work, including the possibility of interference with the Author's Work; including through third parties, the possibility of granting a sub-license and the possibility to transfer the license to a third party. For the avoidance of doubt, the price for all the licences granted under this Article is already included in the Price of the Work. The Client or its legal successor is not obliged to use the licence.
  3. In the case of the license pursuant to the preceding Article, the Contractor, with regard to the meaning and manner of use, expressly waives the right to terminate the licence contract pursuant to Section 2370 of the Civil Code and waives the right to withdraw from license contract because of changed beliefs pursuant to Section 2382 of the Civil Code.

# CHANGES OF THE WORK

* 1. At any time during the performance of the Work, the Client is entitled to request the Contractor to change the Work, i.e. to perform work that was not part of the performance under the Contract, or not to perform work that was part of the performance under the Contract, or to perform work in other way than described in the Contract. The Contractor is obliged to accept such request. It must always be a change that will not be a substantial modification according to Section 222 of the PPA.
  2. The Contractor itself is entitled, based on its discretion or based on the recommendation, to suggest changes to the performance of the Contract. These are mainly the changes that will bring improvements of the performance of the Contract, savings for the Client or that solve newly occurred situations.
  3. All new or modified Parts of the Work, directly or indirectly affected by the change, must, after the implementation of the approved change, meet all the conditions of the Contract as amended after the incorporation of the relevant change. Likewise, the entire Work and all the Parts of the Work must, after the change has been implemented, continue to meet all the conditions of the Contract. The implementation of the approved change in the performance of the Contract shall not affect the validity of all provisions of the Contract.
  4. If the Client or the Contractor suggests a change to the Work, it shall notify the other party of such fact and, at the same time, describe the subject of the change, its reasons, the anticipated technical solution and the anticipated consequences of the change. The change of the Work shall be marked with a serial number and both parties shall discuss the suggested change at the next meeting.
  5. The Contractor shall subsequently assess the impacts of the suggested change of the Work on the amount of the Price of the Work (i.e. an overview of all costs or savings caused by this change) and possibly also on the deadlines of the performance according to the Performance Schedule and on the cooperation of the Client, etc. The Contractor shall carry out this assessment in writing no later than fifteen (15) days from the suggestion of the change by the Client or the Contractor, unless the Contractor agrees otherwise with the Client in writing. The Contractor is not entitled to remuneration for carrying out the impact assessment of the suggested change.
  6. If the suggested change of the Work also results in a change of the Price of the Work, the Contractor is obliged to compile, within the impact assessment of the suggested change, a budget or a qualified estimate of the change of the price of the relevant parts of the Contract affected by the change (i.e. all costs or savings caused by the change).
  7. Based on a written assessment of the suggested change of the Work, the Client shall approve or reject the suggested change.
  8. If the suggested change of the Work is approved by the Client, the changes must subsequently be agreed in writing in the form of an amendment to the Contract signed by both contracting parties.
  9. In the case of changes of the Work pursuant to this Article, the contracting parties are obliged to proceed in accordance with the mandatory provisions of generally binding legal regulations, in particular the PPA.
  10. The Contractor commits to proceed within the framework of the changes of the Work so as not to endanger the proper performance of the Contract in accordance with the Performance Schedule.
  11. The Contractor commits that in the period from the suggestion for the changes of the Work to the approval of the suggestion for changes of the Work it will not take any steps that would mean that the suggested change of the Work is endangered, prevented or that its Price would increase. If, in the opinion of the Contractor, compliance with such an obligation would lead to a delay in the Performance Schedule, the Contractor is obliged to immediately notify the Client of such a fact.
  12. The provisions of Article 8 of these Terms and Conditions on the acceptance of the Work are not affected by the provisions of this Article.

# LIABILITY FOR DAMAGE AND EXEMPTION FROM OBLIGATION OF COMPENSATION THEREOF

* 1. The risk of damage to the Work or to the Part of the Work being performed shall be borne by the Contractor until the moment of proper handover of the entire Work, i.e. the moment of signing the Protocol on the Execution of the Work by both the Contractor and the Client, even after the submission of the Work or the Part of the Work for acceptance.
  2. The Contractor is liable for any damage incurred by the Client or by third parties as a result of a breach of the Contractor's obligations stipulated by legal regulations or on the basis of legal regulations, or as a result of a breach of the Contractor's obligations under the Contract.
  3. The Contractor commits to compensate any damage incurred by the Client as a result of a breach of the Contractor's obligations stipulated by law or on the basis of law, or as a result of a breach of the Contractor's obligations under the Contract.
  4. The Contractor commits to compensate the Client for all damage arising from duly asserted claims of third parties, arising from breach of any obligation of the Contractor set out in this Article, including claims arising from the exercise of third party intellectual or industrial property rights that were part of the Contractor's performance. At the same time, in the event that the violation of the rights of the third parties is of a permanent nature, the Contractor commits to ensure, without undue delay and at its own expense, that the Work or the Part of the Work no longer violates the rights of the third parties.
  5. No party shall be liable for a damage if it proves that the fulfilment of its obligations under the Contract has been temporarily or permanently prevented by an extraordinary, unpredictable and insurmountable obstacle arising beyond its control pursuant to the provisions of Section 2913 (2) of the Civil Code. However, an obstacle arising from the personal circumstances of the party at fault, or arising only at a time when the party at fault was delayed with the performance of the contractual obligation, or an obstacle which the party at fault was obliged to overcome according to the Contract, shall not exempt the party at fault from its compensation obligation. However, this is without prejudice to the Client's claims arising from the breach of the Contractor's obligations under the Contract if these are covered by the insurance contracts listed in Annex No. 7 to the Contract.
  6. The right to assert the claims from compensations for damages shall expire after a period of fifteen years, calculated from the date on which the right could be exercised for the first time.

# LIABILITY FOR DEFECTS AND GUARANTEES

* 1. The Contractor is liable for all defects in the Work or in the Part of the Work at the time of its handover and acceptance by the Client, as well as for defects that become apparent at any time within 60 months of handover and acceptance of the Work.
  2. For the period pursuant to the previous paragraph, the Contractor is obliged to hand over a duplicate of the Work to the Client if, after its handover and acceptance by the Client, there is complete or partial destruction of the Work and the Client requests for the issuance of a duplicate of the Work. The costs of obtaining the duplicate of the Work shall be borne by the Client.
  3. The Contractor is especially responsible for the accuracy and completeness of the Work, i.e. all documentation prepared within the performance of the Contract. The Contractor is liable for all defects, including legal defects.
  4. The period pursuant to paragraph 16.1 of these Terms and Conditions shall not run:
     1. for the period during which the Client cannot properly use the Work or the Part of the Work affected by the defect, (especially continue in the Construction) because of the defect for which the Contractor is liable,
     2. for the period during which the Contractor is removing defects of the Work or of the Part of the Work for which the Contractor is liable and which do not prevent the Client from the proper use of the Work or the Part of the Work, but which occur repeatedly.
  5. Defects of the Work include, but are not limited to:
     1. incompleteness of the Work and such errors and shortcomings, the elimination of which causes an extension of the deadline for handing over the Work or possibly negatively affects the result and deadline of the zoning decision or zoning approval, or statement of the relevant building authority on the compliance of the proposed construction with spatial planning intentions according to Act No. 183/2006 Coll., the Building Act, as amended, and its implementing decree, including implementing decrees and related regulations;
     2. incompleteness of the Work and such errors and shortcomings that will result in a change of the decisive parameters of the construction, or in an increase of the total costs of the construction, which will have a negative impact on the demonstration of economic efficiency of the construction;
     3. all undiscussed deviations from the Contract, incl. valid legal order, standards and the internal guidelines of the Client;
     4. inconsistency between drawing and text part (e.g. in the report specifying costs of construction);
     5. errors based on the focus performed by the designer;
     6. failure to review the binding underlying materials and output data submitted by the Client;
     7. errors in coordination between individual professions within the project preparation;
     8. failure to state any of the land affected by the construction in the list of the affected land;
     9. failure to contractually secure any land affected by the construction.
  6. If the Client cannot use the Part of the Work due to a defect, the period pursuant to paragraph 16.1 of these Terms and Conditions does not run for the functionally related Parts of the Work either.
  7. The period pursuant to paragraph 16.1 of these Terms and Conditions does not always run from the day when the Contractor, under the provisions of the Contract, became obliged to start eliminating the defect, but not earlier than from the day when the Client actually allows the Contractor to start work on its elimination, until the day when the Contractor hands over the relevant Part of the Work after removing the defect to the Client.
  8. The period pursuant to paragraph 16.1 of these Terms and Conditions is always extended by the period during which this period does not run pursuant to the previous provisions.
  9. The Client or another authorized party is obliged to notify the Contractor that the Work or the Part of the Work has defects, and to request their removal without undue delay after finding them during handover and acceptance of the Work or the of Part of the Work, and in the case of defects that appear only during the period according to paragraph 16.1, without undue delay after they have been found during this period. The Client or another authorized party shall also notify the Contractor of damages incurred by the Client in connection with the identified defects of the Work.
  10. The Contractor commits to start eliminating the defects in the Work or in the Part of the Work without undue delay after receiving the notification from the Client or from another authorized party stating that the Work or the Part of the Work has defects, including a request for their removal. The Contractor commits to continue eliminating the defects without interruption and to eliminate them within the shortest deadline that is technically and technologically possible; such deadline shall be suggested by the Contractor and approved by the Client. If no agreement is reached between the contracting parties regarding the deadline for the elimination of the defect, the Contractor is obliged to eliminate the defect, according to the nature of the defect, within a reasonable period determined by the Client. The Contractor is obliged to remove, at its own expense, also those defects of the Work notified by the Client, for which the Contractor refuses liability, or the defects which the Contractor does not acknowledge. For such a defect, the regulation for defects of the Work shall apply adequately as for other aspects. If it subsequently becomes indisputable that the Contractor was not actually liable for the defect which the Contractor did not acknowledge, the Client is obliged to reimburse the Contractor for the costs the Contractor expediently incurred to eliminate the defect, within 30 days from the date of proving them by the Contractor.
  11. In the event that the Contractor fails to fulfil its obligation to eliminate the defect within the deadline agreed, or determined by the Client, the Client or another authorized person is entitled to ensure the elimination of this defect by its own capacities or by another supplier at the Contractor's expense. Such a procedure of the Client shall not affect the quality guarantee provided by the Contractor for the affected Part of the Work, including its possible extension. The Contractor is obliged to pay the costs of eliminating the defect to the Client on the basis of a request for payment. The Client has the right to use the Bank Guarantee to cover the costs of eliminating the defects.
  12. If the defect in the Work or the defect in the Part of the Work is irreparable, the Contractor is obliged to perform a replacement Work or Part of the Work, or to provide the Client with a reasonable discount on the Price of the Work. The decision whether the Client accepts the replacement Work or the discount on the Price of the Work is entirely within the competence of the Client and is not affected by the previous exercise of another right related to defects. If the Contractor fails to fulfil its obligation to perform a replacement Work or Part of the Work, the Client is entitled to ensure its execution by its own capacities or by another supplier at the Contractor's expense. The Client has the right to use the Bank Guarantee to cover the costs of performing the replacement Work or Part of the Work, or to pay its claim to the provision of a reasonable discount from the Price of the Work.
  13. In addition to the relevant provisions of the legal regulations governing the Client's claims from defective performance, the Contractor commits to reimburse the Client for the share in extra costs incurred by the Client during the execution of the Construction according to the Construction Documentation due to defects in the Work. The extra costs according to the previous sentence shall mean the costs that the Client will have to pay as costs for work and deliveries during the Construction according to the Construction Documentation, which were not recorded by the Contractor in the Construction Documentation, although due to the Contractor's obligations they should and could have been there (extra work), reduced by possible savings which will be achieved as a result of the elimination of the same defects of the Work and the resulting changes in the procedure for the implementation of the Construction (less work). The Client is entitled to demand a share in the extra costs according to this provision, even repeatedly, from the Contractor, up to a total maximum amount of 10% of the total final Price of the Work, including all amendments to the Contract. The Contractor shall pay this share in the extra costs upon a written request from the Client, no later than within 60 days from the delivery of the request for payment. The maximum amount of the share already reflects the fact that the Client itself will not identify the defects of the Work after its own inspection (especially of the completeness of the Documentation), although it should and could have identified them. This provision in no way rules out the right to compensation for damages, payment of the contractual penalty or other rights from defective performance, but to the extent that the Client's claim for payment of a share in the extra costs is exercised, according to this provision, the Client's claims from compensation for damages or contractual penalties can no longer be asserted according to paragraph 17.8 of these Terms and Conditions arising from the same defect.
  14. The right to assert the claims from defective performance shall expire after a period of fifteen years, calculated from the date on which the right could be exercised for the first time.
  15. The provisions of this Article are without prejudice to the provision of Section 2630 of the Civil Code to the Contract.

# PENALTIES

* 1. In the event of a delay of some of the contracting parties with monetary performance, the other contracting party is entitled to demand payment of interest in arrears in the amount stipulated by generally binding legal regulations. For the purposes of the right to payment of a contractual penalty, the interests in arrears within the meaning of the provisions of Section 1971 of the Civil Code are not considered to be a part of the compensation for damage.
  2. The obligated contracting party commits to pay the interest in arrears or the contractual penalty within thirty (30) days from the date of delivery of the written request of the other contracting party.
  3. The payment of the contractual penalty is without prejudice to the right of the other contracting party to receive compensation for damage in full amount.
  4. The contracting party is obliged to fulfil the obligation, which was secured by the contractual penalty, without any respect to the payment of the contractual penalty.
  5. The right to assert the claims pursuant to this Article shall expire after a period of fifteen years, calculated from the date on which the right could be exercised for the first time.
  6. In the event of the Contractor's delay in handing over the entire Work or submitting it for acceptance within the deadline and under the conditions set out in the Performance Schedule, the Contractor is obliged to pay a contractual penalty of 0.1% of the Price of the Work for each commenced day of delay.
  7. In the event of the Contractor’s delay in handing over the duly performed Part of the Work or submitting it for acceptance within the deadline and under the conditions set out in the Performance Schedule for the individual Partial Stages, the Contractor is obliged to pay a contractual penalty of 0.1% of the price for the relevant Part of the Work for each commenced day of delay.
  8. If the Work contains a defect that results in a change of the subsequent stage of development of project documentation (e.g. change in technical parameters of the construction, change in total investment costs of the construction, change in the zoning decision), the Contractor is obliged to pay a contractual penalty of 0.5% of the Price of the Work for each such case.
  9. In the event that the Contractor, at the termination of the activities of any of the authorized persons listed as a member of the Contractor's professional staff or of a person who was proposed for evaluation by the Contractor in the Contractor's tender and who met the minimum qualification level, does not notify the Client, in accordance with paragraph 5.2, of another authorized person, the Contractor is obliged to pay a contractual penalty in the amount of 0.1% of the Price of the Work for each such case and each commenced day of delay.
  10. If the Contractor has entrusted the performance of the Work to a Subcontractor other than that specified in Annex No. 8 to the Contract, without the prior written consent of the Client made in the form of an amendment to the Contract, the Contractor is obliged to pay a contractual penalty of 5% of the Price of the Work for each such case.
  11. If the Contractor fails to fulfil its obligation under the Contract to maintain the insurance contracts required by the Client for the entire period of the performance of the Work, or fails to submit the specified documents to the Client to prove the fulfilment of this obligation, the Contractor is obliged to pay a contractual penalty of 0.02% of the Price of the Work for each day of non-compliance with this obligation.
  12. If the Contractor fails to fulfil its obligation to provide and hand over to the Client the Bank Guarantee for the Performance of the Work, or does not maintain the Bank Guarantee in force to the extent required by the Contract for Work, the Contractor is obliged to pay a contractual penalty of 0.03% of the Price of the Work for each day of non-compliance with this obligation.
  13. If the Contractor assigns, even partially, the obligations related to the performance of the Work to a third party without the prior written consent of the Client, the Contractor is obliged to pay a contractual penalty in the amount of 3% of the Price of the Work.
  14. In the event of non-inclusion of the land affected by the Construction in the list of land and in the event of contractual non-securing of the land affected by the Construction, the Contractor is obliged to pay a contractual penalty in the amount of CZK 50,000 for each such affected land.
  15. In the event of the Contractor's delay in fulfilling another obligation under the Contract than stated above, the Contractor is obliged to pay a contractual penalty in the amount of 0.05% of the price of the affected Part of the Work for each commenced day of delay.
  16. If the Contractor breaches any obligation pursuant to Article 4 of these Terms and Conditions, it is obliged to pay to the Client a contractual penalty in the amount of 0.1% of the Price of the Work for each individual breach.

# WITHDRAWAL OF THE CLIENT

* 1. The Client reserves the right to withdraw from the Contract after each Partial Stage specified in the Contract if the relevant Partial Stage of the performance results in significant changes in the assignment of the subsequent stages, or the processing of other partial parts of the performance has lost its meaning. These are mainly the cases where the evaluation of the efficiency of the investment has not proven the required efficiency or the Detailed Design will not be approved, etc.
  2. In addition to other reasons arising from legal regulations, the Client is entitled to withdraw from the Contract in the case of a material breach of the Contract if:
     1. The Contractor has been delayed in the execution of the Work or of the Part of the Work for more than 30 days.
     2. The Contractor violates its obligation under the Contract if the defective condition due to a reason on the part of the Contractor persists even after 15 days from the date of the Client's written notification of this fact.
     3. The Contractor does not fulfil its obligation to provide the Bank Guarantee for the Performance of the Work pursuant to Article 11 of these Terms and Conditions, or does not fulfil its obligation to maintain any of the insurance contracts required by the Client in force for the entire period of performance of the Work.
     4. It is clear from the circumstances that the Contractor is not able to continue in the performance of the Work, or the Contractor notifies the Client in writing that it will not continue in the performance of the Work.
     5. The Contractor does not comply with the request to eliminate any of the defects pursuant to Article 16 of these Terms and Conditions if the defect deprives the Client, in principle, of all benefits from the Work or the Part of the Work.
     6. The Contractor breaches the obligation that the Subcontractors shall provide the performance under the Contract only to the extent specified in Annex No. 8 to the Contract, or assigns the rights or obligations under the Contract without the written consent of the Client.
     7. The Contractor becomes insolvent, was dissolved with or without liquidation if it has no assets, bankruptcy is declared for the Contractor's assets, the Contractor itself files a debtor's petition to initiate the insolvency proceedings or the insolvency petition is rejected because the assets are insufficient to reimburse the costs of the insolvency proceedings (pursuant to Act No. 182/2006 Coll., on Bankruptcy and Ways of Resolving it (the Insolvency Act), as amended), or the bankruptcy was cancelled because the assets were completely insufficient to satisfy creditors, if the enforcement proceedings have been initiated or the enforcement of the decision has been ordered against the Contractor, or if any other act or event occurs which would have a similar effect to any of the mentioned acts or events.
     8. The Contractor, a party on the Contractor's side or the Representative of the Contractor commits the criminal offense of bribery or acceptance of a bribe in connection with the performance of the Contract.
     9. Any statement of the Contractor under the Contract proves to be untrue.
     10. Until the commencement of work on the rail transport route, the Contractor does not submit the original or a certified copy of the document proving professional competence stipulated by Act No. 266/1994 Coll., on Railways, and by implementing decrees to this Act, all as amended, by which the Contractor demonstrates that every employee, who shall perform the managerial work, is authorized to perform the activities on the rail transport route, if such a document is necessary due to the nature of the Work and of the work performed.
     11. The Contractor does not notify the Client, pursuant to paragraph 5.2 of these Terms and Conditions, of another authorized person within 30 days after termination of activities of any of the authorized persons who was listed as a member of the Contractor's professional staff or of a person who was suggested for the purpose of evaluation by the Contractor in the Contractor's tender and who met the minimum qualification level.
  3. If any of the events or circumstances specified in paragraph 18.2 of these Terms and Conditions occurs, the Client may withdraw from the Contract by written notification to the Contractor, which will take effect on the day of its delivery to the Contractor. In addition, in the cases specified in paragraphs 18.1, 18.2.7 and 18.2.8 of these Terms and Conditions, the Client may withdraw from the Contract by notification with immediate effect as of the date of its delivery to the Contractor.
  4. The Client's decision to withdraw from the Contract does not affect the exercise of other rights of the Client under the Contract, which by their nature are to last even after this withdrawal.
  5. The Contractor commits that on the day when its withdrawal from the Contract takes effect the Contractor will:
     1. cease to perform all other work except those which the Client has instructed for the protection of life or property, or for the safety of the Work;
     2. hand over all completed documentation for which it has received payment; and
     3. return to the Client all documents and items it was given by the Client for the purpose of performing the Work.
  6. The Contractor acknowledges that upon withdrawal, the Client may complete the Work and/or arrange for other parties to do so. The Client and these parties may then use the DZD and other documentation prepared by the Contractor or on its behalf.
  7. As of the effective date of the withdrawal from the Contract, the Contractor is entitled to reimbursement of the provable costs for:
     1. work that has been performed on the Work until the effective date of the withdrawal and that has not been paid to the Contractor as a performance for the Part of the Work within another Partial Stage;
     2. materials ordered by the Contractor for the performance of the Work until the effective date of withdrawal from the Contract, which were delivered to the Contractor or the delivery of which the Contractor is obliged to accept: these materials shall become the property of the Client at the time of payment and the Contractor is obliged to hand them over to the Client at a place specified by the Client.
     3. The Contractor is not entitled to payment according to the preceding paragraphs in relation to the work and material, the execution of which, or the use of which in the performance of the Work, would result in defects of the Work.

# WITHDRAWAL OF THE CONTRACTOR AND CLAIMS OF THE CONTRACTOR

* 1. In addition to other reasons arising from legal regulations, the Contractor is entitled to withdraw from the Contract only if:
     1. The Client does not sign the Handover Protocol within sixty (60) days after the Contractor has met the conditions for its signature by the Client;
     2. The Client has been delayed in any due payment for the performance of any of the Partial Stages, after deducting the Client’s financial claims against the Contractor, for more than forty (40) days after maturity date of the relevant tax document and delivery of the written request of the Contractor for the payment of the amount due in question.
  2. The Contractor’s withdrawal from the Contract pursuant to this Article shall become effective on the date on which the written withdrawal from the Contract is delivered to the Client.
  3. The Contractor's decision to withdraw from the Contract does not affect the exercise of other rights of the Contractor under the Contract.
  4. The provisions of paragraphs 18.5 to 18.7 of these Terms and Conditions shall also apply in the event of the Contractor's withdrawal.

# DISPUTE RESOLUTION

* 1. The contracting parties commit herein to make maximum effort in order to settle all mutual disputes arising from or in connection with the Contract, including disputes relating to the interpretation or validity of the Contract, or disputes related to confirmations, decisions, instructions, opinions or assessments of the Client, and to try to solve these disputes in an amicable manner, primarily by means of negotiations between the authorized persons or authorized representatives.
  2. Disputes arising from the Contract and in connection with the Contract shall be referred to the competent general court of the Czech Republic.