

Howden ČKD Compressors s.r.o.

General Terms and Conditions of Purchase

1. DEFINITIONS

In these Conditions where the context so admits

The "**Act on Criminal Liability of Corporate Entities**" means the Act No. 418/2011 Coll., on criminal liability of corporate entities and the proceedings against them, as amended.

The "**Civil Code**" means the Act No. 89/2012 Coll., the Civil Code, as amended.

The "**Contract**" means the agreement between the Purchaser and the Supplier for the supply of the Goods and/or the completion of the Works, incorporating these Conditions and any appendices as appropriate.

The "**Contract Price**" means the sum payable to the Supplier in accordance with the terms of the Contract as stated in the Order, which shall be exclusive of value added tax but inclusive of all other charges.

The "**Criminal Code**" means the Act No. 40/2009 Coll., the Criminal Code, as amended.

The "**Goods**" means the goods, plant, machinery, apparatus, materials, documentation and the like, supplied or to be supplied under the Contract.

The "**Order**" means a written order of the Purchaser that, by its content, is an offer aimed at entering into the Contract or that is an acceptance of the Supplier's offer to enter into the Contract. In the order that is the offer to enter into the Contract there must be specified at least the subject-matter of supply, its price and the place and time of supply. In the order that is the acceptance of the Supplier's offer, the Purchaser shall refer to the Supplier's offer that is being accepted.

The "**Purchaser**" means Howden ČKD Compressors s.r.o.

The "**Supplier**" means the person, firm or company to whom the Order is addressed.

The "**Works**" means the work to be performed by the Supplier under the Contract and includes, where the context so admits, the Goods.

2. CONDITIONS

(i) These Conditions form an inseparable part of the Contract.

(ii) All Contracts for the supply of Goods to the Purchaser and/or the completion of Works for the Purchaser are entered by the Purchaser only upon these Conditions. Subject only to Condition 3 hereof, anything in any document forming part of or incorporated in any such Contract which is inconsistent with these Conditions or any part thereof shall have no effect and every such document shall be deemed to incorporate only these Conditions.

3. VARIATIONS/AMENDMENTS

No variation of or addition to these Conditions shall be effective unless in writing and signed for and on behalf of the Purchaser and the Supplier.

4. PRECEDENCE

The documents forming the Contract are to be taken as mutually explanatory of one another. In the event of any conflict or ambiguity between the various documents, the order of precedence shall be in the order as listed below:

- (i) Order;
- (ii) These Conditions; and
- (iii) Any ancillary appendices attached to the Contract.

5. VALIDITY AND EFFECTIVENESS OF CONTRACT

(i) The process of entering into the Contract and the contractual relations between the Purchaser and the Supplier shall be governed by the laws of the Czech Republic, in particular by the Civil Code.

(ii) The Contract shall become valid and take effect on the date of delivery to the Purchaser of written acceptance by the Supplier of the Purchaser's Order which is an offer aimed at entering into the Contract or on the date of delivery to the Supplier of the Order that is an acceptance of the Supplier's offer to enter into the Contract, unless agreed otherwise by the parties in writing.

(iii) If the Supplier considers details in an Order inaccurate, vague or insufficient for determining the contents of the Contract to which the Order is aimed, the Supplier shall immediately inform the Purchaser of such fact and state what details of the Order shall be further specified. The Purchaser shall then immediately specify the Order. If the Supplier fails to invite the Purchaser to specify the Order, the Supplier shall be liable for any defectively supplied Goods and/or defectively completed Works.

(iv) If the Supplier fails to expressly confirm or refuse the Order within the time period specified in the Order and supplies the ordered Goods and/or completes the ordered Works within the time period decisive for the acceptance of the Order, the Supplier shall be deemed to have accepted the Order by the supply of the Goods and/or the completion of the Works.

(v) The Purchaser excludes the acceptance of the Order that is an offer to enter into the Contract with any supplement or variance; a reply to such Order with a supplement or variance shall not be considered as acceptance of an offer, but as a new offer.

(vi) If the Supplier refuses to accept the terms of the Order, it shall send to the Purchaser a new offer within [five] [calendar] days. Within [five] [calendar] days after receipt of the new offer, the Purchaser shall either expressly accept or refuse such an offer or send to the Seller amended Order.

(vii) The entering into the Contract is subject to obtaining of the required approvals within the Purchaser and to signing of the relevant contractual documentation. The Purchaser reserves the right not to enter into the Contract at any phase of negotiations, in particular if the required internal approvals are not obtained. The Purchaser shall not be obliged to communicate to the Supplier the reasons why the Contract has not been entered into.

6. EXTRAS

The Purchaser may instruct variations of and extras to the Contract at any time. Any such instructions must be confirmed by a formal written amendment of the Order issued by the Purchaser.

7. MATERIAL AND WORKMANSHIP

The Goods shall be fit for the purpose specified and conform in every respect as to quantity, quality, performance and description with any drawing or specification set out or referred to in the Order, or attached to these Conditions as an appendix, and be of the most appropriate materials and best workmanship for Goods of that type.

8. TIME FOR DELIVERY / COMPLETION

(i) The time stipulated for delivery of the Goods, or as the case may be for completion of the Works, shall be the delivery date and at the delivery address, both as hereinafter specified in the Order. In the event that the Supplier fails to deliver within such time it shall pay the Purchaser as a contractual penalty for delay at the rate specified in the Order for each week for which the Supplier fails to complete the delivery of the Goods, or complete the Works, up to a maximum amount as stated in the Order. Without prejudice to any right or remedy which shall have accrued or shall accrue thereafter, the Purchaser shall be entitled to immediately terminate the Contract where the contractual penalty reach the maximum amount specified in the Order. Where the Order does not specify an accrual rate or maximum contractual penalty, the Supplier shall be liable for a contractual penalty of 1% of the Contract Price per week subject to a maximum of 20% of the Contract Price.

(ii) Partial supply is allowed only with the Purchaser's prior written consent.

(iii) The Supplier may deliver the Goods or complete the Works before the date agreed in the Contract only with the Purchaser's prior written consent. In such an event, the due date of the invoice shall be the same as if the delivery or completion occurred at the originally agreed time.

(iv) If such delivery or completion is not made within four weeks of the time stipulated in the Contract, the Purchaser may determine a time for such delivery or completion or may, at its option, withdraw from the Contract without prejudice to any right or remedy which shall have accrued or shall accrue thereafter to the Purchaser. If the Seller fails to deliver the Goods or complete the Works within this newly determined deadline, the Purchaser may withdraw from the Contract without prejudice to any right or remedy which shall have accrued or shall accrue thereafter to the Purchaser.

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9. DELIVERY OF GOODS

- (i) Where the Contract is for the supply of Goods, delivery shall occur when the Goods have been delivered in accordance with the Contract, including the provision of all required documentation and with correct packing.
- (ii) At the supply of Goods, the Supplier shall provide the Purchaser with the following documentation (according to the nature of the Goods and other specifications in the Contract):
 - (a) declaration of origin of the supplied Goods;
 - (b) certificate of conformity or CE certificate;
 - (c) other certificates (e.g. GOST) if required in the Contract;
 - (d) safety data sheets;
 - (e) attestations;
 - (f) declaration of meeting of conditions of putting of packaging on the market under Act No.477/2001 Coll., on packages, as amended;
 - (g) accompanying technical documentation;
 - (h) drawing documentation;
 - (i) operation manuals;
 - (j) materials for project documentation; and
 - (k) documentation required for customs proceedings;whereas all such documents shall be in the required language and form.
- (iii) The Supplier shall package the supplied Goods and duly secure them for transport with regard to the nature of the Goods in the way minimizing any negative effects on the environment so that the protection and preservation of the Goods in transport is ensured as much as possible. In large or bulky packaging, the Supplier shall mark the lashing points.
- (iv) The price of packaging materials, except for returnable packaging, shall be included in the price of the Goods.
- (v) The price of Goods that are supplied for a price according to weight shall be determined according to the actual net weight at supply.
- (vi) Unless the place of delivery is the Purchaser's registered office, the Supplier shall, at the Purchaser's request and expense, ensure transport of the Goods from the place of delivery to the place determined by the Purchaser. The price of such transport must be approved by the Purchaser before the Goods are shipped.
- (vii) The delivery of a supply of Goods means always the moment of signing of the handover report by both parties or confirmation of the delivery note by a representative of the Purchaser.
- (viii) A supply of Goods shall also include:
 - (a) documents (Condition 9(ii) hereof) relating to the subject-matter of supply. If the documents are missing, the supply has not been made duly and in time;
 - (b) services connected with the supply (installation, putting into operation, training of operating staff; and
 - (c) list of recommended spare parts, if required by the Contract.
- (ix) The Goods must always be marked with the Purchaser's item number according to the Order; otherwise the supply has not been made duly and in time.

10. VESTING AND RISK

- (i) The property in the Goods or any part thereof shall pass to the Purchaser when:
 - (a) materials or parts of the Goods are set aside for the Contract; or
 - (b) the Purchaser accepts delivery; or
 - (c) the Supplier becomes entitled to any payment in respect thereof;whichever is the earlier.
- (ii) Where the Contract is to supply Goods, the risk in the Goods shall not pass to the Purchaser until the Purchaser accepts delivery thereof at the delivery address as specified in the Order.
- (iii) Where the Contract is to complete Works, the risk in the Works shall not pass to the Purchaser until such Works are complete as stated in the Order.

11. FORCE MAJEURE

The Purchaser shall have no liability in respect of its obligations and shall not be considered to be in default or in breach of its obligations under the Contract to the extent that performance of such obligations is prevented or delayed by any circumstances outside the reasonable control of the Purchaser (including without limitation strikes, lock-outs or other industrial disputes (whether involving workforce of the Purchaser or the workforce of any other party), act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accidental breakdown of plant or machinery, fire, flood, storm).

12. REPLACEMENT OF GOODS OR WORKS

- (i) Any part of the Goods or Works (including any part replaced under this Condition) which is defective owing to fault in material, workmanship or design within a period of twenty-four months (the "**Warranty Period**") from the date of commencement of commercial operation of the Goods or Works, shall be replaced by the Supplier free of charge, but without prejudice to any right or remedy which shall have accrued or shall thereafter accrue to the Purchaser. The Warranty Period shall not run for the time for which the Purchaser cannot use the Goods or Works due to their defects for which the Supplier is liable.
- (ii) In necessary cases of danger to operational safety about which the Supplier is notified immediately, or if the Supplier is in delay with the removal of the defects, the Purchaser may remove the defects itself and request a compensation of the related costs from the Supplier.
- (iii) The same warranty terms as to the original subject-matter of the supply shall apply to spare parts or repaired parts; the Warranty Period shall start to run on the date when the repair or replacement is completed.
- (iv) For other parts of the Goods or Works, the Warranty Period shall be extended by the time during which the Goods or Works could not be duly used as a result of the defect.
- (v) The Purchaser shall notify the defects to the Supplier in writing, without undue delay after they are detected, at the latest by the end of the Warranty Period.
- (vi) In the event of a defect occurring during the Warranty Period, the Supplier shall provide the Purchaser with assistance within a reasonable time, in particular with technical and service support in the form of written, email or phone communication leading to the removal of the defects. This is without prejudice to other warranty rights.
- (vii) The Supplier shall compensate the Purchaser for all direct and indirect damage and costs incurred by it due to defects of Goods or Works, including any sanctions and damages claimed from the Purchaser by its customer.
- (viii) In the event that a defect shall appear in the Goods or Works of the kind referred to above within a period of 6 years after the end of the Warranty Period, then the same shall be made good by the Supplier provided that the defect was either caused by an act or omission on the part of the Supplier; such act or omission implies either a failure to pay due regard to the serious consequences which a conscientious and responsible contractor would foresee as being likely to ensue, or a willful disregard of any consequences of such act or omission, or would not have been disclosed by a reasonable examination prior to the end of the Warranty Period.

13. ASSIGNMENT

- (i) The Supplier shall not, without the consent in writing of the Purchaser, assign or transfer the Contract or any part thereof, or make any sub-contract with any person, firm or company for the execution of any portion of the Goods or of the Works other than for the supply of unprocessed materials. Any such

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consent shall not relieve the Supplier from any of his obligations under the Contract. The Supplier shall supply the Purchaser with two unpriced copies of sub-orders placed by the Supplier.

- (ii) By accepting these Conditions, the Supplier agrees that the Purchaser may assign any of its claims against the Supplier or the entire Contract to a third party and that, in assigning the Contract, the Supplier shall be entitled to refuse the release of the Purchaser from its duties only if, from the assigned Contract, the respective third party (assignee) is to have a monetary debt to the Supplier and at the moment of assignment the ability of this third party to repay the debt is lower than the ability of the Purchaser.

14. REPORTS, INSPECTION, REJECTION OR AMENDMENT AT SUPPLIER'S WORKS

- (i) The Supplier shall at the request of the Purchaser furnish the Purchaser with regular reports showing the availability of material parts and the manufacturing status of the items covered by the Order. The Supplier shall afford to the Purchaser's representative, inspectors, or any inspecting authority nominated by the Purchaser access to the Supplier's manufacturing areas at all reasonable times where the material parts and assemblies are being produced. In the event that part of the Order is sub-contracted by the Supplier, the Supplier will make arrangements for the Purchaser's representative to visit sub-contractors on a similar basis.
- (ii) The Works shall be subject to expediting and inspection by Purchaser and as may be required by Purchaser's principals.
- (iii) The Purchaser shall be given a certificate of the results of any test of the Goods or Works carried out by the Supplier or the manufacturer or importer of the Goods or Works.
- (iv) Where the Order prescribes any tests or performance parameters for the Goods or Works, the Supplier shall carry out such tests and otherwise ensure such performance. The Supplier shall give reasonable notice and full opportunity to the Purchaser to witness all such tests. If the Purchaser fails to attend such tests at the notified time and place, the Supplier may proceed in its absence, however, should the Purchaser so request prior to such notified time the Supplier shall hold such tests at such reasonable alternative time and place as the Purchaser may require. No approval of the Goods or Works or failure to reject the Goods or Works by the Purchaser pursuant to any inspection or tests of the Goods or Works or otherwise shall prejudice any right of the Purchaser under the Contract.
- (v) The Supplier shall inform the Purchaser at least [three] [calendar] days in advance about tests, which the Purchaser is entitled to witness under the Contract. The general practice of the particular industrial sector shall be decisive for such tests.
- (vi) The Purchaser may conduct a test of the quality of the supplied Goods or Works. If the test proves that the Goods or Works are not in compliance with the Contract, the Supplier shall compensate the Purchaser for the costs of the test.
If during the test the Goods or Works prove to be not in compliance with the Contract, the Supplier shall remove the defects at its expense without delay. The test shall be repeated upon the Purchaser's request.

15. REJECTION AFTER DELIVERY

In the case of Goods delivered by the Supplier not being fit for the purpose specified, or not being of the stipulated quality, weight or measurement, or otherwise not compliant, and if after being notified thereof the Supplier has not rectified or replaced the same, the Purchaser shall have the power to reject any such Goods or materials and to purchase elsewhere as nearly as practicable to the same specification and conditions as circumstances shall admit, and any additional costs howsoever incurred shall be paid by the Supplier to the Purchaser. Alternatively the Purchaser reserves the right to rectify such Goods either itself or by others on his behalf; costs being backcharged to the Supplier.

16. PRICE VARIATION

Unless otherwise stated the Contract Price is fixed for the duration of the Order and no increases shall be accepted unless related to a written amendment issued by the Purchaser.

17. CHANGE OF CIRCUMSTANCES, LIMITATION PERIOD, SET OFF, WRITTEN FORM

- (i) If, after execution of the Contract, circumstances change to such an extent that supplying under the Contract becomes more difficult for the Supplier, it shall not affect its duty to fulfill its obligations, unless specified otherwise by law, these Conditions or a particular contractual arrangement. The Supplier assumes the risk of a change of circumstances, therefore also if the change of circumstances is so material that the change causes a gross imbalance between the rights and duties of the parties to the detriment of the Supplier, the Supplier shall neither be entitled to request the Purchaser to resume negotiations about the Contract nor to amend the terms of the executed Contract.
- (ii) By accepting these Conditions, the Supplier agrees that the Purchaser's rights from, or relating to, the contractual relations with the Supplier shall be time-barred (in Czech: *se promlčí*) [fifteen] years after the day when the Purchaser could exercise such rights for the first time.
- (iii) The Purchaser may set off its claim to a contractual penalty under, or in connection with, the Contract against any claim of the Supplier under, or in connection with, the Contract, irrespective of Section 1987(2) of the Civil Code.
- (iv) Sections 1799 and 1800 of the Civil Code shall not apply.
- (v) Legal acts delivered by mail, courier, fax or e-mail shall be considered as delivered in writing.

18. INVOICES

- (i) Invoices in respect of Goods or Works must be submitted at the time of completion of Order requirements, a copy advice note to be forwarded to the address in accordance with the Order. Invoices not stating the Order number will be rejected. Payment of undisputed amounts of the Contract Price shall, unless stated otherwise in the Order, be made sixty (60) [calendar] days following receipt of a valid invoice.
- (ii) The invoice must contain the elements of a tax invoice in the sense of Act No. 235/2004 Coll., on value added tax, as amended, and the number of the Contract/Order according to the Purchaser's records, subject number according to the [Standard Classification of Products] and the due date. If the invoice does not contain the Contract number according to the Purchaser's records, a copy of a confirmed Order must be enclosed to the invoice. If the Contract Price consists of several items, the Supplier shall provide a due breakdown of the items in the invoice.
- (iii) The Purchaser may return without payment an invoice that does not have the required elements under Condition 18(ii) hereof or includes incorrect details, within [thirty] [calendar] days after delivery of the invoice. The Supplier shall correct the invoice or issue a new invoice, depending on the nature of the defect. The period for payment shall start to run again on the date of delivery of the corrected or newly issued invoice.
- (iv) Payment means debiting of the paid amount from the Purchaser's account in favour of the Supplier's account specified in the invoice.
- (v) Advance payments paid by the Purchaser shall be credited against the Contract Price and the Supplier cannot consider them as a cancellation fee and cannot credit them against its other claims against the Purchaser.
- (vi) The Purchaser may request from the Supplier at its expense the granting of bank guarantees or other equivalent security when the Purchaser undertakes to provide financial performance to the Supplier before the day when the supply is to be made. The Supplier undertakes to provide the required security within [five] [calendar] days after delivery of the Purchaser's request. If the Supplier fails to provide duly and in time the security required by the Purchaser, the Purchaser's duty to pay shall be considered not having been created and the Supplier may request payment for the subject-matter of the supply only after the supply is made.

19. LIABILITY, INDEMNITY / REIMBURSEMENT AND INSURANCE

- (i) The Purchaser shall be liable only for actual damage, which the Purchaser causes to the Supplier willfully or by gross negligence.
- (ii) The Seller shall indemnify and reimburse the Purchaser against all liabilities, losses, damages, claims, costs and demands and all proceedings whatsoever which may be made against the Purchaser however the same shall arise in respect or in connection with an infringement or alleged infringement of any intellectual property rights (including any breach by the Supplier of the duty of confidentiality set out in Condition 20(i)), and any bodily

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injury to, disease or death of any person whomsoever, whether employed by the Purchaser, the Supplier or by any sub-contractor, or any other person or persons whatever or in respect of any damage to any property or persons, firm or company (including the Supplier's own property), which is occasioned by or arises out of the supply of the Goods and/or completion of the Works covered by the Order or is in any way connected therewith.

- (iii) The Supplier shall insure and keep insured during the execution of the Works covered by the Order, with a reputable insurance company and when required to do so by the Purchaser produce evidence of such insurance. All insurance policies shall include a provision whereby the insurer waives its rights of subrogation against the Purchaser or the Purchaser's principals. If the Supplier fails to provide or maintain any of the foregoing insurance, the Purchaser shall have the right to provide or maintain such coverage at Supplier's expense. Neither the procurement, maintenance nor limits of coverage, shall relieve the Supplier of liability for loss or damage.

20. PURCHASER'S RIGHTS IN PLANS, DRAWING, PATTERNS ETC

- (i) Any specification, plans, drawings, patterns or designs supplied by the Purchaser to the Supplier in connection with the Order shall remain the property of the Purchaser, and any information derived therefrom or otherwise communicated to the Supplier in connection with the Order shall be regarded by the Supplier as secret and confidential and shall not without the consent in writing of the Purchaser be published or disclosed to any third party or made use of by the Supplier except for the purpose of implementing the Order. If this duty is breached, the Supplier shall pay to the Purchaser a contractual penalty of [CZK 100,000] for each breach. In addition to the contractual penalty, the Purchaser may also request damages resulting from the breach. Any specifications, plans, drawings, patterns or designs supplied by the Purchaser must be returned in good order unless otherwise agreed.
- (ii) Where development forms part of the Order the ownership of any intellectual property rights including but not limited to patents, registered and unregistered designs and copyright arising from such development shall be transferred to the Purchaser and the Supplier shall cooperate in any measure necessary to make such transfer effective as soon as any such right arises.

21. PURCHASER EQUIPMENT

All property of the Purchaser at any time in the hands of the Supplier including but not limited to any patterns/drawings, tools or other equipment furnished by the Purchaser to the Supplier, shall be used only for the purposes of the Order unless otherwise authorised by the Purchaser. The Supplier shall maintain such property in good condition, fair wear and tear excepted, and shall take all reasonable care to protect the same from loss or damage. The Supplier shall maintain insurance against loss or damage of such property. The Supplier shall produce satisfactory evidence of such insurance including premium receipts whenever required to do so by the Purchaser.

22. SUSPENSION OR CANCELLATION FOR CONVENIENCE

- (i) The Purchaser shall be entitled to delay the delivery of the Goods or Works for a period of up to thirty (30) [calendar] days at Supplier's cost.
- (ii) The Purchaser shall be entitled to unilaterally cancel the Order and the Contract in whole or in part at its discretion and without liability, save for reimbursement in the case of cancellation for reasons other than the Supplier's default of the Supplier's reasonable costs properly incurred to the Purchaser's reasonable satisfaction prior to receipt of the Purchaser's notice of cancellation, less the value of material or work in progress usable by the Supplier or normally in its inventory or stock or otherwise recoverable by the Supplier, and which the Purchaser does not wish to obtain, plus such reasonable profit as the parties agree. All items for which costs are reimbursed shall be delivered by the Supplier to the Purchaser unless otherwise agreed.

23. SUPPLIER'S DEFAULT

In the event of default by the Supplier in the performance of any obligation hereunder including but not limited to time of delivery and/or completion or in the event it becomes apparent that delivery or completion cannot be accomplished within the time specified, or should the Supplier become insolvent, go into liquidation, bankruptcy, re-organisation, enter into any other arrangement or proceeding relating to any form of insolvency, the Purchaser may, in addition to its other rights or remedies, withdraw from the Contract without penalty and/or liability, except for Goods or Works previously received and accepted, charging the Supplier for losses and damages sustained by reason of such termination. In such circumstances the Supplier shall ensure that full title to the Goods and Works transfers to the Purchaser.

24. OVERALL LIABILITY

Save for claims pursuant to Conditions 19 (ii) and 25, the Supplier's overall liability to the Purchaser under the Contract shall be:

- (i) For Orders less than CZK 3,000,000, not more than CZK 15,000,000; and
- (ii) For Orders greater than CZK 3,000,000, the greater of CZK 15,000,000 or 100% of the Order value.

25. BRIBERY AND CORRUPTION

The Supplier represents and warrants that it will comply with all applicable laws in respect of activities contemplated by the Contract including, without limitation, laws and regulations relating to taxation, exchange controls and custom requirements as well as with any anti-corruption, anti-trust, anti-money laundering, sanctions or other applicable criminal law, rule or regulation. In particular, the Supplier shall comply fully with the UK's Bribery Act 2010, the Criminal Code and the Act on Criminal Liability of Corporate Entities and it represents, and warrants that, it will not do anything which could contravene or cause the Purchaser to contravene the UK's Bribery Act 2010, the Criminal Code and the Act on Criminal Liability of Corporate Entities. Furthermore the Supplier represents and warrants that it will not offer to or receive any inducement or bribe from any employee, agent, official or fiduciary or any third party with the intent to influence the conduct of any such person or customer in relation to the supply of the Goods and/or the completion of the Works. The Supplier shall indemnify and reimburse the Purchaser against any loss, howsoever caused, due to a breach of the terms of this Condition 25.

26. JURISDICTION

The Contract shall in all respects be treated and construed in accordance with Czech Law. Any dispute arising out of or in connection with this Contract shall be settled under the Rules of Arbitration of the International Chamber of Commerce by one or more said arbitrators appointed in accordance with the said Rules. The seat, or legal place, of arbitration shall be Prague, Czech Republic. The arbitrations shall be held and the award shall be rendered in English.