



Technology that delivers

**BRINOX**<sup>®</sup>  
process systems

# GENERAL TERMS AND CONDITIONS OF PURCHASE

## 1. DEFINITIONS OF TERMS

### 1.1. In these Conditions:

**Conditions:** means these general terms and conditions of purchase;

**Buyer:** means Brinox d.o.o., Sora 21, 1215 Medvode.

**Supplier:** means the party that sends an Offer to the Buyer to provide Services and/or deliver Product(s) or Materials,

**Parties:** means both the Buyer and the Supplier;

**Product(s):** means the product or products (including any instalment of the products or any part of them) described in the Offer;

**Services:** means the service (if any) described in the Offer and includes any deliverables provided as part of the Services;

**Material:** means the materials described in the Offer and refers to the circumstances, when the subject of the Offer is the delivery of materials that are not included in specific Product(s);

**Offer:** means the offer made by the Supplier based on the Buyer's inquiry;

**Order:** means the acceptance of the Offer by the Buyer or an order made on the basis of the Offer;

**Agreement:** means the contract between the Buyer and the Supplier, comprising of the Offer, these Conditions and any specification or special terms for the purchase of the Products and/or the supply of Services. This includes the situations when a special written agreement is concluded as well as the situations when an agreement is concluded when the Buyer accepts the Supplier's Offer. The Agreement includes all subsequent annexes and supplements to the Agreement.

### 1.2. The headings in these Conditions are for convenience only and do not affect the interpretation of the Conditions.

### 1.3. Writing or written includes e-mails and faxes.

### 1.4. Order of Priority:

- 1.4.1. In the event of any inconsistency between the documents comprising the Agreement, the following order of priority will prevail:
- (a) order form agreed in writing between the Buyer and the Supplier (to the extent it is consistent with any specific terms and conditions and these Conditions)
  - (b) specific terms and conditions agreed in writing;
  - (c) these Conditions.

1.5. Prices are as specified in an agreed Order and unless stated otherwise, are fixed for Orders placed within a period of 12 months. Any taxes, duties, levies, fees, costs and expenses in associated with customs formalities, including licenses and authorizations, which are necessary for export and import, shall be in accordance with the agreed Incoterm and to the account of the party as defined by that Incoterm.

## 2. SUPPLY OF PRODUCT(S)

2.1. This subsection of the Conditions applies when the subject of the Offer is the delivery of finished Product(s).

2.2. The Supplier's obligations are as follows:

**2.2.1.** to supply the ordered Product(s) within the agreed scope and quality, in accordance with the applicable rules and standards. Should any of the materials or the Products need to be replaced, the Supplier must first acquire the Buyer's written approval for the replacement. Should the Supplier replace any material or Product without the Buyer's prior written approval, the Buyer shall not be obligated to pay for the Product(s);

**2.2.2.** all supplied Product(s) and their elements, spare parts etc. must be completely new, manufactured in line with state-of-the-art technology and the latest specialised industrial know-how, as well as in conformity with the applicable rules and standards, while the Supplier shall also be obliged to provide adequate certificates of attestation;

**2.2.3.** the supplied Product(s) must be manufactured pursuant to the Technical Requirements for Products and Conformity Assessment Act (Official Gazette of the Republic of Slovenia, No. 17/2011) and the Machinery Safety Rules (Official Gazette of the Republic of Slovenia, No. 75/2008 et seq.) and any other acts, which may apply to the Product(s) and are in force in the Republic of Slovenia at the time of the delivery of the Product(s). The Supplier shall certify the conformity with essential occupational health and safety requirements with adequate markings on the Product(s) (machinery/devices) and shall be obliged to submit, upon takeover or at the latest before the Product(s) is put into operation, an adequate declaration of conformity in Slovene language and a CE Declaration of Conformity (European CE Mark Directives) with all particulars in accordance with the applicable rules;

**2.2.4.** to supply and assemble the Product(s) manufactured in line with the following directives: the Electromagnetic Compatibility (EMC) Directive 2004/108/EC, Directive 2006/95/EC relating to electrical equipment designed for use within certain voltage limits, the Machinery Directive 2006/42/EC and any other directives, which may apply to the Product(s) at the time of their delivery;

**2.2.5.** to organise user trainings for the Buyer for handling the supplied Product(s) before their takeover;

**2.2.6.** to ensure spare parts for additional 10 years after takeover;

**2.2.7.** to protect the Product(s) from damage and destruction until handed over to the Buyer;

**2.2.8.** to satisfy all other parameters and obligations defined in the Offer and other documentation or arising from other mutual arrangements.

**2.3. If the Supplier's obligation also includes start-up of the Product(s), the Supplier's obligations shall extend to the following:**

**2.3.1.** after the conclusion of the agreed upon start-up and prior to the takeover, the Supplier shall submit to the Buyer the complete technical and other documentation required for operation and maintenance of the Product(s) that was mounted by the Supplier. This includes all required certificates, approvals, measurements, warranty certificates for the Product(s) and in-built elements, any warranties against defects during the warranty period, instructions for use and maintenance of the Product(s) etc.;

**2.3.2.** regular settlement of obligations towards their Subsuppliers. In case of late payment, the Supplier shall be obliged to conclude a suitable assignment agreement with the Buyer and the Subsupplier;

**2.3.3.** if the Product(s) are to be supplied to the site of the investor of the Buyer, the Supplier must ensure that its workers are informed of the regime on that site, including but not limited to any smoking ban in the business premises and in open areas, the traffic order, rules on safety at work, fire escape, list of workers present on the site etc., the Supplier must also ensure that such rules and instructions are consistently adhered to by its workers and any of its Subsupplier's workers. If the Supplier's or the Subsupplier's workers violate the aforementioned rules, this could constitute grounds for withdrawal or cancellation of the order or Agreement without any notice period and a prohibition of future work. In case of delivery to the site of the investor, the Buyer shall be obliged to familiarise the Supplier with such rules.

**2.4. If the Order includes the delivery of a new or used machine, the Supplier shall also be obliged to submit all documentation and satisfy the requirements from Annex 1.**

**2.5. Payment**

**2.5.1.** The payment shall be made to the Supplier after:

- a successfully effected takeover;
- the submission of all documentation defined in the Offer and Order;
- presentation of all agreed instruments of security (guarantees, bills of exchange etc.) if specified in the Order and/or Offer.

**2.5.2.** If any of the previous conditions is not fulfilled, the Buyer may refuse to pay the agreed upon price and the payment shall not fall due until all the conditions enumerated in point 2.5.1. have been fulfilled. Although the payment dynamics may deviate from this order, all previously mentioned items need to be fulfilled before the final payment in any event.

**2.5.3.** If the Buyer contests an invoice or a part of an invoice, it shall notify the Supplier thereof within 8 working days after the receipt of the invoice and settle the undisputed part of the invoice. The Supplier shall be obliged to issue a credit note for the disputed part.

## **2.6. Takeover**

**2.6.1.** In the event that the Supplier's obligation only includes the delivery of the Product(s):

**2.6.1.1.** Once the Supplier has the equipment ready to be taken or handed over, he must notify the Buyer thereof and make the delivery to the agreed location within the agreed time or make the arrangements for takeover in accordance with the agreed Incoterms clause (Incoterms 2010). The Buyer shall carry out a customary inspection of the supplied Product(s), inform the Supplier of any obvious defects and confirm the receipt of the Product(s) by signing the delivery note (takeover).

**2.6.1.2.** If it is revealed after the takeover by the Buyer that the Product(s) shows a defect, which could not have been noticed during the customary inspection (latent defect), it shall notify the Supplier immediately after the defect has been discovered or within 2 years after the takeover at the latest.

**2.6.1.3.** The delivery note shall be an integral part of the invoice.

**2.6.2.** In the event that the Supplier's obligation includes the delivery and start-up the of Product(s):

**2.6.2.1.** After the Supplier has delivered the Product(s) and starts them up, he is obliged to inform the Buyer. The parties shall carry out the takeover within 8 days of such notification, drawing up and signing a record on takeover which lays down inter alia the period for rectification of any minor deficiencies. In case of major deficiencies, the takeover shall not take place but a new time limit shall be set. The record on takeover shall constitute an integral part of the invoice.

**2.6.2.2.** If the Supplier fails to rectify the discovered defects and deficiencies within reasonable time limits set by the Buyer or fails to remedy them during the warranty period, the Supplier shall carry all costs incurred by the Buyer in this regard or the costs claimed by the investor from the Buyer (which includes but is not limited to costs of substitutional performance, possible price differences of substitute providers, administrative costs related to the remedy of defects, the costs of court and administrative proceedings etc.).

## **2.7. Delivery**

**2.7.1.** The Supplier must deliver the Product(s) until the date specified in the Order or Offer. Any Deviation from the agreed upon delivery times shall be possible only with prior written consent by the Buyer. Timely delivery of the Product(s) means the delivery that is effected during the specified delivery time in agreed upon quantity and quality.

**2.7.2.** If the delivery of the Product(s) does not comply with the agreed date(s), the Buyer may:

- (i) terminate the Agreement in whole or in part;
- (ii) refuse any subsequent delivery of the Product(s);
- (iii) recover from the Supplier any expenses reasonably incurred by the Buyer in obtaining the Product(s) in substitution from another supplier;
- (iv) claim damages for any cost, loss, expenses and liquidated damages incurred by the Buyer which are attributable to the Supplier's delay; and/or
- (v) claim liquidated damages at a rate of 0,5% of the total contract price per week, for each commenced week, of delay.

**2.7.3.** Liquidated damages under this clause become due at the time of the Buyer's demand in writing, and shall be deducted immediately from any amount owed to the Supplier. The Supplier's payment of liquidated damages under this clause does not prejudice the Buyer's right to make any other claim against the Supplier in connection with the late delivery.

**2.7.4.** If the Supplier fails to deliver the Product(s) within the specified period or fails to deliver it at all and the Buyer engages another supplier in accordance with point (iii) 2.7.2. for full or partial execution of works the Buyer may charge a payment to the Supplier in the amount of 5% of the total price for the Product(s) and/or Services to cover the overheads.

**2.7.5.** The Supplier is also liable for any damages suffered by the Buyer due to the Suppliers late or non-delivery which exceed the above outlined penalty. The damages shall be charged to the Supplier as the difference between the damage incurred and the charged penalty.

**2.7.6.** Any penalty or damages shall be charged on a special invoice issued by the Buyer to the Supplier.

## **2.8. Warranty**

**2.8.1.** The Supplier warrants for a period of 24 months from the takeover that the installed Product(s) will be:

- (i) in accordance with applicable laws and regulations,
- (ii) in accordance with the Agreement and all the Buyer's instructions,
- (iii) free from defects in design, workmanship or materials and from any rights of third parties, and
- (iv) fit for any particular purpose specified in the Agreement or, in absence thereof, fit for the purposes for which such Product(s) would ordinarily be used.

Ordinary wear and tear is not a defect under this clause.

**2.8.2.** The Buyer must, without undue delay, give written notice of any defect to the Supplier, including a description of the defect.

**2.8.3.** In case of breach of any warranty, the Buyer is entitled to enforce any or more of the following remedies at its discretion and at the Supplier's expense:

- (i) to give the Supplier another opportunity to carry out any additional work necessary to ensure that the Agreement is fulfilled, and/or to obtain prompt repair or replacement of the defective Product(s);
- (ii) to carry out (or to instruct a third party to carry out) any additional work necessary to make the Product(s) comply with the Agreement;
- (iii) to refuse any further Product(s);
- (iv) to claim such damages as may have been sustained by the Buyer as a result of the Supplier's breach of the Agreement;
- (v) to terminate the Agreement; in such event the Buyer has no obligation to compensate the Supplier, and, at the Buyer's option, the Supplier shall pay back to the Buyer any remuneration received from the Buyer for any Product(s) and take back any Product(s) at the Supplier's own cost and risk.

The rights and remedies available to the Buyer under the Agreement are cumulative and are not exclusive of any rights or remedies available at law or in equity.

**2.8.4.** In case of defect arising during the warranty period, the Supplier shall if the Buyer so chooses ensure a repair or delivery and replacement of the defective element free of charge. For each part replaced during the warranty period, a new warranty period shall begin anew after installation for the entire Product. The Supplier may authorise an expert of the Buyer to eliminate the defective element during the warranty period. If an element breaks down three times, the Supplier shall replace it with a new one. The Buyer may issue an invoice to the Supplier for the value of non-executed warranty repairs.

## **3. SUPPLY OF MATERIAL**

**3.1. This subsection of the Conditions applies when the subject of the Offer is the delivery of Materials.**

**3.2. The Supplier's obligations are as follows:**

**3.2.1.** to supply the ordered Materials within the agreed scope and quality, in accordance with the applicable rules and standards. If any of the ordered Materials need to be replaced, the Seller must first acquire the Buyer's written approval. Should the Supplier replace the Material without the Buyer's prior written approval, the Buyer shall not be obligated to pay for the delivered Materials;

**3.2.2.** all supplied Materials must be completely new, manufactured in line with state-of-the-art technology and the latest specialised industrial know-how, as well as in conformity with the applicable rules and standards, while the Supplier shall also be obliged to provide adequate certificates of attestation;

**3.2.3.** to protect the Material from damage and destruction until handover to the Buyer;

**3.2.4.** to satisfy all other parameters and obligations defined in the Offer and/or Order and other documentation or arising from other mutual arrangements.

### **3.3. Payment**

**3.3.1.** The payment shall be made to the Supplier after:

- a successfully effected takeover;
- submission of all documentation defined in the Offer and/or Order;

**3.3.2.** If any of the previous conditions is not fulfilled, the Buyer may refuse to pay the agreed upon price and the payment shall not fall due until all the conditions enumerated in point 3.3.1. have been fulfilled. Although the payment dynamics may deviate from this order, all previously mentioned items need to be fulfilled before the final payment in any event.

**3.3.3.** If the Buyer contests an invoice or a part of an invoice, it shall notify the Supplier thereof within 8 working days after the receipt of the invoice and settle the undisputed part of the invoice. The Supplier shall be obliged to issue a credit note for the disputed part.

### **3.4. Takeover**

**3.4.1.** Once the Supplier has the Material ready to be taken or handed over, it shall notify the Buyer and make the delivery to the agreed location within the agreed time or make the arrangements for takeover in accordance with the agreed Incoterms clause (Incoterms 2010). The Buyer shall carry out a customary inspection of the supplied Material or he will review the Material as soon as possible after the normal course of events, inform the Supplier of any obvious defects and confirm the receipt of the Material by signing the delivery note (takeover). The delivery note shall be an integral part of the invoice.

**3.4.2.** Should any defects on the Material be revealed after the takeover, which could not have been noticed during the customary inspection (latent defect), the Buyer is obliged to notify the Supplier immediately after the defect has been discovered or within 2 years after the takeover at the latest. The Supplier is obliged to remedy the defects on the Material or deliver new Material.

### **3.5. Delivery**

**3.5.1** The Supplier is obliged to deliver the Material until the date defined in the order. Any deviation from the agreed upon delivery times shall be possible only with prior written consent by the Buyer. Timely delivery of the Material means the delivery that is effected during the specified delivery time in agreed upon quantity and quality.

**3.5.2.** If the delivery of the Material does not comply with the agreed date(s), the Buyer may:

- (i) terminate the Agreement in whole or in part;
- (ii) refuse any subsequent delivery of the Material;
- (iii) recover from the Supplier any expenses reasonably incurred by the Buyer in obtaining the Material in substitution from another supplier;
- (iv) claim damages for any cost, loss, expenses and liquidated damages incurred by the Buyer which are attributable to the Supplier's delay; and/or
- (v) claim liquidated damages at a rate of 0,5% of the total contract price per week, for each commenced week, of delay.

**3.5.3.** Liquidated damages under this clause become due at the time of the Buyer's demand in writing, and shall be deducted immediately from any amount owed to the Supplier. The Supplier's payment of liquidated damages under this clause does not prejudice the Buyer's right to make any other claim against the Supplier in connection with the late delivery.

**3.5.4.** If the Supplier fails to deliver the Material within the specified period or fails to deliver it at all and the Buyer engages another supplier for full or partial execution of works the Buyer may charge a payment to the Supplier in the amount of 5% of the total price for the Product(s) and/or Services to cover the overheads.

**3.5.5.** The Supplier is also liable for any damages suffered by the Buyer due to the Suppliers late or non-delivery which exceed the above outlined penalty. The damages shall be charged to the Supplier as the difference between the damage incurred and the charged penalty.

**3.5.6.** Any penalty or damages shall be charged on a special invoice issued by the Buyer to the Supplier.

## **4. SUPPLY OF SERVICES**

**4.1. This subsection of the Conditions applies when the subject of the Offer is the provision of Services.**

**4.2. The Supplier's obligations are as follows:**

**4.2.1.** to perform the ordered Services professionally and in accordance with the presented requirements, within the agreed upon scope and quality and taking into account the applicable rules and standards. The Supplier shall obtain a written consent from the Project Manager for each substitution of material and equipment from the inventory lists of the Project Engineer. If the Supplier does not obtain written permission for such substitutions, the Buyer shall not be obliged to pay for the material and equipment;

- 4.2.2.** to obtain consents from the Project Manager and the supervisory service of the Buyer for any modifications of particular technical solutions;
- 4.2.3.** to arrange the site in accordance with the safety plan and organize the works on the (construction) site so that it does not pose a threat to the safety of the structure, to the lives and health of people, to traffic, to neighbouring objects or the environment;
- 4.2.4.** to keep a construction logbook with regular and up to date entries;
- 4.2.5.** to deliver the equipment, elements, spare parts, etc., as specified in the Offer and/or Order. All delivered and installed equipment, elements, spare parts, etc., shall be completely new, manufactured in line with state-of-the-art technology and the latest specialized industrial know-how, and in conformity with the applicable rules and standards, the Supplier shall also be obliged to provide adequate certificates of attestation;
- 4.2.6.** to provide the Services and any applicable equipment or materials pursuant to the Technical Requirements for Products and Conformity Assessment Act (Official Gazette of RS, No. 17/2011) and the Machinery Safety Rules (Official Gazette of RS, No. 75/2008 et seq.) and any other act, which may apply to the aforementioned and are in force in the Republic of Slovenia at the time of the provision of the Services. The Supplier shall certify the conformity with essential occupational health and safety requirements with adequate markings on the equipment (machinery/devices) and shall be obliged to submit, upon takeover or at the latest before any equipment is put into operation, an adequate declaration of conformity in Slovene language and a CE Declaration of Conformity (European CE Mark Directives) with all particulars in accordance with the applicable rules;
- 4.2.7.** to supply and assemble the equipment manufactured in line with the following directives: the Electromagnetic Compatibility (EMC) Directive 2004/108/EC, Directive 2006/95/EC relating to electrical equipment designed for use within certain voltage limits, the Machinery Directive 2006/42/EC and any other directives, which may apply to the equipment at the time of its delivery or at the time of the provision of Services;
- 4.2.8.** to bring its work methods and activities into line with the requirements of ISO 14001 standard for environmental management systems (Requirements with instructions for use), and OHSAS 18001 standard for occupational health and safety management (Requirements) and any other standards, which may apply at the time of the provision of Services. If the Supplier does not possess the mentioned certificates, he shall be obliged to satisfy the environmental protection requirements and the occupational health and safety rules according to his own programme;
- 4.2.9.** to submit to the Buyer the diagrams and plans of executed Services (Project of implemented works – PID) in hard copy (four copies) and electronic form;
- 4.2.10.** to submit to the Buyer, upon completion of the Services, all technical and other documentation required for technical inspection of the completed Services, and for subsequent operation and maintenance of the equipment installed by the Supplier. The Supplier shall be obliged to submit to the Buyer all required certificates, approvals, measurements, instructions for use and maintenance relating to the supplied and/or installed equipment, as well as any agreed performance guarantees and warranties against defects during the warranty period, etc.;
- 4.2.11.** to draft and submit instructions for operation and maintenance;
- 4.2.12.** to organise trainings for operating the system or the supplied and/or installed equipment prior to takeover;
- 4.2.13.** to submit warranty certificates for installed elements and ensure spare parts for 10 more years after the takeover;
- 4.2.14.** to protect the works and objects on the site against damage and destruction until hand over to the Buyer;
- 4.2.15.** to regularly settle his obligations towards his Subcontractors. In case of late payment, the Supplier shall be obliged to conclude a suitable assignment agreement with the Buyer and the Subcontractor;
- 4.2.16.** to satisfy other obligations defined in the tender documentation if applicable and in the Offer and Order or arising from mutual arrangements;
- 4.2.17.** to only hire such workers, for the performance of the Services, who are duly registered and possess adequate work permits. The Supplier shall indemnify the Buyer for any damage caused by hiring workers without work permits or any other documentation needed by the workers to perform the agreed upon work;

**4.2.18.** to inform his workers about the smoking ban in business premises and in open areas if works are being carried out on the site of the Buyer or investor, as well as about the rules and work conditions on the site of the Buyer or investor, including but not limited to the traffic order, smoking ban, rules on safety at work, fire escape, list of workers present on the site, etc. The Supplier shall be obliged to take such rules into account, to respect them and to follow all instructions issued by the workers of the Buyer and the investor to ensure that such rules and instructions shall be consistently followed. Furthermore, the Supplier's workers and the workers of his Subcontractors shall also be obliged to take all of the above into account. If the Supplier's workers violate any rule applicable to the business premises or working premises, this could constitute a ground for withdrawal from the Agreement without any notice, and in the case of workers of external contractors, result in their immediate removal from the site of the Buyer or the investor and the prohibition of further work. The Supplier is liable for any damages caused by breaking the applicable rules by its workers as well as by the workers of its Subsupplier;

**4.2.19.** to ensure that the construction site and its surroundings are regularly cleaned and to regularly dispose waste in the containers available for that purpose. If the site is only cleaned poorly and sporadically, cleaning will be arranged by the Buyer whereby the costs shall be charged to the Supplier.

### **4.3. Payment**

**4.3.1.** The Buyer will pay for the executed Services based on an invoice issued by the Supplier at the latest within 5 days after the takeover. A specification of executed Services and record on takeover shall be integral parts of the invoice. The Buyer shall confirm the sent invoice within 10 days upon receipt and settle it within 60 days upon approval. Unless the parties have explicitly agreed otherwise, the payment shall also be conditional upon successful takeover and the submission of complete documentation mentioned in the Offer and/or Order, as well as the presentation of all agreed instruments of security (guarantees, bills of exchange, etc.), except where the parties have agreed in writing that this shall not be required.

**4.3.2.** If the Buyer challenges a part of the invoice, he shall notify the Supplier thereof in writing within the period of approval and shall settle the undisputed part in accordance with point 4.3.1. of these Conditions. The Supplier shall be obliged to issue a credit note for the disputed part.

**4.3.3.** In case of late payment, the Supplier shall be entitled to request default interest from the Buyer as stipulated by the Statutory Default Interest Rate Act (Official Gazette of RS, No. 11/2007). No default interest shall be charged for delay of one day.

### **4.4. Takeover**

**4.4.1.** After the Supplier has completed the agreed upon Services, he shall notify the Buyer thereof in writing. The parties shall effect the takeover of executed Services within 8 days upon such notification by drawing up and signing a record on takeover which lays down inter alia the period for rectification of any lesser deficiencies. In case of major deficiencies, the takeover shall not take place but a new time limit shall be set. The record on takeover shall constitute an integral part of the final account of the construction situation and invoice.

**4.4.2.** If the Supplier fails to rectify the discovered defects and deficiencies within reasonable time limits or fails to do away with them during the warranty period, he shall be obliged to carry all costs incurred by the Buyer in this regard or the costs claimed by the investor from the Buyer (costs of substitutional performance, any price differences of substitute providers, administrative costs related to the remediation of defects, the costs of court and administrative proceedings, etc.).

### **4.5. Performance period**

**4.5.1.** The Supplier shall be obliged to render the ordered Services until the date specified in the Offer or Order. Any deviation from the agreed upon periods of performance shall only be possible with prior written consent by the Buyer. Timely execution of Services shall mean execution complying with the specified period of performance in terms of quantity and quality.

**4.5.2.** If the performance of the Services does not comply with the agreed date(s), the Buyer may:

- (i) terminate the Agreement in whole or in part;
- (ii) refuse any subsequent performance of the Services;
- (iii) recover from the Supplier any expenses reasonably incurred by the Buyer in obtaining the Services in substitution from another supplier;
- (iv) claim damages for any cost, loss, expenses and liquidated damages incurred by the Buyer which are attributable to the Supplier's delay in performance; and/or
- (v) claim liquidated damages at a rate of 0,5% of the total contract price per week, for each commenced week, of delay in performance.

**4.5.3.** Liquidated damages under this clause become due at the time of the Buyer's demand in writing, and shall be deducted immediately from any amount owed to the Supplier. The Supplier's payment of liquidated damages under this clause does not prejudice the Buyer's right to make any other claim against the Supplier in connection with the late performance.

**4.5.4.** If the Supplier fails to perform the Services within the specified period or fails to perform them at all and the Buyer engages another supplier for full or partial performance of Services, the Buyer may charge a payment to the Supplier in the amount of 5% of the total price for the Product(s) and/or Services to cover the overheads.

**4.5.5.** The Supplier is also liable for any damages suffered by the Buyer due to the Suppliers late or non-performance which exceed the above outlined penalty. The damages shall be charged to the Supplier as the difference between the damage incurred and the charged penalty.

**4.5.6.** Any penalty or damages shall be charged on a special invoice issued by the Buyer to the Supplier.

#### **4.6. Performance warranty**

**4.6.1.** The Supplier is obliged to deliver to the Buyer within 8 days from Order a blank bill of exchange without protest amounting to 10% of the value of the ordered Services as a performance warranty with the period of validity of 30 days after takeover. The Buyer shall call on the bill of exchange if the Supplier fails to execute the commissioned Services in the agreed quality, quantity and time limits.

**4.6.2.** The Supplier warrants for a period of 24 months from the takeover that the installed Product(s) or equipment will be

- (i) in accordance with applicable laws and regulations,
- (ii) in accordance with the Agreement and all the Buyer's and investor's instructions,
- (iii) free from defects in design, workmanship or materials and from any rights of third parties, and
- (iv) fit for any particular purpose specified in the Agreement or, in absence thereof, fit for the purposes for which such Product(s) would ordinarily be used.

Ordinary wear and tear is not a defect under this clause.

**4.6.3.** The Buyer must, without undue delay, give written notice of any defect to the Supplier, including a description of the defect.

**4.6.4.** In case of breach of any warranty, the Buyer is entitled to enforce any or more of the following remedies at its discretion and at the Supplier's expense:

- (i) to give the Supplier another opportunity to carry out any additional work necessary to ensure that the Agreement is fulfilled, and/or to obtain prompt repair or replacement of the defective Product(s) or Services;
- (ii) to carry out (or to instruct a third party to carry out) any additional work necessary to make the Product(s) and/or Services comply with the Agreement;
- (iii) to refuse any further Product(s) or Services;
- (iv) to claim such damages as may have been sustained by the Buyer as a result of the Supplier's breach of the Agreement;
- (v) to terminate the Agreement; in such event the Buyer has no obligation to compensate the Supplier, and, at the Buyer's option, the Supplier shall pay back to the Buyer any remuneration received from the Buyer for any Product(s) and take back any Product(s) at the Supplier's own cost and risk.

The rights and remedies available to the Buyer under the Agreement are cumulative and are not exclusive of any rights or remedies available at law or in equity.

**4.6.5.** If any Product(s) or equipment is installed, for which the Supplier's subcontractors offer a warranty, they shall be liable within the time limits as laid down in their warranty certificates. The Product(s) or equipment supplied by the Supplier from his Subcontractors shall be subject to their warranty terms.

**4.6.6.** In case of defect during the warranty period, the Supplier shall ensure a repair or delivery and replacement of the defective element free of charge if the Buyer chooses the option of repair. For each part replaced during the warranty period, a new warranty period shall begin anew after installation. The Supplier may authorise an expert of the Buyer to eliminate the defective element during the warranty period. If an element breaks down three times, the Supplier shall replace it with a new one. The Buyer may issue an invoice to the Supplier for the value of non-executed warranty repairs.

**4.6.7.** The Supplier shall also guarantee that the technical documentation is accurate and comprehensive, and shall assume liability for all mistakes and shortcomings in the technical documentation. The Supplier shall be obliged to carry out at his own expense all modifications and corrections of the technical documentation, as well as on the supplied and installed equipment, should it be discovered that they result from mistakes and shortcomings in the technical documentation.

**4.6.8.** Upon issue of the final invoice or account of the construction situation, the Supplier shall be obliged to deliver to the Buyer a blank bill of exchange without protest amounting to 10% of the calculated value of works as a performance guarantee during in the warranty period. The Buyer shall be entitled to write out the bill of exchange in the amount of costs incurred during the elimination of defects which arose during the warranty period, or correction of the technical documentation, which were not remedied in due time on demand of the Buyer. The Buyer shall be obliged to return an undrawn bill of exchange to the Supplier within 30 days after the expiration of the warranty period.

#### **4.7. Construction waste**

**4.7.1.** The Supplier shall be obliged to handle the waste material and other construction waste in accordance with the Rules on the Management of Construction Waste and instructions on waste management of the investor at the site of which the works are being carried out. Waste shall be properly separated and disposed of in the investor's waste management system or to authorized collectors and processors of waste. A copy of certified waste management sheets shall be submitted to the Buyer and the investor. If the Supplier violates this provision, he shall be obliged to reimburse all direct and indirect costs incurred due to improper waste management (inspection measures, costs of unsuccessful technical inspections, elimination of after-effects of improper waste management, etc.).

#### **4.8. Labour protection**

**4.8.1.** The Supplier must carry out all the Services pursuant to:

- the Occupational Health and Safety Act ZVZD-1 (Official Gazette of RS, No. 43/2011 et seq.);
- the Fire Protection Act (Official Gazette of RS, No. 3/2007, 9/2011, 83/2012, 61/2017 et seq.);
- the Decree on the Implementation of Safety and Health Requirements at Temporary and Mobile Construction Sites (Official Gazette of RS, No. 83/2005 et seq.);
- the Construction Act GZ (Official Gazette of RS No.61/2017, 65/2020 et seq.);
- the house rules, internal rules and procedures of the Buyer and of the investor at the site of which the works are being carried out;
- the safety plan of the construction site or facility where the works are being carried out;
- the requirements of a written agreement pursuant to Article 39 of the Occupational Health and Safety Act ZVZD-1
- and any other applicable laws, rules or regulations.

#### **4.9. Insurance**

**4.9.1.** The Supplier shall be obliged to insure his liability for any possible damage inflicted to the Buyer or third persons in carrying out of his activity (Article 14 of the Construction Act – GZ) and to neighbouring objects with the minimum insured sum of EUR 50.000.

**4.9.2.** The Supplier shall prove the existence and adequacy of insurances by providing the Buyer with a copy of the insurance policy or a certificate of the insurance company on request.

### **5. CONFIDENTIALITY**

**5.1.** Each Party undertakes that it will not at any time disclose to any person any confidential information concerning this Agreement, Offer, Product(s), Material, business, affairs, customers, clients or suppliers of the other party or of any member of the group of companies to which the other party belongs.

**5.2.** No Party will use any other party's confidential information for any purpose other than to perform its obligations under the agreement between both Parties.

**5.3.** Should there be any breach of confidentiality as outlined above, the Party in breach must pay 0.5 % of the contractual value to the other Party for each breach.

## 6. TERMINATION

### 6.1. Termination of the Order by the Buyer

**6.1.1.** The Buyer shall have the right to terminate the order at any time without any notice period, especially in the following cases:

- if the Supplier is in delay with delivery times under the Agreement and fails to deliver the Product(s), Material or provide the Services even within the grace period of 8 days;
- immediately after the Supplier runs behind schedule, if it can be concluded from the Supplier's conduct that the Supplier will not fulfil their obligations even in the grace period;
- if the Supplier becomes incapable of fulfilling its obligations;
- if Supplier is prepared to fulfil only one part of the order without any justified reason, and the Buyer has no interest in such partial fulfilment;
- if it is obvious that the Supplier will not fulfil their obligations;
- if the Supplier fails to respect the provisions and obligations from the Agreement or seriously violates them.

**6.1.2.** If the Buyer terminates the order, he is obliged to pay the Supplier for all goods delivered to that point, and at the same time have the right to request from the Supplier a compensation for damage incurred, the costs of substitutional performance and administrative costs as a result of the termination. The Buyer shall charge the previously incurred costs on a special invoice to be issued to the Supplier and set off with the invoice issued by the Supplier.

### 6.2. Termination of the Order by the Supplier

**6.2.1.** The Supplier shall also have the right to terminate the order but only in case of force majeure or due to the Buyer failing to meet their obligations (default of payment...). In this case the Supplier shall be entitled to receive payment for the already delivered Product(s) or Material and a compensation for the damage suffered due to the Buyer failing to meet their obligations.

### 6.3. Force Majeure

**6.3.1.** Either party is entitled to suspend performance of its obligations under the Agreement to the extent that such performance is impeded by any event of force majeure. A force majeure event is an event arising after the date of the Agreement which is beyond the control, and without the fault or negligence of either party, and includes war, riots, fire, flood, typhoons, hurricanes, etc. which were not reasonably avoidable by the party claiming the benefit of this clause, and, to the extent applicable, the imposition of economic sanctions or export controls by the European Union and its Member States, and by any other applicable jurisdiction. The party wishing to claim the benefit of this clause must notify the other party in writing within 7 days of the force majeure event, and the suspension of obligations lasts only to the extent the force majeure event lasts. Failure to give notice under this clause will disentitle the party the benefit of the clause. No party is entitled to claim any costs from the other party arising out of a force majeure event.

## 7. LIABILITY AND INDEMNITY

**7.1.** The Supplier shall, without any limitations, indemnify and hold harmless the Buyer for all liabilities, damages, cost, losses or expenses incurred by the Buyer as a result of the Supplier's breach of the Agreement. The Supplier shall, without any limitations, indemnify and hold harmless the Buyer for any claim made by a third party against the Buyer in connection with the object of the Agreement, including but without limitation to claims that any Product(s) and/or Materials infringe a third party's intellectual property rights. Upon the Buyer's request the Supplier shall defend the Buyer against any third-party claims. The Supplier shall be liable for all personal injury or property damage caused by the object of the Agreement regardless of whether or not the Supplier has acted with negligence.

## 8. INTELLECTUAL PROPERTY RIGHTS

**8.1.** The Supplier grants the Buyer a worldwide, irrevocable, transferable, non-exclusive, royalty-free, perpetual license to use any intellectual property rights in the Product(s), including drawings and documents that relate to the Product(s). The Buyer shall have the right to, without limitation, use, copy, maintain, modify, sell, transfer and exploit the Product(s), including drawings and documents that relate to the Product(s). Any intellectual property rights created by the Supplier specifically for the Buyer are assigned and transferred to the Buyer with full ownership rights to such intellectual property rights. The Supplier must specify in writing and prior to delivery all open-source software contained in or used by the Product(s), if any, and request the Buyer's written approval. The Supplier agrees to replace at its own cost any open-source software components rejected by the Buyer with software of at least the same quality and functionality. If any claim is made against the Buyer that the Product(s) infringe a third party's rights, the Supplier shall at its own cost, but at the Buyer's discretion (i) procure for the Buyer and its investor, as the case may be, the right to continue using the Product(s); (ii) modify the Product(s) so they cease to be infringing; or (iii) replace the Product(s) by non-infringing equivalents. Otherwise, the Buyer is entitled to terminate the Agreement and to reclaim all sums that it has paid to the Supplier under the Agreement.

## 9. OTHER PROVISIONS

**9.1. Law and Disputes:** The Parties agree that they shall consensually resolve any potential disputes arising out and in connection with the Agreement. The courts of Slovenia will have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with the Agreement (including any non-contractual disputes or claims). The Agreement (and any part thereof) and any disputes or claims arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) will be governed by the laws of Slovenia. The United Nations Convention on Contracts for the International Sale of Goods, dated April 11, 1980 shall be excluded.

**9.2. Severability:** If any provision, or part of a provision, of these Conditions and/or the Agreement between the Parties is found by any court or authority of competent jurisdiction to be illegal, invalid or unenforceable in whole or in part that provision or part-provision will be deemed not to form part of the contractual relationship, and the legality, validity or enforceability of the remainder of the provisions of contractual relationship will not be affected, unless otherwise required by operation of applicable law. The Parties will use all reasonable endeavours to agree within a reasonable time upon any lawful and reasonable variations to the contractual relationship which may be necessary in order to achieve, to the greatest extent possible, the same commercial effect as would have been achieved by the provision, or part-provision, in question.

**9.3. Amendments:** No alterations or amendments to the Agreement will be effective unless contained in a written document signed by the authorized representatives of each of the parties.

**9.4. Validity of these Conditions:** These Conditions are valid from 1<sup>st</sup> of January 2022 until revoked or until the adoption of new general terms and conditions of purchase of Brinox d.o.o. These Conditions also apply to Daughter Companies: 000 Brinoks RUS and Brinox Deutschland GmbH.

## Annex 1

Documentation to be submitted by the Supplier of new or used machinery based on the Machinery Safety Rules (Official Gazette of RS, No. 75/2008 et seq.)

### 1. EC Declaration of Conformity has to include the following data:

- business name and full address of the manufacturer and, where applicable, his authorised representative;
- name and address of the person authorised to compile technical documentation, who must be established in the European Union;
- description and identification of the machine, including a general designation, function, model, type, serial number and trade name;
- explicit indication that the machine satisfies all relevant provisions of the aforementioned Rules and, where applicable, a similar indication of conformity with other special regulations or relevant provisions, which the machine complies with. These references must be references from texts published in the EU Official Journal;
- name, address and identification number of the notified body that performed the EC type-examination mentioned in Annex 9, and the number of certificates on EC type-examination if use of such an examination was made in the course of conformity assessment procedures;
- name, address and identification number of the notified body that confirmed the full quality assurance system mentioned in Annex 10 if the machine was produced under that system;
- reference to harmonised standards from Article 11, paragraph 3, of the aforementioned Rules, whenever they were applied;
- reference to other standards and technical specifications, whenever they were applied;
- place and date of issuing the declaration;
- identification and signature of the person authorised to draw up the declaration on behalf of the manufacturer or his authorised representative.

### 2. Technical documentation

The technical documentation needs to prove that the machinery conforms to the requirements of the aforementioned Rules. It has to comprise the planning, manufacture and operation of the machinery insofar this is necessary for the purposes of conformity assessment. Technical documentation must be drafted in one or more official languages of the European Union with the exception of instructions for use.

### 3. Instructions

All machinery placed on the market or put into service in the Republic of Slovenia must be accompanied by instructions in Slovene language. The instructions accompanying the machinery must be either "Original instructions" or a "Translation of the original instructions", in which case the translation must be accompanied by the original instructions. By way of exception, the maintenance instructions intended for use by specialised personnel mandated by the manufacturer or his authorised representative may be supplied in only one language of the European Union which the specialised personnel understand.

### 4. Marking of machinery

All machinery must be marked visibly, legibly and indelibly with the following minimum particulars:

- business name and full address of the manufacturer and, where applicable, his authorised representative;
- designation of the machinery;
- CE marking,
- designation of series or type;
- serial number, if any;
- year of construction, that is the year in which the manufacturing process is completed.

It is prohibited to pre-date or post-date the machinery when affixing the CE marking.

Furthermore, machinery designed or constructed for use in a potentially explosive atmosphere must be marked accordingly.