

PROCESS <b>ZSC 8.4.3 - Indirect Order Placement</b>	DOCUMENT NUMBER WI ZSC 8.4.3-01 EN	PAGE NUMBER 1 of 7
SUBJECT GENERAL PURCHASING TERMS AND CONDITIONS	REVISION DATE 07/27/2018	REVISION 0
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Solar Turbines EAME s.r.o.

## GENERAL PURCHASING TERMS AND CONDITIONS

### TABLE OF CONTENTS

A.	SCOPE AND CONTRACTUAL LANGUAGE .....	1
B.	ORDER AND PERFORMANCE OF THE ORDER.....	1
C.	TRANSFER OF OWNERSHIP AND RISKS.....	2
D.	PRICE .....	2
E.	INVOICING AND PAYMENT .....	2
F.	PERFORMANCE .....	2
G.	WARRANTY.....	3
H.	LIABILITY.....	3
I.	INSURANCE .....	3
J.	COMPLIANCE WITH LAWS AND REGULATIONS .....	4
K.	SUBCONTRACTING .....	5
L.	LIQUIDATED DAMAGES, SUSPENSION AND TERMINATION.....	5
M.	FORCE MAJEURE .....	6
N.	CONFIDENTIALITY AND USE OF PROVIDED INFORMATION .....	6
O.	APPLICABLE LAW AND JURISDICTION.....	7
P.	LANGUAGE .....	7

### A. SCOPE AND CONTRACTUAL LANGUAGE

These General Purchasing Terms and Conditions (the “GPTCs”), negotiated and approved by and between the Parties, shall govern all the contractual relations between SOLAR TURBINES EAME s.r.o. (“Solar”) and their suppliers (the “Supplier”) within the context of product supply (the “Goods”) or service (the “Service”) provision orders (collectively, the “Supply or Supplies”). Any exemption to these GPTCs shall be subject to a prior written agreement by and between Solar and Supplier (also separately referred to as a “Party” and collectively as “Parties”).

The Parties hereby acknowledge that if any provision stipulated in the Supplier’s documents conflicts with these GPTCs, said provision in Supplier’s documents shall not apply. Furthermore, the Parties hereby acknowledge that

only the technical part of the Supplier’s proposal applies.

The Parties hereby acknowledge that the execution of this document or any other document incorporating these GPTCs as well as any commercial negotiations between them shall not entail any exclusive or preferential right for the Supplier or any commitment regarding volume from Solar, unless otherwise expressly provided.

Contractual documents such as purchase orders, delivery programmes (etc.) as well as changes made to the said documents may be exchanged by and between the Parties by mail, fax, email or any other electronic communication means provided, however, that any such changes must be agreed to in writing by the Parties.

### B. ORDER AND PERFORMANCE OF THE ORDER

The purpose, characteristics and performance conditions of the Supply shall be set out in Solar’s purchase order and/or the documents appended thereto (collectively, “Purchase Order”).

Purchase Order shall be accepted only with reference to these GPTCs. Should the Supplier in its acceptance refer to any purchase terms different from these GPTCs, the acceptance shall be considered an invalid acceptance of the Purchase Order.

Any change to the agreement established by the Purchase Order has to be agreed in writing by Solar and the Supplier.

Delivery times, types of supplies and quantities stipulated shall be essential and mandatory conditions of the Purchase Order. Should the Supplier fail to comply with these provisions without any prior written approval from Solar, the Supplier shall bear any and all additional costs and to repair any damage resulting therefrom.

Unless otherwise expressly provided, the Supplies shall be transported at the Supplier’s risks. Any delivery shall come with a packing list including the number and the date of the Purchase Order, the reference, quantity and description of the delivered Supplies. The Supplier shall also transmit a proof of delivery or a readiness for shipment notification of the Goods to Solar. Solar reserves the right to refuse any Supplies which do not comply with the instructions, specifications, drawings, data or required

PROCESS	DOCUMENT NUMBER	PAGE NUMBER
ZSC 8.4.3 - Indirect Order Placement	WI ZSC 8.4.3-01 EN	2 of 7
SUBJECT	REVISION DATE	REVISION
GENERAL PURCHASING TERMS AND CONDITIONS	07/27/2018	0
THE INFORMATION HEREON IS THE PROPERTY OF Solar Turbines Incorporated. WITHOUT WRITTEN PERMISSION, ANY COPYING, TRANSMITTAL TO OTHERS, AND ANY USE EXCEPT THAT FOR WHICH IT WAS LOANED, IS PROHIBITED.		

warranty (either express, automatic or legal) and to request the replacement thereof. The refused Supplies shall be returned to the Supplier at its expense and risks.

### **C. TRANSFER OF OWNERSHIP AND RISKS**

Unless otherwise stipulated by the Parties, ownership and risks shall be transferred upon delivery of the Supplies at the place stipulated in the Purchase Order.

No Supplier's title retention clause shall be enforceable against Solar unless expressly accepted in writing.

### **D. PRICE**

The prices mentioned on Solar's Purchase Order shall be total, firm, and may not be revised, unless expressly agreed by Solar in writing.

Partial payment of an invoice does not imply that the Supplies meet the requirements of the Purchase Order and Solar reserves the right to make claims at any time.

Prices shall be expressed in the currency set out in the Purchase Order.

Any agreed change to the Purchase Order shall be treated separately in one separate variation Purchase Order with one payment or credit at the completion of the Purchase Order.

### **E. INVOICING AND PAYMENT**

The following data shall be mentioned in invoices:

- Supplier's corporate name and any other mandatory legal information,
- correct VAT number of Supplier,
- correct VAT number of Solar purchasing entity,
- appropriate tax exemption wording whenever applicable,
- invoice number and date,
- Purchase Order number and date,
- project reference number and project manager's name,
- product references, descriptions, quantities and unit price,
- total amount before tax, any taxes, the total amount including tax and the currency, and
- all specific information mentioned in the corresponding Purchase Order.

The invoice shall be addressed to Solar and shall be transmitted to the "Accounts Payable" department at the following address: **Solar Turbines EAME, s.r.o., Průmyslová zóna Triangle, Tatinná 59, Bitovozeves, 438 01 Žatec, Czech Republic** or in electronic form to following address e-mail: **2U\_invoice@solarturbines.com**

Unless otherwise provided by a special clause mentioned in the Purchase Order or in any written contractual document executed by the Parties, the whole amount shall be invoiced by the Supplier after delivery of the Purchase Order.

Unless otherwise specified on the Purchase Order, Solar shall pay all valid invoices received from Supplier within 60 days upon receipt.

Any invoice non-compliant with the above mentioned requirements shall be considered as invalid by Solar. In that case, Supplier shall proceed with the corrections and submit a compliant invoice to Solar. Payment of the invoice will be delayed accordingly.

### **F. PERFORMANCE**

The Supplier agrees to comply with all statutory and regulatory provisions, in particular labour law and the regulations pertaining to the employment of foreign workers. The Supplier also agrees to comply with all applicable regulations against illegal employment.

Any and all Supplier's staff required to work on Solar's sites shall remain under the full authority of the Supplier which shall be solely responsible for its personnel's work and behaviour.

The Supplier shall provide its personnel with all the appropriate resources required for the full performance of its mission. Under no circumstance may the Supplier's personnel use Solar's equipment unless under an express written permission.

By acceptance of the Purchase Order, the Supplier acknowledges that it has received a copy of the rules to be complied with by service providers working on Solar's site or any other site designated by Solar as well as the site safety instructions. The Supplier agrees to comply with said rules and instructions and to have them complied with by its staff.

PROCESS	DOCUMENT NUMBER	PAGE NUMBER
ZSC 8.4.3 - Indirect Order Placement	WI ZSC 8.4.3-01 EN	3 of 7
SUBJECT	REVISION DATE	REVISION
GENERAL PURCHASING TERMS AND CONDITIONS	07/27/2018	0
THE INFORMATION HEREON IS THE PROPERTY OF Solar Turbines Incorporated. WITHOUT WRITTEN PERMISSION, ANY COPYING, TRANSMITTAL TO OTHERS, AND ANY USE EXCEPT THAT FOR WHICH IT WAS LOANED, IS PROHIBITED.		

The Supplier agrees to keep Solar informed of any changes applicable to the said Supplier (legal form, shareholding, registered office, banking data, contact person, etc.).

## G. WARRANTY

The Supplier, in addition to any express or implied warranties of additional scope given to Solar by Supplier or implied by law, hereby warrants that Supply will be in full conformity with Solar's instructions, specifications, drawings and data, and are new, of excellent quality and will be free from defects in design (to the extent that Supplier furnishes the design), materials, manufacturing and workmanship and are suited to their intended use.

The Supplier agrees to develop, maintain and engage its personnel and any person under its responsibility in its drive to continuously improve its competitiveness, quality, procurement securing and the services incumbent upon it. The Supplier shall be kept informed of any changes to said procedures and agrees to inform Solar immediately in writing, should it fail to comply with said procedures. Solar reserves the right to check that the Supplier complies with the procedure at any time, without the Supplier being released from its obligations and liabilities.

In the event a defect is found on the Supplies, visible or not upon delivery, the Supplier agrees to replace them immediately at its expense or to correct the defect (whenever possible). The Supplier shall also bear the costs incurred before the defect is observed and directly resulting therefrom, notwithstanding the compensation of any damage suffered by Solar, in compliance with the provisions of Act No. 89/2012 Coll., Czech Civil Code (hereinafter referred to as "**Czech Civil Code**"). Should the Supply be rejected during an inspection due to Supplier's fault, the cost of all additional inspections on the rejected Supply will also be charged to the Supplier.

The Supplier agrees that this warranty shall also be applicable after acceptance of the Supply by Solar, for a period of twenty four (24) months as from the delivery, excepted otherwise specified on the Purchase Order. Supplier shall be responsible for every claim for compensation in respect of damage or injury that is based on a breach of the foregoing warranty, and, at Solar's option, Supplier shall handle any such claims or shall provide all reasonable assistance to Solar in Solar's

handling of such claims.

## H. LIABILITY

The Supplier shall be solely liable for any faults/defects of the Supplies. Should the Supplier fail to do so, Solar reserves the right to replace, repair and modify the Supplies (subject to Solar's free choice) at the Supplier's entire expense.

Similarly, the Supplier shall hold Solar harmless from any poor workmanship claim and agrees to cover any harmful consequences for Solar and/or third parties.

The Supplier shall immediately inform Solar of any defect that it discovers in its Supplies so as to limit the harmful consequences of said defects.

## I. INSURANCE

The Supplier shall be insured so as to be covered should any action for compensation be taken against it further to any damage (especially bodily harm), including death and/or any material and/or consequential damage. The said insurance policies shall include the applicable minimum legal warranties and shall cover the risks stated below up to the following minimum amounts:

- (i) Worker's Compensation and Employers' Liability Insurance providing benefits as required by applicable law with a minimum limit of EUR 1,000,000;- per occurrence or limits set by applicable law, whichever is greater;
- (ii) Commercial General Liability Insurance (Occurrence Coverage) including products, completed operations, and Contractor's contingent liability for subcontractors and agents with a minimum combined single limit of liability of EUR 2,000,000;- per occurrence for bodily injury or death and property damage;
- (iii) Business Automobile Liability Insurance (Occurrence Coverage) for owned, non-owned, and hired automotive equipment with a minimum combined single limit of liability set by applicable law; and
- (iv) If the Supply include design and/or engineering or other professional services, Contractor shall maintain

PROCESS	DOCUMENT NUMBER	PAGE NUMBER
ZSC 8.4.3 - Indirect Order Placement	WI ZSC 8.4.3-01 EN	4 of 7
SUBJECT	REVISION DATE	REVISION
GENERAL PURCHASING TERMS AND CONDITIONS	07/27/2018	0
THE INFORMATION HEREON IS THE PROPERTY OF Solar Turbines Incorporated. WITHOUT WRITTEN PERMISSION, ANY COPYING, TRANSMITTAL TO OTHERS, AND ANY USE EXCEPT THAT FOR WHICH IT WAS LOANED, IS PROHIBITED.		

Errors or Omissions Liability and Professional Liability Insurance with a minimum limit of EUR 2,000,000;- each occurrence, and any other specialty policies with appropriate coverage limits as requested by Solar.

The Supplier shall prove that it holds said insurance policies upon receipt of the Purchase Order or at any time upon request from Solar. Upon request, the Supplier shall transmit to Solar a valid insurance certificate stating the type and term of the insurance warranty as well as the deductibles.

## J. COMPLIANCE WITH LAWS AND REGULATIONS

1. The Supplier hereby makes the following undertakings:

- (i) The Goods shall be manufactured, stored, transported and sold in compliance with the legislation in force in the country where they are manufactured, stored, transited, delivered and installed, in particular as regards health, safety, environmental protection and applicable labour laws, rules and regulations;
- (ii) The Service shall be provided in compliance with the applicable laws, rules and regulations in force in the country of delivery.

2. In particular, the Supplier represents that it also complies with the REACH Regulation (Registration, Evaluation, Authorization and restriction of Chemicals) and more generally with any health, safety and environmental laws, rules, regulations, directives, ordinances, orders, or statutes. Furthermore, the Supplier shall, whenever required by law, provide Solar with a certificate of compliance of the Supplies delivered within the scope of any Purchase Order with Czech health, safety and environmental laws and regulations.

3. If applicable and if requested by Solar, Supplier shall disclose to Solar any Goods Supplier delivered to Solar that contain tin, tantalum, tungsten, gold, or other materials that may be designated as a conflict mineral by the U.S. government (“**Conflict Minerals**”). Supplier shall have a supply chain policy for Conflict Minerals and shall undertake (1) a reasonable inquiry into the country of origin of Conflict Minerals incorporated into Goods it

provides Solar; (2) due diligence of its supply chain, as necessary, to determine (i) if Conflict Minerals incorporated into Goods it provides Solar are sourced from the Democratic Republic of the Congo or adjoining countries and if so, (ii) whether such Conflict Minerals directly or indirectly support conflict in these countries, and (3) risk assessment and mitigation actions as may be necessary to implement the reasonable country of origin inquiry and due diligence procedures. Supplier agrees to provide to Solar all supporting information and documentation substantially in the format requested by Solar, including, but not limited to, supply chain data necessary or desirable for Solar to comply with its obligations under U.S. law, namely Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act and its implementing regulations.

4. The Supplier also represents that it complies with the provisions of all applicable laws and regulation from which liability may accrue to Solar for any violation thereof, including but not limited to, applicable wood packing regulations of the country of destination, Environmental Requirements, Product Regulations, Export Regulations such as without limitation the Fair Labor Standards Act of 1938, the U.S. Export Administration Regulations, the International Traffic in Arms Regulations, the sanctions regulations administered by the U.S. Treasury Department Office of Foreign Assets Control, and the Sarbanes-Oxley Act, all as amended.

5. The Supplier represents and warrants that neither it nor any of its directors, officers, employees, or representatives have engaged or will engage in Bribery in connection in with its performance under these GPTCs or any other agreement with Caterpillar Inc., its affiliates, or their respective directors, officers, employees, representatives, agents, successors, and assigns (“Caterpillar”). Bribery means the offering, promising, giving, or authorizing of any payment or transfer of anything of value, directly or indirectly through third parties, to any person for the purpose of influencing any act or decision of such person or securing an improper advantage to assist Caterpillar in obtaining, retaining or conducting business.

To the extent Caterpillar permits the use of subcontractors under these GPTCs, Supplier agrees it (1) will instruct such subcontractors neither to engage in nor to tolerate any act



PROCESS	DOCUMENT NUMBER	PAGE NUMBER
ZSC 8.4.3 - Indirect Order Placement	WI ZSC 8.4.3-01 EN	5 of 7
SUBJECT	REVISION DATE	REVISION
GENERAL PURCHASING TERMS AND CONDITIONS	07/27/2018	0
THE INFORMATION HEREON IS THE PROPERTY OF Solar Turbines Incorporated. WITHOUT WRITTEN PERMISSION, ANY COPYING, TRANSMITTAL TO OTHERS, AND ANY USE EXCEPT THAT FOR WHICH IT WAS LOANED, IS PROHIBITED.		

of Bribery, (2) will not use such subcontractors as a conduit for Bribery, and (3) will ensure that such subcontractor complies with this provision in the same manner as Supplier is required to comply.

Supplier agrees that a violation of this provision shall constitute a material breach of the GPTCs and that Caterpillar may, in its discretion, either suspend the Purchase Order or terminate it. Supplier agrees to indemnify, defend, and hold harmless Caterpillar against all demands, liabilities, fines, penalties, losses, and damages (including costs, investigation and litigation expenses and counsel fees incurred in connection therewith) arising out of or related to Supplier's obligations under this provision.

Upon Caterpillar's request, Supplier shall at its expense provide to Caterpillar in a timely manner complete and accurate information requested through due diligence questionnaires and periodic compliance certifications. If Caterpillar has reason to believe that Supplier is not in compliance with this Clause, Caterpillar has the right to inquire, or to have Caterpillar's authorized representatives conduct inquiries, to ascertain the extent of the Supplier's non-compliance with this provision, and Supplier agrees to cooperate and provide all documentation and information related to this Purchase Order or any other agreement with Caterpillar that is reasonably requested by Caterpillar in connection with such inquiries.

In the event Supplier becomes the subject of an enforcement action or receives an information request from any government entity for Bribery relating to Supplier's performance under this Purchase Order or any other agreement with Caterpillar, Supplier shall provide to Caterpillar written notice not later than ten (10) business days following such enforcement action or information request, or the earliest date thereafter if prohibited from earlier disclosure by applicable law.

6. The Supplier shall comply with all applicable employment, social security, salary and tax obligations, including but not limited to the obligations imposed on an employer in the area of safety and welfare at work, the guarantee of a minimum wage and payment of the wage for its employees and those of the Supplier's subcontractors,

employment or accommodation of foreign workers.

The Supplier shall also ensure that all social security contributions and all applicable taxes, such as VAT and payroll withholding tax, are regularly paid.

The Supplier shall indemnify, defend and hold harmless Solar, its agents, affiliates, officers and directors from and against all claims of third parties (including public authorities) with respect to any breach.

Where an alleged non-compliance involves a notification from a public authority to Solar in relation to social security dues from the Supplier towards such public authorities, Solar shall request Supplier to correct the situation within a remedy period of seven (7) days after written notice by Solar. Where the Supplier fails to become compliant within said seven (7) days, Solar shall have the right to terminate the agreement established by the Purchase Order.

### **K. SUBCONTRACTING**

The Supplier agrees to comply with all legal provisions related to subcontracting and to obtain Solar's prior written approval concerning subcontractor selection and payment conditions before commissioning any subcontractor. Solar reserves the right to refuse or reject any of the Supplier's subcontractors.

The Supplier shall be liable for all the services provided by its subcontractors and shall ensure that they comply with the obligations that it has undertaken with Solar. The Supplier shall also remain liable for the Supply.

### **L. LIQUIDATED DAMAGES, SUSPENSION AND TERMINATION**

Should the Supplier fail to perform or to comply with its obligations (including but not limited to late delivery of Supplies and late submittal of any documentation requested in the Purchase Order), Solar may, after sending a formal notice to provide explanations on the situation, take the following measures by registered letter with acknowledgment of receipt:

- (i) Suspend the performance of the Supplies in progress
  - call on another service provider at the defaulting Supplier's expense and risks; and/or
  - apply liquidated damages of 1% of the amount of

PROCESS	DOCUMENT NUMBER	PAGE NUMBER
ZSC 8.4.3 - Indirect Order Placement	WI ZSC 8.4.3-01 EN	6 of 7
SUBJECT	REVISION DATE	REVISION
GENERAL PURCHASING TERMS AND CONDITIONS	07/27/2018	0
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the total Purchase Order per commenced late week, without said liquidated damages exceeding 5 % of the amount before tax of the concerned Purchase Order, notwithstanding any action taken by Solar for the compensation of its entire loss.

- (ii) Terminate the whole or part of the agreement established by the Purchase Order. Said termination shall take effect upon receipt of Solar's termination letter, unless Solar has provided a notice period. The termination shall be understood without prejudice to any damages which Solar might claim.

Solar may at any time terminate or cancel all or any part of undelivered Supplies by a termination of the agreement established by the Purchase Order or its part. The Supplier agrees that its sole remedy as a consequence of any such termination or cancellation is the reimbursement by Solar of the reasonable costs of materials and labour actually and directly incurred by Supplier on the Supplies terminated or cancelled by Solar prior to the Supplier's knowledge of such termination or cancellation.

### **M. FORCE MAJEURE**

Events considered as unforeseeable, irresistible and uncontrollable under applicable Czech Law shall be considered as cases of Force Majeure. The Party which suffers such an event that prevents its performance of its obligation shall notify the other Party thereof by registered letter with acknowledgment of receipt within eight days as from the occurrence of the event, and shall immediately take all measures to remedy the situation. The respective Party's obligations shall then be suspended.

Should the event last longer than one month, either Party shall be free to terminate the agreement established by a Purchase Order by registered letter with acknowledgment of receipt.

### **N. CONFIDENTIALITY AND USE OF PROVIDED INFORMATION**

All plans, drawings, designs, and specifications supplied by Solar to Supplier shall remain the property of Solar.

The Supplier agrees to keep all the information obtained from Solar confidential and to refrain from disclosing said information. The Supplier shall only transmit information to its employees who need to be knowledgeable thereof.

Said information shall include but not be limited to any information transmitted by Solar or information (general, specific, economic or technical information) of which the Supplier becomes knowledgeable during visits, meetings and exchanges with Solar including any drawings, specifications, manufacturing methods, transmitted verbally or on any support whatsoever.

Should a court demand that the Supplier disclose any information, the Supplier shall be entitled to disclose such information and is obliged to notify in writing the Solar of the disclosure in advance or, if prior notice is not possible, without delay after the disclosure.

Furthermore, the Supplier agrees to use the information transmitted by Solar in Solar's sole interest, i.e. not to use said information on its own behalf or on behalf of third parties.

The Supplier acknowledges that it has a mere right to use the confidential information transmitted by Solar and under no circumstances any intellectual property rights. In fact, information shall remain Solar's exclusive property.

Said information shall be kept confidential throughout the term of the relationship established between the Supplier and Solar and for 5 (five) years after the end of said relationship.

In the event of claim, action for infringement, legal or other proceedings against Solar pertaining to the Supplies, the Supplier accepts to pay the costs incurred by Solar for its defence and to compensate Solar for any damage or loss suffered due to said action for infringement, legal actions and any type of claims. This guarantee shall extend to Solar's subsidiaries and customers.

Moreover, the Supplier shall refrain from disclosing its relationship with Solar and, more generally, with CATERPILLAR, even for commercial reference purposes without prior express approval from Solar. The Supplier shall also refrain from disclosing the Solar trade name as well as its trademarks, logos and, more generally, any element on which Solar or CATERPILLAR has an intellectual and/or industrial property right, without Solar's prior express approval.

PROCESS <b>ZSC 8.4.3 - Indirect Order Placement</b>	DOCUMENT NUMBER WI ZSC 8.4.3-01 EN	PAGE NUMBER 7 of 7
SUBJECT GENERAL PURCHASING TERMS AND CONDITIONS	REVISION DATE 07/27/2018	REVISION 0
THE INFORMATION HEREON IS THE PROPERTY OF Solar Turbines Incorporated. WITHOUT WRITTEN PERMISSION, ANY COPYING, TRANSMITTAL TO OTHERS, AND ANY USE EXCEPT THAT FOR WHICH IT WAS LOANED, IS PROHIBITED.		

### **O. APPLICABLE LAW AND JURISDICTION**

Any dispute concerning the construction, performance or termination of the respective commitments made by the Supplier or Solar, the purchasing agreement or these GPTCs shall be brought before the Courts of the Czech Republic, specifically the Municipal Court of Prague 1 (in Czech: Obvodní soud pro Prahu 1) or the District Court of Prague (in Czech: Městský soud v Praze). Disputes shall not be brought before any other courts, irrespective of the place of delivery and method of payment agreed upon by and between the parties, even in the event of warranty claim, incidental claim or multiple defendants.

These GPTCs and any Purchase Order shall be governed by and construed under the laws of Czech Republic.

Section 1729 (relating to pre-contractual liability) and Section 1764 (relating to hardship) of the Czech Civil Code shall not be applicable to any transaction pursuant to these GPTCs.

The United Nations Convention on Contracts for the International Sale of Goods, the United Nations Convention on the Limitation Period in the International Sale of Goods of 1974 and Protocol of 1988 (amending the Limitation Period Convention) shall not be applicable to any transaction pursuant to these GPTCs.

### **P. LANGUAGE**

These GPTCs exist in English and Czech versions. In case of any discrepancy between the Czech and English versions, the English version shall prevail.