

**POGOJI POSLOVANJA ZA DOBAVO OBDELOVALNIH STROJEV V SLOVENIJI**

to be applied to transactions concluded with

- a person who, when concluding the contract, acts for the purposes of his/her commercial or self-employed professional activities (entrepreneur);
- legal persons and/or special funds under applicable law.

**1. General**

- 1.1. Any and all deliveries and services are governed by these Terms and Conditions and by specific contractual agreements, if any. Deviating terms and conditions of purchase of the customer do not become part of the contract, not even if the order is accepted. In default of any special agreement, a contract is deemed concluded upon written confirmation of the order by the supplier.
- 1.2. The supplier reserves all property rights and copyrights in samples, cost estimates/ quotations, drawings and similar information of tangible or non-tangible quality including in electronic form; they must not be made available to third parties. The supplier undertakes to make information and documents which are designated by the customer as confidential available to third parties with the customer's consent only.

**2. Price and Payment**

- 2.1. In default of any special agreement to the contrary, the prices are ex works, including cost of loading at the works but exclusive cost of packaging. The prices are exclusive of the value-added tax which has to be paid on top at the statutory rate valid at the time.
- 2.2. In default of any special agreement to the contrary, payment is due and payable without deduction to the supplier's account as follows:
  - 30% within 10 days from the date of the down payment invoice
  - 60% within 10 days from the notification to the customer that the machine is ready for dispatch,
  - The remainder within one month from the passing of the risk.
- 2.3. The customer is only entitled to withhold payments if and to the extent that his counter-claims are un-disputed or have been established by a final non-appealable court decision (*res judicata*).
- 2.4. The customer is only entitled to set off his counter-claims arising from any other legal relationships if and to the extent that they are undisputed or have been established by a final non-appealable court decision (*res judicata*).

**3. Delivery time, delay in delivery**

- 3.1. The delivery time is specified in the agreements concluded between the contracting parties. Compliance with such delivery times by the supplier requires that all commercial and technical issues have been clarified between the contracting parties and that the customer has fulfilled all obligations incumbent on him such as the provision of any required official certificates or permits or the down payment. If this is not the case, the delivery time will be extended correspondingly. This does not apply if and to the extent that the supplier is responsible for the delay.
- 3.2. Compliance with the delivery times is subject to correct and timeous sub-supplier delivery to the supplier.
- 3.3. The delivery time is deemed complied with if the goods to be delivered have left the supplier plant by the expiry of the

Veljajo za posle, sklenjene

- z osebo, ki pri sklenitvi pogodbe deluje v imenu svoje poklicne dejavnosti kot samozaposlena oseba (podjetnik);
- s pravnimi osebami in/ali s posebnimi skladi, v skladu z nacionalnim pravom.

**1. SPLOŠNO**

- 1.1. Katere koli dobave in storitve so urejene s predmetnimi Pogoji poslovanja in s posebnimi pogodbenimi dogovori, če obstajajo. Naročnikovi pogoji poslovanja v zvezi z nakupom, ki vsebujejo drugačne določbe, ne postanejo del pogodbe, tudi če je naročilo sprejeto. V primeru, da ne obstaja nikakršen poseben dogovor, se pogodba šteje za sklenjeno na podlagi pisne potrditve naročila s strani dobavitelja.
- 1.2. Dobavitelj si pridržuje vse pravice, ki izhajajo iz lastništva, in avtorske pravice na vzorcih, ocenah stroškov / predračunih, skicah in podobnih podatkih opredmetenih ali neopredmetenih proizvodov, tudi v elektronski obliki; le-te ne smejo biti dane na razpolago tretjim osebam. Dobavitelj se obvezuje, da bo podatke in dokumente, ki jih naročnik označi kot zaupne, razkril tretjim osebam zgolj, če naročnik s tem soglaša.

**2. CENE IN PLAČILO**

- 2.1. V primeru, da ne obstaja nikakršen poseben dogovor, ki bi izkazoval nasprotno, so dogovorjene tovarniške cene, vključno s stroški nakladanja, a brez stroškov embalaže/pakiranja. Cene ne vključujejo davka na dodano vrednost, ki se plača poleg cene, po vsakokrat veljavni zakonsko določeni stopnji.
- 2.2. V primeru, da ne obstaja nikakršen poseben dogovor, ki bi izkazoval nasprotno, plačilo zapade in se nakaže brez odbitkov na račun dobavitelja, kot sledi:
  - 30 % v roku 10 dni od datuma izdaje predračuna;
  - 60% v roku 10 dni od obvestila naročniku, da je stroj pripravljen za odpremo;
  - Preostanek v roku enega meseca od prenosa tveganja.
- 2.3. Naročnik je upravičen zadržati plačilo, le v primeru in obsegu, kolikor so njegovi nasprotni zahtevki nesporni ali so bili ugotovljeni s pravnomočno odločbo, zoper katero ni pritožbe (res judicata).
- 2.4. Naročnik je upravičen pobotati svoje nasprotno zahtevke, ki izhajajo iz katerih koli drugih pravnih razmerij, v primeru in obsegu, kolikor so njegovi nasprotni zahtevki nesporni ali so bili ugotovljeni s pravnomočno odločbo, zoper katero ni pritožbe (res judicata).

**3. ROK DOBAVE, ZAMUDA PRI DOBAVI**

- 3.1. Rok dobave je podrobneje določen v dogovorih, sklenjenih med pogodbenima strankama. Spoštovanje rokov dobave s strani dobavitelja zahteva, da so vsa poslovna in tehnična vprašanja med pogodbenima strankama razjasnjena in da je naročnik izpolnil vse obveznosti, ki so mu naložene, kot na primer zagotavljanje vseh zahtevanih uradnih potrdil ali dovoljenj ali izvedba predplačila. Če do tega ne pride, se dobavni rok ustrezno podaljša. To ne velja, v primeru in v obsegu, kolikor je dobavitelj odgovoren za zamudo.
- 3.2. Spoštovanje dobavnih rok je pogojeno s pravilno in pravočasno dobavo s strani (pod)dobavitelja dobavitelju.
- 3.3. Rok dobave se šteje za izpolnjenega, če je blago, ki mora biti dostavljeno, ob izteku roka dobave že zapustilo tovarno dobavitelja in je bil naročnik obveščen o pripravljenosti odpreme. To velja tudi v primeru, ko sta potrebna sprejem in odobritev blaga.

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delivery time and the customer has been notified of the readiness for dispatch. This also applies in the case that acceptance and approval of the goods are necessary.

3.4. If the dispatch resp. acceptance and approval are delayed for reasons attributable to the customer, the costs incurred as a result of the delay will be charged to the customer, starting one month after notification of the readiness for dispatch resp. readiness for acceptance.

3.5. If non-compliance with the delivery time is due to force majeure, industrial riots or other events beyond the supplier's control, the delivery time will be extended by an adequate period. The supplier will inform the customer of the beginning and the end of such circumstances as soon as possible.

3.6. The customer is entitled to withdraw from the contract if the entire performance becomes definitely impossible for the supplier before the risk has passed. Moreover, the customer is also entitled to withdraw from the contract, if in the context of an order the execution of some part of the delivery becomes impossible and the customer has a legitimate interest in refusing partial delivery. If this is not the case, the customer is obliged to pay such portion of the contractually agreed price as corresponds to the partial delivery. The same applies in the case in the case of the supplier's personal inability to perform. For the rest, section 7.2. applies.

3.7. If the impossibility or inability to perform occurs during a period where the customer is in default of acceptance or if the customer is solely or clearly for the most part responsible for said circumstances, the customer continues to be obliged to render the consideration.

3.8 a) DMG MORI will exert its best efforts to cause the Goods to be shipped in accordance with its quotations and these Terms. Unless a date is expressly agreed to as "fixed" however, all dates stated by DMG MORI are approximate dates only, and are estimated in good faith to the best of DMG MORI's ability, commensurate with foreseeable scheduling and subject to availability of product and transit.

b) DMG MORI shall not be liable for any loss or damage whatsoever, including loss of income and/or profits, incidental, special or consequential damages resulting from DMG MORI's delayed shipment or delivery of the Goods for any reason whatsoever. Any claims for shortages or claims that the Goods shipped is other than that which was ordered or claims for damages prior to delivery to Buyer or Buyer's agent must be made in writing to DMG MORI within fifteen (15) days after the arrival of the Goods at Buyer's plant or place of business.

3.9. If the customer grants to the supplier who is in default an adequate grace period for the delivery – in consideration of the exemptions stipulated by law – and if the supplier fails to comply with such period, the customer will be entitled to withdraw from the contract in accordance with the statutory provisions.

3.10. Any further claims arising from the delay in delivery are exclusively subject to the provisions in section 7.2. of these Terms and Conditions.

**4. Passing of risk, commissioning, acceptance and approval, performance by third parties**

4.1. The risk passes to the customer as soon as the goods to be delivered have left the supplier plant, even in the case that partial deliveries are made or the supplier has agreed to also perform other services such as delivery and hand-over or installation or has accepted to pay the costs of dispatch. Any agreed upon acceptance and approval of the goods must take

3.4. V kolikor je odprema oz. sprejem in odobritev blaga v zamudi iz razlogov na strani naročnika, se bodo stroški, ki nastanejo kot posledica zamude, zaračunali naročniku, z začetkom od poteka enega meseca po obvestilu o pripravljenosti odpreme oz. pripravljenosti za sprejem dalje.

3.5. Če je razlog za nespoštovanje dobavnega roka višja sila, delavski nemiri ali drugi dogodki izven nadzora dobavitelja, se rok dobave podaljša za ustrezno obdobje. Dobavitelj bo naročnika čim prej obvestil o začetku in prenehanju takšnih okoliščin.

3.6. Naročnik je upravičen odstopiti od pogodbe, če celotna izpolnitev za dobavitelja postane dokončno nemogoča, preden je bilo tveganje preneseno. Poleg tega je naročnik upravičen odstopiti od pogodbe, če v okviru naročila izvedba določenega dela dobave postane nemogoča in ima naročnik upravičen interes za zavrnitev delne dobave. V nasprotnem primeru je naročnik dolžan plačati del pogodbeno dogovorjene cene, ki ustreza delni dobavi. Enako velja v primeru, če izpolnitev ni mogoča zaradi dobaviteljeve osebne nezmožnosti izpolnitve. Za ostalo velja 7. člen.

3.7. Če postane izpolnitev nemogoča ali neizvedljiva v času, ko je naročnik v zamudi s sprejemom, ali če je naročnik izključno ali jasno v pretežnem delu odgovoren za navedene okoliščine, naročnik ostane zavezan povrniti plačilo.

3.8. a) DMG MORI si bo po najboljših močeh prizadeval, da bo blago odpremljeno v skladu z njegovimi ponudbami in temi pogoji. Razen če je datum izrecno dogovorjen kot "fiksni", kajti vsi datumi, ki jih navaja DMG MORI, so samo približni datumi in ocenjeni v dobri veri in po najboljših močeh DMG MORI, sorazmerno s predvidnim razporedom glede na razpoložljive izdelke v tranzitu.

b) DMG MORI ne odgovarja za kakršno koli izgubo ali škodo, vključno z izgubo dohodka in/ali dobička naključno, posebno ali posledično škodo, ki je posledica zamude DMG MORI pri pošiljanju ali dostavi blaga iz kakršnega koli razloga. Kakršne koli zahtevke zaradi primanjkljaja oziroma nepopolne dostave ali trditve, da poslano blago ni tisto, ki je bilo naročeno, ali za odškodnino pred dostavo kupcu ali kupčevemu zastopniku je treba vložiti pisno na DMG MORI v petnajstih (15) dneh po prispetju blaga na naslov Kupčev obrat ali kraj poslovanja.

3.9. Če naročnik dobavitelju, ki je v zamudi, odobri ustrezen dodatni rok za dobavo - upoštevajoč zakonske izjeme - in če dobavitelju izpolnitev ne uspe niti v tem obdobju, je naročnik upravičen odstopiti od pogodbe v skladu z zakonskimi določbami.

3.10. Katere koli nadaljnje zahtevke, ki izhajajo iz zamude pri dobavi, izključno urejajo določbe 7. člena predmetnih Pogojev poslovanja.

**4. PRENOS TVEGANJA, ZAGON, SPREJEM IN ODOBRITEV, IZVEDBA S STRANI TRETJIH OSEB**

4.1. Tveganje se prenese na naročnika, takoj ko blago, ki je predmet dobave, zapusti tovarno dobavitelja, tudi v primeru, da gre za delne dobave ali če je dobavitelj privolil, da se opravijo tudi druge storitve, kot so na primer dobava in predaja ali namestitve blaga, ali pa je privolil v plačilo stroškov odpreme. Vsak dogovorjen sprejem in odobritev blaga morata biti izvedena nemudoma na dan sprejema in odobritve ali drugače, če je prva možnost neizvedljiva, po obvestilu s strani dobavitelja o pripravljenosti za sprejem in odobritev. V primeru neznatne napake naročnik ne sme zavrniti sprejema in odobritve blaga.

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place without undue delay ("nemudona") on the date of acceptance and approval or otherwise, if the first alternative is infeasible, after notification by the supplier of the readiness for acceptance and approval. The customer is not allowed to refuse acceptance and approval of the goods in the case of a minor defect.

4.2. The supplier is allowed to assign the claim to his financing partner. The financing partner as the owner of the claim is entitled to have the commissioning of any delivered machine done by a third party designated by him if he holds that this is necessary for collecting the assigned claim. The customer can reject such third party for good cause (e.g. lacking skill or qualification) without undue delay ("nemudona"). Otherwise, the commissioning will be made by said third party.

4.3. If the dispatch resp. the acceptance and approval are delayed or omitted for reasons not attributable to the supplier, the risk passes to the customer from the day of notification of the readiness for dispatch resp. the readiness for acceptance and approval. The supplier undertakes to take out at the customer's expense such insurance policies as are requested by the customer.

4.4. Partial deliveries are permissible only to the extent that they are reasonably acceptable for the customer.

**5. Reservation of title**

5.1. The supplier reserves title to the delivered goods until all payments under the supply contract have been received. If installation or assembly services are to be performed, title to the delivered goods will only pass to the customer after receipt of the remuneration payable for the installation/ assembly resp. of such portion of the payment as corresponds to the installation/ assembly services. Upon request of the supplier, the customer is obliged to sign and notarize its signature on any written contract, agreement, order or similar document, which shall serve as documentary evidence that the requirements for the establishment and enforceability of the retention of title according to Art. 520 of the Code of Obligations (Obligacijski zakonik) have been fulfilled.

5.2. The supplier is entitled to insure the delivered goods at the customer's expense against theft, breakage, damage by fire, water or other damage unless the customer has demonstrably taken out such an insurance policy himself.

5.3. The customer may only sell, pledge or transfer title to the delivered goods with the prior written consent of the supplier. In the case of an attachment or seizure or other disposal by third parties, the customer is obliged to inform the supplier without undue delay ("nemudona").

5.4. In the case that the customer is in breach of the contract, in particular in the case of non-payment despite maturity, the supplier is entitled to withdraw from the contract as is provided for by the statutory provisions and to claim return of the delivered goods relying on both the reservation of title and the withdrawal. Neither the fact that the supplier invokes the reservation of title nor the seizure of the delivered goods by the supplier must be deemed to constitute withdrawal from the contract.

5.5. If the customer resells the delivered goods in the ordinary course of business, the customer already now assigns to the supplier any and all claims up to the final invoice amount (including VAT) which will accrue and will be owing to him by his own customers or third parties from the resale, regardless of whether the delivered goods have been resold before or after

4.2. Dobavitelj lahko odstopi terjatev svojemu finančnemu partnerju. Finančni partner ima kot lastnik terjatve pravico, da zagon katerega koli dobavljenega stroja opravi tretja oseba, ki jo imenuje finančni partner, v kolikor presodi, da je to potrebno zaradi poplačila odstopljene terjatve. Naročnik lahko nemudoma zavrne tretjo osebo iz upravičenega razloga (na primer zaradi neustreznega znanja ali usposobljenosti). Sicer se zagon stroja opravi s strani navedene tretje osebe.

4.3. Če je prišlo do zamude ali opustitve odpreme oz. sprejema in odobritve iz razlogov, za katere ni odgovoren dobavitelj, se tveganje prenese na naročnika od dneva obvestila o pripravljenosti za odpremo oz. pripravljenosti za sprejem in odobritev. Dobavitelj se obvezuje, da bo na zahtevo in račun naročnika sklenil take zavarovalne police, kot jih le-ta zahteva. 4.4. Delne dobave so dovoljene samo v obsegu, kolikor so upravičeno sprejemljive za naročnika.

**5. PRIDRŽEK LASTNINSKE PRAVICE**

5.1. Dobavitelj si pridržuje lastninsko pravico na dobavljenem blagu, dokler niso prejeta vsa plačila v okviru pogodbe o dobavi. Če je potrebno izvesti storitve namestitve ali montaže, bo lastninska pravica na dobavljenem blagu prenesena na naročnika po prejemu plačila za namestitev / montažo oz. takšnega dela plačila, ki ustreza opravljenim storitvam namestitve / montaže. Na zahtevo dobavitelja je naročnik dolžan podpisati in svoj podpis overiti na kakršni koli pisni pogodbi, dogovoru, naročilnici ali podobnem dokumentu, ki služi kot pisno dokazilo, da so bile izpolnjene predpostavke za ustanovitev in izvršljivost pridržka lastninske pravice v skladu s 520. členom Obligacijskega zakonika.

5.2. Dobavitelj je upravičen na stroške naročnika zavarovati dobavljeno blago proti tatvini, poškodbam, škodi zaradi požara, vode ali druge škode, razen, če je naročnik dokazljivo sam sklenil takšno zavarovalno polico.

5.3. Naročnik lahko proda, zastavi ali prenese pravico na dobavljenem blagu samo s predhodnim pisnim soglasjem dobavitelja. V primeru rubeža, zaplembe ali drugih razpolaganj s strani tretjih oseb mora naročnik o tem nemudoma obvestiti dobavitelja.

5.4. V primeru, da naročnik krši pogodbo, zlasti v primeru neplačila kljub zapadlosti, je dobavitelj upravičen odstopiti od pogodbe, kot je določeno z zakonskimi določbami, in zahtevati vračilo dobavljenega blaga sklicujoč se tako na pridržek lastninske pravice kot tudi na odstop. Niti dejstvo, da dobavitelj uveljavlja pridržek lastninske pravice, niti odvzem dobavljenega blaga s strani dobavitelja, se ne šteje avtomatično kot odstop od pogodbe.

5.5. Če bo naročnik dostavljeno blago prodal naprej v sklopu rednega poslovanja, naročnik že na tem mestu odstopa dobavitelju vse terjatve do višine končno zaračunanega zneska (vključno z DDV), ki bodo obstajale in jih bo imel do svojih naročnikov ali tretjih oseb iz nadaljnje prodaje, ne glede na dejstvo, ali je bilo dobavljeno blago prodano naprej pred ali po predelavi. Naročnik je tudi po odstopu še vedno upravičen izterjati te terjatve. To ne posega v pravico dobavitelja, da sam izterja terjatve. Vendar pa se dobavitelj zaveže, da se bo vzdržal izterjave terjatev, dokler naročnik izpolnjuje svoje plačilne obveznosti iz zneskov, ki jih je izterjal, in zlasti, dokler ni vložen noben predlog za insolvenčni

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they have been processed. The customer is still entitled to collect these claims even after the assignment. This is without prejudice to the supplier's right to collect the claim himself. However, the supplier undertakes to abstain from collecting the claims as long as the customer satisfies his payment obligations out of the amounts collected by him and, in particular, as long as no petition in in-solvency has been filed and the customer has not ceased payments. However, if this is the case, the supplier may demand the customer to disclose and specify to him the assigned claims and the respective debtors, to provide all information required to collect the claims, to hand over the corresponding documents and to notify the debtors (third parties) of the assignment.

- 5.6. Any processing or transformation of the delivered item by the customer is always deemed to be carried out for and on behalf of the supplier. If the delivered item is processed together with other items not belonging to the supplier, the supplier will share title to, and become co-owner of the new item in the proportion of the value of the delivered item to that of the other processed items at the time of the processing. Apart from that, the item generated by the processing is subject to the same regulations as the goods delivered subject to retention of title.
- 5.7. If the delivered item is inseparably mixed with other items not belonging to the supplier, the supplier will share title to, and become co-owner of the new item in the proportion of the value of the delivered item to that of the other mixed items at the time of the mixing. If the mixing is made in the way that the item of the customer must be considered as the main item, the parties are deemed to have agreed that the customer transfers to the supplier pro rata ownership of the new item. The customer retains the so generated sole-ownership or co-ownership item for the supplier.
- 5.8. The customer assigns to the supplier those claims by way of security for the supplier's claim which arise against a third party from the union of the delivered item with a real estate.
- 5.9. The supplier undertakes to release, upon the customer's request, the security provided to him to the extent that the value of the security exceeds the claims to be secured by more than 20%. The part of the security to be released is chosen by the supplier in its sole discretion.
- 5.10. Notwithstanding the above, if a petition in insolvency is filed, the supplier is entitled to withdraw from the contract and demand immediate return of the delivered goods.

**6. Warranty**

The supplier gives warranty of quality and title of the delivered goods excluding at the same time any further rights and claims of the customer – subject to the provisions in section 7. – as is described in the following:

**6.1. Defects of quality of new delivered goods:**

- 6.1.1. All parts which prove to be defective within 18 months from delivery due to any circumstance having occurred before the passing of the risk must, at the supplier's choice, either be subsequently improved or substituted by new goods. The supplier must be informed of any detected defects in writing without undue delay. Any parts that have been substituted become the property of the supplier.
- 6.1.2. The customer is obliged, after consultation with the supplier, to grant to the supplier the time and opportunity which the suppliers considers necessary for any subsequent improvements or substitute deliveries; otherwise, the supplier is released from the liability for any consequences resulting

postopek in naročnik ni prenehal s plačili. Vendar pa lahko v nasprotnem primeru dobavitelj zahteva, da naročnik dobavitelju razkrije in podrobneje opredeli odstopljene terjatve in predmetne dolžnike, da zagotovi vse podatke, potrebne za izterjavo terjatev, preda ustrezne dokumente in obvesti dolžnike (tretje osebe) o odstopu terjatev.

- 5.6. Za vsako predelavo ali spremembo dobavljenega predmeta, izvedeno s strani naročnika, se vedno šteje, da je bila izvedena za račun in v imenu dobavitelja. Če je dobavljeni predmet predelan skupaj z drugimi predmeti, ki niso last dobavitelja, dobavitelj pridobi delež in postane solastnik novega predmeta v razmerju vrednosti dobavljenega predmeta proti vrednosti drugih predelanih predmetov v času predelave. Poleg tega za predmet, ki je bil ustvarjen s predelavo, veljajo enaki predpisi kot za dobavljeno blago in tako velja tudi pridržek lastninske pravice.
- 5.7. Če je dobavljen predmet neločljivo pomešan z drugimi predmeti, ki ne pripadajo dobavitelju, ali če bi bili z ločitvijo povezani nesorazmerni stroški, dobavitelj pridobi delež in postane solastnik novega predmeta v razmerju vrednosti dobavljenega predmeta v primerjavi z drugimi pomešanimi predmeti v času pomešanja. Če je pomešanje nastalo na način, da predmet naročnika šteje za glavno stvar, velja, da stranke soglašajo s tem, da naročnik prenese na dobavitelja lastništvo novega predmeta v sorazmernem deležu. Naročnik ohrani tako ustvarjeno izključno lastništvo ali solastništvo nad predmetom za dobavitelja.
- 5.8. Naročnik v zavarovanje dobaviteljeve terjatve odstopi dobavitelju tiste terjatve, ki nastanejo nasproti tretjim osebam zaradi prirasti dobavljenega predmeta k nepremičnini.
- 5.9. Dobavitelj se zavezuje na zahtevo naročnika sprostiti zavarovanje, ki mu je bilo dano, če vrednost zavarovanja presega vrednost zavarovanih terjatev za več kot 20%. Del zavarovanja, ki se sprostijo, izbere dobavitelj po lastni presoji.
- 5.10. Ne glede na zgoraj navedeno je dobavitelj upravičen, če je vložen predlog za začetek postopka zaradi insolventnosti, odstopiti od pogodbe in zahtevati takojšnjo vrnitev dobavljenega blaga.

**6. JAMSTVO**

Dobavitelj jamči za kakovost in neobstoj napak na dobavljenem blagu hkrati izključujoč katere koli nadaljnje pravice in zahtevke naročnika – za katere veljajo določbe iz 7. člena - kot bo opisano v nadaljevanju:

**6.1. Stvarne napake novega dobavljenega blaga:**

- 6.1.1. Glede vseh delov, za katere se v roku 18 mesecev od dobave izkaže, da imajo napako zaradi kakršnih koli okoliščin, ki so se pojavile pred prenosom tveganja, mora dobavitelj po svoji izbiri bodisi naknadno odpraviti napako ali zamenjati blago z novim blagom. Dobavitelj mora biti nemudoma pisno obveščen o vseh odkritih napakah. Kateri koli deli, ki so bili zamenjani z drugimi deli, postanejo last dobavitelja.
- 6.1.2. Naročnik je dolžan, da po posvetu z dobaviteljem dobavitelju zagotovi čas in možnost, kot je po mnenju dobavitelja potrebno, da se opravijo morebitne odprave napak ali nadomestna dobava; v nasprotnem primeru je dobavitelj oproščen odgovornosti za katere koli morebitne posledice, ki zaradi tega nastanejo. Le v nujnih primerih, ko je ogrožena varnost delovanja ali za primere preprečitve nerazumno visoke škode, o čemer mora biti dobavitelj nemudoma obveščen, je naročnik upravičen popraviti ali odpraviti napako sam ali prek tretjih oseb in zahtevati povračilo zaradi tega nastalih potrebnih stroškov.

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therefrom. Only in urgent cases where the operating safety is endangered or for the prevention of unreasonably high damage, in which case the supplier has to be informed immediately, the customer will be entitled to remedy or eliminate the defect himself or through third parties and to claim reimbursement of the necessary expenses incurred thereby.

- 6.1.3. If and to the extent that the complaint proves to be justified, the supplier bears the direct costs of the subsequent improvement resp. the substitute delivery including the costs of dispatch. The supplier further bears adequate costs of deinstallation/ disassembly and reinstallation/ reassembly and in addition – provided that this can reasonably be requested with regard to the specific circumstances of the individual case in question – the costs of any required provision of installers/ assemblers and auxiliaries.

If the customer relocates the delivered goods, in whole or in part, from the contractually agreed place of installation to another place, the customer will bear any additional costs incurred as a result of such relocation, including but not limited to any additional travelling expenses incurred by the supplier.

- 6.1.4. The customer is entitled to withdraw from the contract within the limits of the law if the supplier, in consideration of the exemptions provided for by law, fails to duly fulfil his obligations within a grace period granted to him for the purpose of subsequent improvement or substitute delivery due to a defect of quality. In the case of a minor defect, the customer will only be entitled to reduce the contractually agreed price. Apart from that, the right to reduce the contractually agreed price is excluded.

- 6.1.5. Any further rights and claims are exclusively governed by section 7.2. of these Terms and Conditions.

- 6.1.6. The warranty is in particular excluded in the following cases: Unsuitable or improper use, defective installation/ assembly resp. commissioning by the customer or third parties, regular wear and tear, defective or careless treatment, improper maintenance, unsuitable operating means or facilities, defective construction work, unsuitable building ground, chemical, electrochemical or electric influences – unless the supplier is responsible for such circumstances.

- 6.1.7. If the customer or a third party carries out the subsequent improvement improperly, the supplier will accept no liability for the consequences resulting therefrom. The same applies to any changes made to the delivered goods without the prior consent of the supplier.

**6.2. Special regulation for defects of quality of used goods:**

Notwithstanding the preceding provisions, the warranty for defects of quality of used goods is excluded. This does not apply in the case of any fraudulently concealed defects or the breach of a guarantee. Apart from that, the contractual rights and claims of the customer remain unaffected even in the case of delivery of used goods.

**6.3. Defects of title**

- 6.3.1. If the use of the delivered goods entails an infringement of industrial property rights or copyrights in Serbia, the supplier generally will procure for the customer at the supplier's expense the right to continue the use of the delivered goods or will modify the delivered goods in a manner which is reasonably acceptable for the customer to the effect that the infringement of the protective rights is eliminated. If this cannot be done at economically reasonable conditions or within a reasonable period, the customer will be entitled to withdraw

- 6.1.3. Če in v kolikor se pritožba izkaže za utemeljeno, dobavitelj krije neposredne stroške naknadne odprave napak oz. nadomestne dobave, vključno s stroški odpreme. Nadalje dobavitelj nosi ustrezne stroške odstranitve / demontaže in ponovne namestitve / ponovne montaže in poleg tega - pod pogojem, da je to mogoče in razumno zahtevati glede na posebne okoliščine posameznega primera – morebitne stroške zagotovitve zahtevanih storitev inštalaterjev / monterjev in dodatne opreme.

- 6.1.4. Če naročnik v celoti ali delno premesti dobavljeno blago iz pogodbeno dogovorjenega mesta namestitve na drugo mesto, naročnik nosi vse dodatne stroške, ki nastanejo kot posledica takšne premestitve, vključno, vendar ne omejeno na kakršno koli dodatno potovanje.

- 6.1.5. Naročnik je upravičen odstopiti od pogodbe v mejah zakona, če dobavitelj, upošteva izjeme, določene s predpisi, ne izpolni ustrezno svojih obveznosti v dodatnem roku, ki mu je dodeljen za namen nadomestne dobave ali kasnejše odprave stvarne napake. V primeru neznatne napake je naročnik upravičen le do znižanja pogodbeno dogovorjene cene. Razen v tem primeru je pravica znižanja pogodbeno dogovorjene cene izključena.

- 6.1.6. Vse nadaljnje pravice in zahtevki so izrecno urejeni v 7. členu predmetnih Pogojev poslovanja.

6.1.7. Jamstvo je izključeno zlasti v naslednjih primerih: neustrezna ali nepravilna uporaba, napačna namestitvev / montaža oz. zagon s strani naročnika ali tretjih oseb, redna obraba, napačno ali neprevidno ravnanje, neprimerno vzdrževanje, neprimerna delovna sredstva ali objekti, napake v gradnji, neprimerni gradbeni temelji, kemijski, elektrokemični ali električnih vplivi – razen, če je dobavitelj odgovoren za takšne okoliščine.

- 6.1.8. Če naročnik ali tretja oseba neustrezno izvede naknadno odpravo napake, dobavitelj ne bo prevzel odgovornosti za posledice, ki nastanejo zaradi takšnih ravnanj. Enako velja za vse spremembe, ki so izvedene v zvezi z dobavljenim blagom brez predhodnega soglasja dobavitelja.

**6.2. Posebna ureditev za stvarne napake rabljenega blaga**

Ne glede na prejšnje določbe je jamstvo za stvarne napake rabljenega blaga izključeno. To ne velja v primeru kakršnih koli goljufivo prikritih napak ali kršitev garancije. Razen tega pogodbene pravice in zahtevki naročnika ostanejo nespremenjeni tudi v primeru dobave rabljenega blaga.

**6.3. Pravne napake**

- 6.3.1. Če uporaba dobavljenega blaga pomeni kršitev pravic industrijske lastnine ali avtorskih pravic v Sloveniji, bo dobavitelj običajno in na lastne stroške poskrbel, da bo imel naročnik, pravico nadaljevati z uporabo dobavljenega blaga ali pa bo dobavljeno blago spremenil na način, ki bo razumno sprejemljiv za naročnika v smislu, da se odpravi kršitev zaščiteneh pravic. Če tega ni mogoče storiti brez povzročitve nesorazmernih stroškov ali v razumnem roku, je naročnik upravičen odstopiti od pogodbe. V zgoraj navedenih okoliščinah bo tudi dobavitelj upravičen odstopiti od pogodbe.

- 6.3.2. Poleg tega bo dobavitelj obvaroval naročnika pred vsemi nespornimi zahtevki in zahtevki lastnika predmetne zaščitene pravice, ki so bile ugotovljene s pravnomočno odločbo, zoper katero ni pritožbe (res judicata).

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from the contract. In addition, the supplier will indemnify the customer from any and all undisputed claims and claims of the owner of the respective protective right that have been established by a final non-appealable court decision (res judicata).

6.3.2. The supplier's obligations in the case of an infringement of industrial property rights or copyrights are exhaustively specified in section 6.3.1., subject to the provisions of section

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6.3.3. They only apply if

- the customer informs the supplier of any invoked industrial property rights or copyrights without undue delay "nemudoma"),
- the customer supports and assist the supplier to a reasonable extent in the defence against the asserted claims resp. enables the supplier to carry out modification measures according to section 6.3.1.,
- the right to take all defence measures including out-of-court settlements is reserved to the supplier,
- the defect of title is not based on an instruction of the customer and
- the infringement of the right was not caused by any unauthorized modification of the delivered goods or by any use of the delivered goods contrary to the contract.

**7. Liability**

7.1. If the delivered goods cannot be used by the customer as agreed in the contract due to the supplier's fault as a result of any omitted or defective execution of pre-or post-contractual proposals or recommendations or due to the breach of any other ancillary duties under the contract, including but not limited to the duty to provide instructions for the operation and maintenance of the delivered goods, the provisions contained in sections 6. and 7.2. apply *mutatis mutandis*; any further rights and claims of the customer are excluded.

7.2. The supplier is only liable – regardless of the legal cause – for any damage other than that caused to the delivered goods as such:

- in the case of intentional conduct,
- in the case of grossly negligent conduct of the owner / officers or executive bodies or executive employees,
- in the case of intentional or negligent injury of the life or limb or health,
- in the case of fraudulently concealed defects or defects for which the supplier has given a guarantee of non-existence,
- in the case of defects of the delivered goods if and to the extent that the liability for personal injury or damage to privately used property is based on the applicable law regulating liability of producer of defective objects (Obligacijski zakonik).

In the case of an intentional or negligent breach of fundamental duties under the contract, the supplier will also be liable for gross negligence of non-executive employees as well as for slight negligence, in the latter case the liability will however be limited to the reasonably foreseeable damages typically occurring with contracts of the kind in question. Any further claims are excluded

6.3.3. Obveznosti dobavitelja v primeru kršitve pravic industrijske lastnine ali avtorskih pravic so taksativno določene v 6.3.1.. členu v povezavi z določbami 7. člena.

6.3.4. Te veljajo le, če

- naročnik nemudoma obvesti dobavitelja o morebitnem uveljavljanju pravic industrijske lastnine ali avtorskih pravic,
- naročnik v razumnem obsegu podpira in pomaga dobavitelju pri obrambi pred zatrjevanimi zahtevki oz. omogoča dobavitelju izvedbo spremembe ukrepov, v skladu z 6.3.1.. členom,
- je pravica sprejema vseh obrambnih ukrepov, vključno z izvensodnimi poravnkami, rezervirana za dobavitelja,
- pravna napaka ne izvira iz navodil naročnika, in
- kršitev pravice ni bila povzročena zaradi katere koli nepooblaščenih sprememb dobavljenega blaga ali na podlagi kakršne koli uporabe dobavljenega blaga v nasprotju s pogodbo.

**7. Odgovornost**

7.1. Če naročnik dobavljenega blaga ne more uporabljati skladno s pogodbenim dogovorom zaradi krivdnega ravnanja dobavitelja, ki je posledica kakršne koli opuščenosti ali napačne izvršitve pred- ali po- pogodbenih predlogov ali priporočil ali zaradi kršitve drugih pomožnih dolžnosti po pogodbi, vključno, vendar ne omejeno na dolžnost zagotoviti navodila za obratovanje in vzdrževanje dobavljenega blaga, se smiselno uporabljajo določbe, vsebovane v 6. in 7. členu; vse nadaljnje pravice in zahtevki naročnika so izključeni.

7.2. Dobavitelj je – ne glede na pravno podlago – razen škode na dobavljenem blagu, odgovoren zgolj za škodo, povzročeno:

- v primeru naklepne ravnanja,
- v primeru naklepne ali malomarne poškodbe življenja, telesa ali zdravja,
- v primeru goljufivo prikritih napak ali napak, za katere je dobavitelj jamčil, da ne obstajajo,
- v primeru napak v dobavljenem blagu, če in v kolikor je odgovoren za telesne poškodbe ali škodo na zasebnilastnini na podlagi splošnih pravil Obligacijskega zakonika.

V primeru naklepne ali malomarne kršitve temeljnih pogodbenih dolžnosti je dobavitelj odgovoren tudi za hudo malomarnost neizvršnih delavcev kot tudi za lahko malomarnost, v slednjem primeru bo odgovornost omejena na razumno predvidljivo škodo, ki se po navadi pojavi pri tej vrsti pogodbe.

Vsi nadaljnji zahtevki so izključeni.

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**8. Limitation**

All claims of the customer – regardless of the legal cause on which they are based – become time-barred after expiry of 12 months. In the case of intentional or fraudulent conduct and in the case of claims under the “general rules of the Code of Obligations (Obligacijski zakonik), the limitation periods prescribed by law will apply. They also apply to defects of a construction and for delivered goods which, according to their regular purpose, have been used for a construction and have caused the defect of such construction.

Unless mandatorily prescribed otherwise by applicable statutory law, the supplier's total liability for damages and losses towards the customer, irrespectively of the legal grounds and number of incidents, shall be limited to the purchase price for the respective delivery and / or services, which caused the damage. There shall be no liability for the supplier for any consequential or indirect damages or losses, in particular but not restricted to loss or interruption of production, loss of profit, loss of use and loss of contracts.

**9. Use of software**

If and to the extent that the delivered goods include software, the customer is granted a non-exclusive right to use the delivered goods together with their documentation. It will be provided for use on the delivered goods destined for such purpose. It is forbidden to use the software on more than one system.

The customer is only allowed to copy, adapt, modify or translate the software or transform it from the object code to the source code to the extent permitted by law (Slovenian Copyright and Related Rights Act). The customer undertakes not to remove or modify without the prior explicit consent of the supplier any manufacturer information including but not limited to any copyright notes.

All other rights in the software and the documentations including any copies thereof remain the property of the supplier resp. of the supplier of the software. Any grant of sub-licences is forbidden.

**10. Applicable law, place of jurisdiction**

10.1. All legal relations between the supplier and the customer are exclusively governed by the law of the Republic of Slovenia applicable to the legal relations between Slovenian parties.

10.2. The competent court at the supplier's domicile will have jurisdiction. The supplier is however also entitled to sue the customer at the customer's principal domicile.

**8. ZASTARALNI ROKI**

Vsi zahtevki naročnika - ne glede na pravno podlago, na kateri temeljijo - zastarajo po preteku 12 mesecev. V primeru naklepnega ali goljufivega ravnanja in v primeru zahtevkov v okviru splošnih pravil Obligacijskega zakonika, veljajo zakonski zastaralni roki. Veljajo tudi za napake v gradnji in za dobavljeno blago, ki je bilo v skladu z običajnim namenom uporabljeno za gradnjo in je povzročilo napako takšne gradnje.

Razen če ni s prisilnimi zakonskimi predpisi določeno drugače, je dobaviteljeva celotna odgovornost za škodo in izgube proti naročniku, ne glede na pravno podlago in število škodnih primerov, omejena na znesek kupnine za zadevno dobavo in/ali storitve, ki so povzročile škodo. Dobavitelj ne odgovarja za posledično ali posredno (refleksno) škodo ali izgube, še zlasti vendar ne omejeno na izpad ali prekinitev proizvodnje, izgubo dobička, nemožnost uporabe in odpoved pogodb.

**9. UPORABA PROGRAMSKE OPREME**

Če in v kolikor dobavljeno blago vključuje programsko opremo, je naročniku podeljena neizključna pravica do uporabe dobavljenega blaga skupaj s pripadajočo dokumentacijo. Zagotovljena bo za uporabo na dobavljenem blagu, ustvarjenem za ta namen. Prepovedana je uporaba programske opreme na več kot enem sistemu.

Stranki je dovoljeno le kopirati, prilagoditi, spremeniti ali prevesti programsko opremo ali jo preoblikovati od objektne do izvorne kode v obsegu, ki ga dovoljuje Zakon o avtorski in sorodnih pravicah ("ZASP"). Naročnik se zavezuje, da brez predhodnega izrecnega soglasja dobavitelja ne bo odstranil ali spremenil kakršnih koli podatkov proizvajalca, vključno z, vendar ne omejeno na katere koli zapise avtorskih pravic.

Vse druge pravice na programski opremi in dokumentaciji, vključno z morebitnimi kopijami le-te, ostanejo v lasti dobavitelja oz. dobavitelja programske opreme. Katera koli podelitev podlicenc je prepovedana.

**10. VELJAVNO PRAVO, SODNA PRISTOJNOST**

10.1. Vsa pravna razmerja med dobaviteljem in naročnikom izključno ureja pravo Republike Slovenije, ki se uporablja za pravna razmerja med slovenskimi strankami.

10.2. Dogovorjena je pristojnost sodišča v kraju sedeža dobavitelja. Dobavitelj pa lahko toži naročnika tudi v kraju sedeža naročnika.