

# **InStar Technologies a.s. GENERAL TERMS AND CONDITIONS**

## **as applied to contracts for work**

and issued in compliance with the provisions of Section 1751 et seq. Act No. 89/2012 Coll. of the Civil Code, as amended (hereinafter “the Civil Code”) and governing contracts for work entered into by InStar Technologies a.s. (hereinafter also “InStar” or “the Order Party”) as the Order Party.

### **I/ Preliminary Provisions**

1. These General Terms and Conditions for the supply of services (hereinafter “these Terms and Conditions”) have been issued for the purpose of facilitating business relations while simultaneously providing precise definition of the discretions and duties of the parties to contracts for work in which InStar Technologies a.s., with place of business at Náměstí Tomáše Bati 419, 391 02 Sezimovo Ústí, ID No.: 00009415, Tax ID No.: CZ00009415, recorded in the Commercial Register of the Regional Court in České Budějovice, Section B, Insert 45, acts as the Order Party. These Terms and Conditions form an integral component of contracts for work (hereinafter “contracts”) entered into by and between the Order Party and a contractor. Any and all departures from these Terms and Conditions and amendments to them are valid only in the event that they are duly approved in writing by both Contracting Parties.

2. As appropriate, these Terms and Conditions shall also apply to business relations in which InStar orders the performance of activities or services that do not produce a tangible and recordable result. For the purposes of these Terms and Conditions, the term “work” shall be understood to include such activities and/or services; the term “Contractor” shall mean the provider or supplier of such activities and/or services; the term “contract” shall be understood to also include other contracts and agreements.

### **II/ Subject Matter and Contract Conclusion**

1. On the basis of a contract, the Contractor shall undertake to perform for the Order Party the work specified in the contract according to the conditions stipulated therein and shall do so in its own name, without defect and/or shortcomings, at its own liability, at its own expense and risk, and with due expert care and shall deliver the work to the Order Party at the time and place stipulated in the contract. The Order Party shall undertake to provide appropriate cooperation during execution of the work, take delivery of the duly executed work at the agreed place and time, and pay the Contractor the contractual price on the date specified in the contract and in compliance with the conditions specified in the contract.

2. Individual contracts shall be concluded by means of written order/tender for the conclusion of a contract for work. The written order/tender for the conclusion of a contract for work must at least contain the following:

- identification of the Contracting Parties: business name, place of business, ID No., Tax ID No., bank information, account number;
- precise description of the subject matter of the contract (the work, service, or reference to selection procedure, use of the work by the Order Party, or purpose for which the services are to be provided to the Order Party);
- price of the work or method for determining the price of the work;
- method of payment, payment terms;
- date and place of performance;
- special technological requirements (if not stipulated in the conditions of the selection procedure);
- warranty period;
- a provision requiring that the General Terms and Conditions of InStar governing contracts for work form an integral component of the contract.

3. The contract must be concluded in writing. The contract shall be concluded by means of confirmation of the commission and/or acceptance of a tender for the conclusion of a contract for work. The Contractor is under obligation to deliver the contract, signed by both parties, to the Order Party by post, email, or fax within a maximum of five (5) days from the date on which the Order Party dispatches the order/tender for conclusion of a contract for work. Upon lapse of this term, the contract may be concluded only in the event that the Order Party does not with no unnecessary delay refuse conclusion of the contract.

4. An indication of intention containing any amendments, objections, limitations, or other changes constitutes rejection of the tender and shall be considered a new tender. Acceptance of a tender with an amendment or departure that does not significantly alter the conditions of the tender is prohibited.

5. A concluded contract can be modified only by means of a written, numbered, bilaterally approved and specifically titled amendment to the contract signed by the statutory bodies or authorized representatives of both Contracting Parties. Other entries, protocols, etc. will not be considered modifications to the contract. Written form includes telegraphic and telex messages as well as messages shared by means of electronic devices that allow for the recording of a transaction and identification of the person executing the transaction.

6. Pursuant to Paragraph 5 of this article of the Conditions, all extrawork, modifications, amendments, and/or extensions that do not form an integral part of the work according to the contract must always be approved in writing, together with their corresponding prices, by the Order Party prior to their performance. If the Contractor performs any of these activities without an approved written amendment to the contract, the Order Party shall be entitled to refuse payment for this performance and the price for this performance will be taken as a component of the price negotiated for performing the work.

7. All written documents issued in relation to the contract must include specific reference to the contract (e.g. contract number).

### **III/ Work Price, Taxes, and Payment Terms**

1. A prerequisite for the conclusion of the contract is agreement on the price of the work. Once the contract has been concluded, the Contractor is not entitled to change the price of the work to the detriment of the Order Party without the Order Party's written approval.

2. The price of the work must include all of the Contractor's accessory expenses, whereas if not specified in the contract otherwise, the price shall include expenses for transporting the work to the place of performance, expenses related to transporting the Contractor's workers or subcontractors to the place of performance, and the provision of services and/or additional expenses for services or activities performed by the Contractor in relation to supplying the work (e.g. customs duty, transit fees, etc.). If the contract does not stipulate otherwise, or if the Order Party is not obligated by law to insure the work, the price of the work will also include expenses for insuring the work.

3. The price of the work shall not include any tax. The Contractor will charge tax pursuant to the tax laws of the Czech Republic valid and in force at the date of taxable performance. A valid document verifying exemption from taxation must be appended to the contract to which it pertains.

4. By signing the contract, the Contractor declares that the contract contains truthful information on whether the Contractor is or is not a VAT registered subject in the Czech Republic, whether the Contractor is a VAT registered subject in another EU country, or whether or not, pursuant to valid VAT legislation, the Contractor is a foreign subject (i.e., that within the EU it does not hold domicile, place of business, commercial premises, or any other address or place of residence).

5. If, in the meaning of the previous paragraph, the Contractor is not a foreign subject, the Contractor must include its tax ID number (DIČ) in the contract, granted the Contractor has been issued such a

number. If, in the meaning of the previous paragraph, the Contractor is a VAT registered subject in another EU member country, it shall be understood that this subject does not hold domicile, place of business, or commercial premises in the Czech Republic, granted the contract does not stipulate otherwise.

6. By signing the contract, the Contractor undertakes for the duration of performance to inform the Order Party without delay of any change in any of the aforementioned information. The Contractor shall inform the Order Party of any such change within a maximum of seven (7) days of its occurrence.

7. By signing the contract, a Contractor who is a foreign subject declares that it does not have permanent commercial premises in the Czech Republic in accordance with the provisions of Section 22, Paragraph 2 of Act No. 586/1992 Coll., on Income Tax, as amended, and the relevant double tax treaty. The Contractor also declares that it has concluded no contract on the basis of which the establishment of permanent commercial premises could occur in accordance to the aforementioned legal enactments. If the Contractor has permanent commercial premises in the Czech Republic, or establishes permanent commercial premises in the Czech Republic, or concludes any contract on the basis of which the establishment of permanent commercial premises could occur, the Contractor shall be under obligation to inform the Order Party of this fact either prior to concluding the contract, or within a maximum of thirty (30) days.

8. In the event of a breach of the obligations stipulated in Paragraphs 5 and 6, or in the event of an untrue declaration according to Paragraph 7, the Contractor shall undertake to provide the Order Party financial compensation for damages incurred and arising from any such breach of obligation or untrue declarations.

9. After delivery and acceptance of the work, or upon delivery and acceptance of the final part of the work, the Contractor shall issue the Order Party an invoice for the entire sum of the price of the work. This invoice must contain the following:

- contract number;
- ID No., Tax ID No. of the Order Party and Contractor;
- subject matter of the contract;
- total invoiced amount broken down per contract specification;
- date of taxable performance;
- payment due date in accordance with the contract or these Terms and Conditions;
- stamp and signature of the Contractor;
- name of bank and bank account number to which payment is to be made.

The invoice must be delivered together with a written protocol of delivery and acceptance signed by both parties and prepared pursuant to Article IV, Paragraph 4 of these Terms and Conditions.

10. The due date for payment of the price of the work shall be sixty (60) days from demonstrable delivery of the relevant invoice to the Order Party, whereas the Order Party's obligation to pay the work price shall be fulfilled upon deduction of the relevant amount from the Order Party's bank account.

11. In the event that the invoice does not contain the information stipulated herein, or contains incorrect information, the Order Party is entitled to return such an invoice to the Contractor. In such an event, the original payment due date shall be annulled, and a new payment due date will take effect upon delivery of the corrected or amended invoice to the Order Party; moreover, the Contractor undertakes to provide the Order Party full cooperation in the event that the Tax Authority subsequently finds that the invoice issued by the Contractor does not contain all of the information required of tax documents in accordance with Act No. 235/2004 Coll., on Income Tax, as amended, and the relevant double tax treaty (hereinafter the "VAT Act"), or other relevant legal enactment. Should the Contractor fail to uphold its obligation to provide full cooperation, the Order Party shall not be obligated to settle any portion of the price of the work or any other financial commitment arising from the contract or these Terms and Conditions.

12. If the Order Party takes delivery of the work with minor defects and shortcomings that do not prevent use of the work, the Order Party shall be entitled to suspend payment of up to 20% of the price of the work (as a retaining fee for elimination of defects and shortcomings) until the defects and shortcomings have been eliminated.

13. If a deposit is provided, the Order Party reserves the right to demand from the Contractor at any time satisfactory security for performance of the Contractor's obligations in relation to the provision of a deposit on the price of the work. The Contractor is obligated to establish such security namely by providing collateral pursuant to the provisions of Section 2012 of the Civil Code.

14. A Contractor with domicile or place of business in the Czech Republic, or who is a payer of value added tax in the Czech Republic, must explicitly declare that it has no outstanding payments due to the Tax Authority and, therefore, does not meet the conditions and circumstances stipulated in Section 109 of the VAT Act that could give rise, by virtue of statutory secondary liability, to an obligation on the part of the Order Party to deduct value added tax on behalf of the Contractor in accordance with the aforesaid provision; furthermore, the Contractor declares that it is at no risk of meeting said conditions and circumstances and shall take every measure to ensure that it will not meet said conditions and circumstances. In the event that the Contractor does meet said conditions and circumstances at the time of taxable performance, or if the Contractor is at risk of meeting them, it shall undertake to inform the Order Party in writing of such a situation without delay. In order to establish the aforementioned, the Contractor is obligated to provide the Order Party, upon request, with current confirmation (not older than 7 days) of no outstanding tax payments (confirmation of personal tax account balance) no later than thirty (30) days from receipt by the Contractor of the Order Party's request. If, at the time of conclusion of the contract, the Collection of Documents of the Commercial Register does not contain the Contractor's latest financial report (granted the Contractor is required to prepare a financial report) or the Contractor's last financial report verified by an auditor (granted verification of the Contractor's financial report is required by law), the Contractor shall provide the Order Party with a notarized copy of said financial report on the basis of a written request from the Order Party. In the event that Contractor is more than fourteen (14) days overdue in fulfilling any of the obligations stipulated in this paragraph, the Order Party is entitled to rescind the contract.

15. The Contractor confirms that, as of the date of conclusion of the contract, it is not an unreliable VAT payer as defined in the VAT Act (hereinafter "unreliable payer"). If, at latest on the invoice payment due date, the Order Party discovers in the remote-access register of VAT payers that, as of the date of taxable performance, the Contractor has been identified as an unreliable payer, the Order Party shall be entitled to pay the price of the work or part of it in an amount equating to the the price of the work minus value added tax, whereas the Order Party shall make use of the institute of securing VAT in compliance with the stipulations of the VAT Act., i.e., reimbursement of the relevant VAT to the Tax Authority no later than the payment due date of the relevant tax document (invoice). By paying the invoiced price of the work minus VAT to the bank account of the Contractor and transferring the amount equating to the VAT to the bank account of the Tax Authority, the Order Party's obligation to pay the invoiced price of the work including VAT shall be satisfied, and the Contractor shall no longer be entitled to demand of the Order Party payment of the amount equating to the tax arising from such taxable performance.

16. In compliance with the provisions of Section 2620, Paragraph 2 of the Civil Code, the Contractor assumes all risk associated with a change of circumstances.

17. If the work has been ordered according to a budget, the Contractor shall, in compliance with the provisions of Section 2621, Paragraph 2 of the Civil Code, guarantee the completeness of the budget.

18. The provisions of Section 2611 of the Civil Code shall not be applied.

#### **IV/ Delivery and Acceptance of the Work, Place of Performance**

1. The obligation of the Contractor to perform the work shall be fulfilled upon due completion of the work and due delivery of the work to the Order Party in accordance with the relevant contract and in compliance with relevant legal enactments, technical standards, and relevant legal enactments, including a protocol of delivery and acceptance signed by both parties and written up in accordance with Article IV, Paragraph 4 of these Terms and Conditions.

2. The Order Party is entitled, however not obligated, to accept the work in the event that the work has been completed properly and on time in accordance with the contract and the commitments arising from it. If the Order Party accepts work that has not been completed properly or on time and in accordance with the contract and the commitments arising from it, i.e., work with even only minor defects and shortcomings that, in and of themselves or in combination with other defects, do not prevent proper use of the work, the relevant rights of the Order Party arising from a provided warranty or the Contractor's liability for defects in the work, the Contractor's liability for damage, or any other right arising from this contract shall not be affected.

3. If the contract does not stipulate otherwise, the place of performance of the contract shall be the Order Party's place of business: InStar Technologies a.s., Náměstí Tomáše Bati 419, 391 02 Sezimovo Ústí II. As for the place of performance of the contract, a particular building at the Order Party's place of business may be specified in the order.

4. The Contractor undertakes to deliver the work or its part on the basis of a written protocol of delivery (hereinafter "the delivery protocol"), which will be prepared immediately upon completion of acceptance proceedings and shall contain the following information:

- identification and specification of the delivered work or part of the work or performed service;
- assessment of the quality of the work or part of the work or performed service;
- assessment of the functionality of the work and its ability to serve the agreed purpose;
- a list of defects and shortcomings or defects in the performed services;
- the names and surnames of persons authorized to act on behalf of the Contractor/Order Party, or authorized representatives of the Contractor/Order Party during delivery/acceptance of the work or its part;
- the date of delivery and acceptance of the work or its part and the signatures of the persons delivering and accepting the work or its part.

5. The work shall be accepted by the Order Party only once the Order Party has signed the delivery protocol.

6. If the Order Party accepts the work without reserve or does not specify any defect or shortcomings in the work, the relevant rights of the Order Party arising from a provided warranty or liability of the Contractor for defects in the work, liability of the Contractor for damage, or any other rights arising from the contract shall not thereby be affected and shall remain in effect.

7. In the event that, in compliance with the relevant contract, one of the Contracting Parties refuses to sign the delivery protocol for the duly completed work, the other Contracting Party shall grant an additional period of at least seven (7) days in which to sign the delivery protocol. If the other Contracting Party does not sign the delivery protocol within this new period and does not provide, in writing, its case for not signing the delivery protocol, the work shall be considered duly delivered and accepted upon expiry of the additional time period even without signature of the delivery protocol.

8. In the event of a dispute concerning whether or not the delivered work shows evidence of defects and/or shortcomings, the work shall be considered to have defects and/or shortcomings until the opposite is proven, whereas the burden of evidence in such cases shall be borne by the Contractor.

9. In cases in which the work performed on the basis of the contract does not produce a tangible, material result, the Contracting Parties are obligated to write up a procedure for performing the work or a record of provided services. The contents of this record and the details contained within shall, as appropriate, be subject to the provisions of Paragraph 4 of these Terms and Conditions.

10. If the work is performed gradually and its individual stages can be differentiated, the Contractor's obligation to perform the work shall be fulfilled once the work has been completed in full in accordance with the provisions stipulated in this article of these Terms and Conditions, granted it is not explicitly stipulated otherwise in the contract.

#### **V/ Term of Performance**

1. The term of performance shall be stipulated in the contract. If the contract stipulates performance of the work in individual parts (stages), the Contractor shall call on the Order Party to take delivery of the finished part of the work at least three (3) days prior to completion of that particular part of the work.

2. In cases in which it is necessary to transport the work to the place of performance, the Contractor is obligated to provide transport of the work to the place of performance and obtain all permissions and approvals from relevant authorities that are required for delivery and transport of the work to the place of performance. The Order Party undertakes to provide the Contractor with all necessary cooperation.

#### **VI/ Other Discretions and Duties of the Order Party**

1. In the event that the work is performed on the premises of the Order Party, the Order Party is under obligation to:

a) train the Contractor or organize training of the Contractor by an authorized employee on occupational safety for the assigned workplace (workstation) and maintain a written record of this training;

b) define and assign the Contractor or the Contractor's authorized representative an appropriate workplace (workstation) in such condition as to allow performance of the work. The Contractor is obligated to inform the Order Party in a timely manner of the type of workplace required for performing the work and provide the Order Party in a timely manner with all relevant documentation. The Order Party and Contractor are obligated to enter the assignment of the workplace (workstation) into the assembly hall/construction logbook;

c) ensure, in relation to performance of the work, that the Contractor and its employees and/or subcontractors have access to the workplace (workstation) on the Order Party's premises. Moreover, the Order Party is under obligation to ensure, on the basis of a written request from the Contractor, that all of the Contractor's vehicles required for performance of the commitments in the contract are granted entry to the workplace (workstation).

2. The Order Party is entitled to regularly inspect performance of the work as provided for in Section 2593 of the Civil Code. For such purposes, the Contractor is obligated to provide the Order Party with all the documentation related to performance of the work that the Order Party requests. The Order Party is entitled to inspect performance of the work at any time. For the purposes of inspection, the Order Party shall have access to the workplace and other places where things intended for the performance of the work are manufactured or located and the Order Party may also take photographs. Should the Order Party discover that the Contractor is performing the work in contradiction with its contractual obligations, the Order Party is entitled to demand that the Contractor eliminate any shortcomings resulting from faulty performance of the work and perform the work properly. If the Contractor fails to do so even in the reasonable period of time granted for such purpose, the Order Party shall be entitled, at the expense of the Contractor, to take all essential action necessary to safeguard due and timely performance of the work. Namely, the Order Party shall be entitled to take, on its own initiative or by means of third parties, necessary action to eliminate the shortcomings that have arisen; such action will in no way affect the Contractor's liability for fulfilling the commitments specified in the contract. Should the actions of the Contractor undeniably lead to a serious breach of the Contract, the Order Party is entitled to rescind the contract.

3. Throughout the course of performance of the work, the Order Party is entitled to give the Contractor binding instructions. In the event that these instructions given by the Order Party are inappropriate or in contradiction with the contract, the Contractor is obligated to inform the Order Party of the matter without unnecessary delay. In the event that the Contractor fails to do so, the Order Party shall not be held liable for damage resulting from the instructions given by the Order Party.

4. The Order Party is entitled to inspect the work of the employees of the Contractor from the standpoint of adhering to legal enactments (including the Order Party's internal regulations) governing safety and the protection of health during work as well as relevant fire safety regulations (namely, laws, executive ordinance, other enactments on fire protection, and the Order Party's internal regulations governing fire protection) and enactments governing the protection of the environment as well as other regulations that said employees were made familiar with upon entering the premises of the Order Party.

5. The Order Party shall provide the Contractor with information concerning health risks in the conditions of the Order Party, which form an integral part of the contract.

6. The Order Party is entitled to issue an order to terminate the work in the event of risk to the safety of the executed work or the life or health of the public or the workers on site at the place of performance, or if any risk of large-scale damage arises. Any such situation will be duly recorded in the assembly hall/construction logbook.

## **VII/ Other Discretions and Duties of the Contractor**

1. The Contractor is obligated to:

a) adhere to, on the premises of the Order Party, legal enactments (including the Order Party's internal regulations) governing safety and the protection of health during work as well as relevant fire safety regulations (namely, laws, executive ordinance, other enactments on fire protection, and the Order Party's internal regulations governing fire protection) and enactments governing the protection of the environment on the part of the employees and other workers with whom the Contractor is performing the Contract. The Order Party's internal regulations shall be available on the website [www.kovosvit.cz](http://www.kovosvit.cz). If the Order Party's internal regulations are not available on the website, the Order Party shall familiarize the Contractor with the internal regulations in accordance with this article prior to the Contractor entering the premises of the Order Party, whereas familiarization with the internal regulations also means that the Order Party will send the internal regulations to the Contractor in electronic or telegraphic form;

b) ensure that the Contractor's employees, subcontractors, and employees of subcontractors entering the premises of the Order Party respect the instructions and directives of the Order Party's employees or other persons authorized by the Order Party and involved in ensuring compliance with regulations (including the Order Party's internal regulations) designed to ensure safety and the protection of health during work, fire safety regulations (namely, laws, executive ordinance, other enactments on fire protection, and the Order Party's internal regulations governing fire protection), and enactments concerning the protection of the environment.

2. If it is appropriate and reasonable with regard to the nature of the work, the Contractor shall be obligated to maintain for the entire course of the performance of the work an assembly hall/construction logbook (or daily logbook with entries on the services provided), in which all matters having decisive bearing on the performance of the contract will be recorded, especially information on timelines and progress of the work or provided services, the quality of the work, and obstacles to performance of the work.

3. If the work is to be performed on the premises of the Order Party, the Contractor is obligated to inform the Order Party in writing at least two (2) days prior to commencement of performance of the work of any risks of damage or safety risks that may arise in the course of performance of the work. If

the Contractor fails to do so, it shall be held liable for any damages resulting from the fact that the Order Party was not duly informed of such risks in a timely manner.

4. The Contractor is fully liable for the activities of its employees on the premises of the Order Party and explicitly declares that its employees are fully qualified and fit to work on the premises of the Order Party.

5. If it is not stipulated otherwise in the contract, the Contractor may entrust performance of a portion of the work to another person. When the work is being performed by another person, the Contractor bears the same degree of liability as if the work were being performed by the Contractor. In such case, the Contractor shall ensure compliance with all contractual provisions arising from these Terms and Conditions as well as those arising from individual contracts with its subcontractors.

6. The Contractor will be held liable by the Order Party for damage brought about during performance of the work by the Contractor's employees or subcontractors. The Contractor undertakes to conclude an insurance policy with a sufficient degree of damage liability coverage.

7. The Contractor may store material required for performance of the work only in the space designated by an authorized employee of the Order Party, and an entry regarding such storage will be made in the logbook. In the event that the Contractor stores material outside of the designated (authorized) space, the Contractor shall be obligated to reimburse the Order Party for any and all damages arising from such storage.

#### **VIII/ Work Quality and Warranties**

1. The Contractor guarantees that the work possesses and, for the duration of the warranty period, shall continue to possess the characteristics specified in the contract and, furthermore, that it possesses the characteristics stipulated by the relevant legal enactments and technical standards valid and in force at the time of performance and completion of the work, or, as the case may be, that it possesses customary characteristics. Moreover, the Contractor guarantees that the work is free of any legal defect and is fit for the use and purpose specified in the contract, or, as the case may be, that it is fit for the customary use and purpose. The Contractor is responsible for ensuring that no legal enactments or third party rights are violated through use of the contracted work by the Order Party, the eventual grant of license for use of the work by a third party, or the transfer of ownership of the work from the Order Party to a third party.

2. The Contractor shall provide the Order Party with a warranty covering the quality of the work. If the contract does not specify otherwise, the Contractor's warranty shall be valid for a period of twenty-four (24) months. The warranty period for the executed work shall commence on the day following acceptance by the Order Party of the duly completed work documented by the delivery protocol signed by both Contracting Parties as verification of the work having been delivered free of defects and/or shortcomings. The warranty period does not include the period between the date of a defect claim and elimination of said defect. If the work is delivered in parts (partial performance), the warranty period shall commence upon delivery of the last part of the work on the basis of the delivery protocol.

3. Defect claims may be filed in writing at any time during the warranty period, unless such defects in the work are discovered later and could not, due to objective reasons, have been discovered sooner. In such cases, the Order Party is obligated to file a claim for these defects no later than six (6) months after discovery of the defects. The provisions of Section 2618 of the Civil Code are not applicable in such cases. The Order Party is obligated to provide the Contractor with an opportunity to inspect the work/thing upon which the work was performed. The written defect claim shall be archived even in the event that the claim is filed by fax, email, or other similarly demonstrable means.

4. The Order Party is entitled, at its discretion, to make the following claims on defects present in the work and filed during the warranty period:

a) The Order Party is entitled to demand elimination of the defect in the work (by means of repair or delivery of a replacement work) at the expense of the Contractor and within a period of ten (10) days from notification of the defect. The Contractor is obligated to eliminate within five (5) days of notification any defects in the work that prevent use of the work, that have direct impact on the Order Party's production, and/or directly impact the technical parameters of the Order Party's production, i.e., production quality and quantity. In the event that the Contractor fails to eliminate the defects within the time periods specified in this paragraph, the Order Party shall be entitled to eliminate the defects on its own or by means of a third Party and at the expense of the Contractor. Elimination of a defect at the expense of the Contractor does not rescind the Contractor's liability for defects or the quality warranty, nor does it restrict the scope of liability of the quality warranty or otherwise impact the other rights of the Order Party, namely the right to compensation for incurred damages and the right to payment of corresponding contractual penalties.

b) The Order Party is entitled to demand a reasonable discount on the price of the work. A demand for a discount on the price of the work does not rescind the Order Party's other rights, namely the right to damages and the right to demand compensation for lost profits resulting from the deficiencies in the work that the aforesaid discount applies to, or the Order Party's right to payment of corresponding contractual penalties.

c) If, during the warranty period, the work shows unreparable defects that prevent use of the work in accordance with the purpose stipulated in this contract or in accordance with the customary purpose, the Order Party is entitled to immediately rescind the contract. By so doing, the Order Party's other rights will not be affected, namely the right to compensation for incurred damages and lost profits as well as the right to payment of corresponding contractual penalties. For the purposes of this provision, an unreparable defect shall also be defined as any defect that occurs repeatedly or one that the Contractor fails to eliminate in the time period stipulated in Paragraph 4, Section a) of these Terms and Conditions.

#### **IX/ Late Payment Interest, Sanctions, Damage Liability, Set-off, Retention of the Work, Accounts Receivable Pledging**

1. In the event that one of the Contracting Parties is late with payment of any financial sum as per this contract, the other Contracting Party shall be entitled to demand payment of a contractual penalty at the rate of 0.05% of the outstanding amount per day and up to 5% of the agreed price of the work. Late payment interest may not be claimed on outstanding debts whose payment has been suspended in accordance with Article 3, Paragraph 12 of these Terms and Conditions.

2. In the event that the Contractor fails to perform the work within the term specified in the contract, the Order Party shall be entitled to demand payment by the Contractor of a contractual penalty of 0.05% of the price of the work for each commenced day of delay.

3. In the event that the Contractor violates any of its obligations arising from Article 14 of these Terms and Conditions, the Order Party shall be entitled to demand payment by the Contractor of a contractual penalty in the amount of 100,000 CZK for every such violation.

4. In the event that the Contractor violates its obligation arising from Article 15, Paragraph 2 of these Terms and Conditions, the Order Party shall be entitled to demand payment by the Contractor of a contractual penalty in the amount of the price of the work.

5. In the event that the Order Party makes any legitimate claims for defects in the work (irregardless of the nature of the defects) more than twice throughout the duration of the contract, the Order Party shall be entitled to demand payment of a contractual penalty in the amount of 10% of the price of the work for every subsequent defect that occurs in the work.

6. In the event that the Contractor repeatedly carries out the work in contradiction to technical regulations and the contract in such a manner as to threaten future use of the work for the purpose

stipulated in the contract, the Contractor shall be under obligation to pay the Order Party a contractual penalty amounting to 10% of the price of the work.

7. In the event that the work exhibits ineliminable defects or repeated defects that preclude regular use of the work, the Contractor shall be under obligation to pay the Order Party a contractual penalty in the amount of 10% of the price of the work.

8. In the event that the Contractor commits a breach of the provisions stipulated in Article 3, Paragraph 14, the Order Party shall be entitled to demand payment by the Contractor of a contractual penalty in the amount of 100,000 CZK for every such breach.

9. Any contractual penalty shall be payable within 15 (fifteen) days of service from the entitled Contracting Party of a demand for payment of said penalty. The provisions governing contractual penalties stipulated in Article 9 of these Terms and Conditions shall have no bearing on the right of the Order Party to compensation for damage, claims arising from warranty liability, or liability for defects in the work. Payment of a contractual penalty shall not be counted towards compensation for damages. In the event of a breach of the obligations of any contract or these Terms and Conditions, the Contracting Party in breach of the contractual obligations shall compensate the aggrieved party for real damage and lost profit.

10. The Contractor is obligated to compensate damage caused by any breach of its duties as per the contract regardless of the culpability of the Contractor.

#### **X/ Proprietorship and Risk of Damage to Property**

1. If the subject of the work is maintenance, repair, or alteration of any item belonging to the Order Party, the Order Party shall be the sole proprietor of that item for the entire duration of the contract. However, the Contractor is obligated to implement all measures necessary for securing the item against accidental damage arising during execution of the work. The Contractor is obligated to inform the Order Party about these measures, and the Order Party is obligated to provide the Contractor with all necessary cooperation in the implementation of these measures. Likewise, the Contractor is liable for any damage to the item arising during execution of the work that could have been and should have been prevented by the Contractor.

2. If the subject of the work is fabrication of an item, the Order Party shall assume proprietorship of the item upon acceptance of the work and signature of the delivery protocol by both Contracting Parties. At the same time, the risk of damage shall be transferred to the fabricated items.

#### **XI/ Force Majeure**

1. A Contracting Party shall not be held liable for complete or partial failure to fulfill one of its contractual obligations if: such a failure is the consequence of circumstances such as flooding, fire, earthquake, or other natural occurrences, war or war negotiations, or other similarly extraordinary circumstances; it may not be reasonably assumed that the Contracting Party could have overcome such an obstacle or its impacts; it may not be reasonably assumed that the Contracting Party could have predicted the occurrence of the aforementioned obstacle at the time that its contractual obligations came into effect (i.e., at conclusion of the contract); the obstacle arose independently of the will of the Contracting Party; the obstacle did not arise from the personal situation of the Contracting Party or at a time when the Contracting Party was late in fulfilling its contractual obligations; the obstacle is not an occurrence that the Contracting Party is obligated to overcome according to the conditions of the contract (hereinafter "Force Majeure").

2. The Contracting Party for which fulfillment of its obligations has been made impossible due to the aforementioned reasons must inform the other Contracting Party in writing without delay, but not later than seven (7) calendar days from occurrence of the extraordinary circumstance and must also inform

the other Contracting Party in writing within seven (7) calendar days about the cessation of such reasons. Upon cessation of an obstacle that has arisen due to Force Majeure, the Contracting Parties are obligated to resume performance of their contractual obligations stipulated in the contract.

3. In the event that an event of Force Majeure lasts at least thirty (30) days, the Contracting Party whose fulfillment of contractual obligations has not been made impossible by the event of Force Majeure shall be entitled to withdraw from the contract. In cases where there exists an event of Force Majeure, the provisions of Sections 2006 through 2008 of the Civil Code shall not be applied.

4. Late or defective delivery by the Contractor to the Order Party shall not be considered an event of Force Majeure.

## **XII/ Withdrawal from Contract**

1. The Order Party is entitled to withdraw from the contract in the situations specified in these Terms and Conditions as well as those specified in the contract; furthermore, the Order Party is entitled to withdraw from the contract in the event of a significant breach of the contract. A significant breach of the contract shall primarily be any situation in which:

- a) the Contractor is more than thirty (30) calendar days late in its contractual performance;
- b) the Contractor repeatedly performs the work with insufficient expert diligence and in contradiction to technical regulations and the contract in a manner that endangers future use of the work for the purposes specified in the contract;
- c) the work displays ineliminable or repeated defects that preclude use of the work.

2. The Contractor is entitled to withdraw from the contract in the event of a significant breach of the contract on the part of the Order Party. A significant breach on the part of the Order Party shall be any delay greater than thirty (30) days in the payment of any part of the price of the work. No payment suspended in accordance with Article 3, Paragraph 12 of these Terms and Conditions shall be considered late payment of part of the price of the work.

3. Each of the Contracting Parties is entitled to withdraw from the contract in writing in the event that the other Contracting Party undertakes liquidation, has become insolvent, or has been declared bankrupt by final order.

4. Should either of the Contracting Parties withdraw from the contract, both Contracting Parties shall bear the following obligations:

- the Contractor shall terminate all activity on the work, with the exception of activities that the Order Party has approved or which are crucial to the protection of the Order Party's property and/or the safety of the work;
- the Contractor shall deliver the work to the Order Party and the Order Party shall accept the work, or, as the case may be, any part of the work that may be used by the Order Party or from which the Order Party has benefit or which is important to the Order Party pursuant to the provisions of Section 2004, Paragraph 2 of the Civil Code;
- mutual financial compensation shall be carried out on the basis of an appraisal of the work, or, as the case may be, on the basis of an appraisal of the part of the work that was delivered by the Contractor and accepted by the Order Party. Appraisal of the work, or, as the case may be, appraisal of part of the work, shall be carried out in accordance with the following rules: (a) in the event of withdrawal from the contract resulting from a breach of contractual obligations on the part of the Order Party, the Contractor shall be entitled to claim a proportionate part of the price of the work calculated based on the price specified in the contract; (b) in the event of withdrawal from the contract resulting from a

breach of contractual obligations on the part of the Contractor, the Contractor shall be entitled to compensation of the necessary expenses that it demonstrably expended in relation to delivery of the work, or, as the case may be, part of the work; however, this compensation must not exceed 75% of the value of the delivered part or the work specified and calculated on the basis of the prices stipulated in the contract. All expenses related to withdrawal from the contract shall be borne by the Contracting Party that has committed the breach of contractual obligation;

upon withdrawal from the contract, the Order Party may complete the work and/or entrust its completion to any other subject (subjects) that the Order Party explicitly authorizes.

5. Withdrawal from the contract shall have no impact on the right of either Contracting Party to claim payment of a contractual penalty or late payment interest (if it has already matured), on the right of either Contracting Party to claim compensation for damage arising from a breach of contractual obligations, or on any provision that, by its nature, serves to bind the Contracting Parties beyond withdrawal from the contract, i.e., namely any provision governing the resolution of disputes. If a debt has been indemnified, withdrawal from the contract shall not have any impact on that indemnification.

6. In the event that one of the Contracting Parties withdraws from the contract, and the subject of the work is fabrication of an item, the Contractor is obligated to return to the Order Party all property (namely semifinished products, replacement parts, materials, packaging materials, etc.) that it received from the Order Party in relation to performing the work in accordance with the contract. In the event that the Contractor returns the aforementioned property in a damaged state, the Contractor shall compensate the Order Party for the damage to this property. In the event that such property was processed by the Contractor during performance of the work, or in the event that such property can not be returned, the Contractor shall undertake to reimburse the Order Party the acquisition cost of said property.

7. In the event that the Order Party withdraws from the contract, it shall be entitled to suspend all payments to the Contractor, including those payments that, in accordance with the contract, have become payable, and may do so until it has completed the work on its own or by means of a different subject.

8. Mutual outstanding debts of the Contracting Parties arising on the day of withdrawal from the contract shall be settled by means of unilateral set-off of mutual outstanding debts, whereas only the Order Party shall be entitled to perform this set-off.

9. The date of withdrawal from the contract shall be the day upon which written notification of withdrawal of the entitled Contracting Party is received by the other Contracting Party.

10. The provisions of Section 2003, Paragraph 1, Section 2591, and Section 2595 of the Civil Code will not be applied.

11. The Order Party is entitled to take advantage of its rights to withdraw from the contract at any point in time after the occurrence of a circumstance or actions on the part of the other Contracting Party that establish for the Order Party the option to withdraw from the contract. In this regard, the Order Party shall not be subject to any time restrictions.

12. During partial performance, the Order Party is entitled to choose whether it will withdraw from the contract with regard to the unfulfilled performance only, or with regard to the entire performance of the contract. During partial performance, the Order Party is entitled to choose whether it will withdraw from the contract with regard to future impacts only, or with regard to the entire performance of the contract.

### **XIII/ Resolution of Disputes and Applicable Law**

All disputes arising from contracts entered into in accordance with these Terms and Conditions and in relation to them shall be, if possible, resolved by means of agreement between the Contracting Parties.

In the event that it is not possible to resolve these disputes in a conciliatory manner, they will be arbitrated by the courts of the Czech Republic of the appropriate subject-matter and territorial jurisdiction: in the first instance, by the Regional Court in České Budějovice; in the question of subject-matter jurisdiction, by the District Court in Tábor.

#### **XIV/ Miscellaneous Provisions**

1. Materials and property provided to the Contractor by the Order Party (documentation, tools, measuring instruments, etc.) will remain the property of the Order Party and may be used only in relation to the performance of contracts on the part of the Contractor. Such materials and property may not be made available to any third party, must be secured and stored safely, and, upon completion of the contract/s in question or, as the case may be, as soon as they are no longer needed by the Contractor, must be returned to the Order Party without any call to do so and in an undamaged state.

2. The Contractor undertakes to maintain the confidentiality of all construction, technological, and production materials, documents, information, devices, and other actualities (hereinafter collectively “business secrets”) that it has received from the Order Party or otherwise acquired in relation to the performance or conclusion of contracts. The Contractor undertakes to not make the business secrets of the Order Party available to third parties without the express consent of the Order Party and undertakes to ensure that its employees and business partners also adhere to this provision. This obligation to maintain the confidentiality of the Business Secrets shall remain in force after the contracts have expired.

3. The Contractor undertakes not to take advantage of the business secrets of the Order Party shared in accordance with the previous paragraph for any other purpose than performance of contracts.

#### **XV/ Industrial and Intellectual Property Rights**

1. If the subject matter of a contract is the result of an activity that is protected by industrial or other intellectual property rights, the Order Party is entitled to use this result without restraint (globally) and without regard for the subject matter of the Contract. The Contractor is not entitled to provide such a result to any other subject than the Order Party. All licensing and other fees shall be included in the price stipulated in the contract.

2. At the bidding of the Order Party, the Contractor is obligated to conclude without delay a contract with the Order Party that will ensure the performance of the Order Party’s rights in accordance with Paragraph 1 of this article of the Conditions.

#### **XVI/ Final Provisions**

1. The addresses for delivering official letters and/or documents shall be the addresses of the headquarters of the Contracting Parties as stated in the contract, or the address that a Contracting Party announces to the other Contracting Party in writing upon conclusion of the contract. If it is not in contradiction with legal enactments, indication of intention of the sender shall be duly applied to the addressee even at the moment the addressee refuses or otherwise knowingly prevents delivery of the indication of intention, or when the holder of postal license returns the indication of intention, which has been sent to the address stipulated for delivery to the addressee, to the sender for any reason whatsoever as undelivered. In the event of uncertainty, the day of delivery of all written letters and/or documents pertaining to the contract between the Contracting Parties by means of post or other mail-order service shall be ten (10) days from the day on which the correspondence was sent. In the event of uncertainty regarding delivery by fax or email, any letter and/or document shall be considered duly delivered to the Contractor four (4) hours after demonstrable dispatch to the Contractor’s email address or fax number.

2. If any provision of the contract is or becomes invalid or void, such a provision shall have no bearing on the other provisions of the contract, which shall remain valid and in force. In such a case, the Contracting Parties shall undertake to replace said invalid or void provision with a provision that is valid and effective and best corresponds to the intended economic purpose of the provision that is no longer valid or has become void. Until such time, relevant legal enactments as amended shall be applied.
3. In matters not governed by a contract or these Terms and Conditions, the duties and discretions of the Order Party and the Contractor shall be subject to the valid provisions of Czech law, namely those of the Civil Code, whereas the conflict rules of international private law shall not be applied.
4. Contracts shall be prepared in duplicate, whereas each Contracting Party shall obtain one copy.
5. In the event of any disputes between the provisions contained within these Terms and Conditions and the provisions contained in the contract, the provisions in the contract shall take priority.
6. The Contracting Parties rule out the application of Section 1987, Paragraph 2 of the Civil Code in relation to outstanding debts arising from the contract and these Terms and Conditions and agree that any uncertain and/or unspecified debt qualifies for set-off.
7. Pursuant to Section 1756 of the Civil Code, the Contractor assumes the risk of a change of circumstances.

Sezimovo Ústí, 01 April 2014

Peter Hawlan  
Statutory Director  
**InStar Technologies a.s.**