*Translation from the Czech language*

**PURCHASE AGREEMENT**

between

**DELIMAX a.s.**

and

**[TO BE FILLED IN BY THE TENDERER – Seller’s name]**

**Buyer’s Agreement number: [TO BE FILLED IN]**

**Seller’s Agreement number: [TO BE FILLED IN BY THE TENDERER]**

On the below day, month and year the following Parties:

**DELIMAX a.s.,** Company identification No.: 26916371, with the registered office at Bratislavská 1647/3, 695 01 Hodonín, Czech Republic

Represented by: Ing. Jan Vrba, authorized agent

incorporated in the Companies Register kept by the Regional Court in Brno, Section B, Insert 4086

e-mail: [sekretariat@delimax.cz](mailto:sekretariat@delimax.cz)

tel.: 518692101, 518692110

Tax identification No.: CZ26916371

(hereinafter referred to as "**the Buyer**")

and

**[TO BE FILLED IN BY THE TENDERER – Name and surname/company],** Company identification No.: [TO BE FILLED IN BY THE TENDERER], with the registered office at [TO BE FILLED IN BY THE TENDERER] E-mail: [TO BE FILLED IN BY THE TENDERER] Tel: [TO BE FILLED IN BY THE TENDERER]

Tax identification No.: [TO BE FILLED IN BY THE TENDERER]

(hereinafter referred to as “**the Seller**”)

(the Seller and the Buyer hereinafter also referred to individually as “**the Party**” and jointly as “**the Parties**”)

enter into this

**PURCHASE AGREEMENT**

Concluded pursuant to Section 2079 et seq. of Act No. 89/2012 Sb., the Civil Code, as amended (hereinafter referred to as “**the Civil Code**”)

(hereinafter referred to as “**the Agreement**”)

# SUBJECT MATTER OF THE AGREEMENT

## This Agreement is concluded based on the selection of the Seller’s tender submitted in the tender titled *The Filling Line*, opened by the Buyer within the Rural Development Programme for 2014–2020.

## This Agreement provides for the obligation of the Seller to supply the Filling Line (hereinafter referred to as “**the Equipment**”) in timely and proper manner. The Equipment is described in more detail in Annex No. 1 hereto.

## Moreover, the Agreement provides for the obligation of the Seller to install, connect and commission the Equipment, train the Buyer in usage of the Equipment and test the Equipment under Art. 10 of the Agreement (the above obligations together with the obligation to supply the Equipment also referred to as “**the Subject Matter of the Agreement**”).

## Prior to the start of the Equipment manufacturing, the Seller is obliged to submit the Equipment execution documentation.

## The Buyer undertakes to take over the provided Subject Matter of the Agreement duly and pay the price set forth in par. 3.1 to the Seller under the terms and conditions 3.1

# TIME AND PLACE OF PERFORMANCE

## The Seller undertakes to supply the Subject Matter of the Agreement by 31 May 2019.

## The place of any performance included in the Subject Matter of the Agreement is the manufacturing premises of DELIMAX a.s., Bratislavská 1647/3, 695 01 Hodonín (hereinafter referred to as “**the Place of Performance**”).

# PURCHASE PRICE

## The purchase price is fixed and, in accordance to the quote of the Seller, amounts to CZK [TO BE FILLED IN BY THE TENDERER] excl. VAT ([TO BE FILLED IN BY THE TENDERER]), VAT amounts to CZK [TO BE FILLED IN BY THE TENDERER], i.e. CZK [TO BE FILLED IN BY THE TENDERER] incl. VAT ([TO BE FILLED IN BY THE TENDERER] (hereinafter referred to as “**the Price**”).[[1]](#footnote-1)

## A detailed budget of the Subject Matter of the Agreement, i.e. the Price breakdown, is given in Annex No. 2 hereto.

## The Price is set as the highest admissible price that may not be changed or exceeded. If the Seller is a VAT payer, the Price may be changed solely in relation to changes of applicable tax laws and regulations governing VAT, by the amount corresponding to the change imposed by this legislative change at most; in which case the Seller shall inform the Buyer about the reason of the change in writing, shall substantiate and quantify the difference between the existing Price and the changed Price amount.

## The Price includes all the costs and profit of the Seller related to the performance of the Subject Matter of the Agreement. The stipulated price also includes any expected costs incurred in relation to the price development within national economy (inflation), until the end of the term of performance.

## The Seller represents that the Seller became aware of all the circumstances and conditions of performance of the Subject Matter of the Agreement that may affect the Price in any way before signing the Agreement.

# PAYMENT TERMS

## The Buyer shall pay the Price to the Seller successively, always based on a duly issued invoice, as follows:

1. 50% of the Price shall be paid by the Buyer within 10 days of the Agreement conclusion;
2. 40% of the Price shall be paid by the Buyer within 10 days from the day when the Seller confirms to the Buyer the Equipment is ready to be supplied to the Place of Performance;
3. 10% of the Price shall be paid by the Buyer within 30 days of acceptance of the Subject Matter of the Agreement by the Buyer pursuant to Article 5 hereof.

## If the Buyer is in default of payment of even one of the agreed parts of the Price under par. 4.1 hereof or any part thereof exceeding 14 days, the Seller is entitled to discontinue the supply of any performance hereunder and/or to discontinue any performance hereunder until the outstanding parts of the Price are paid in full. The discontinuation of the supply and/or discontinuation of performance as a result of Buyer's default of payment of any part of the Price shall not constitute a breach of Seller’s legal obligation, therefore the Buyer shall not become entitled to a contractual penalty or damages as a consequence of the discontinuation. The Parties explicitly stipulate that in the event of supply discontinuation and/or performance discontinuation due to Buyer's default of payment of a part of the Price, the deadlines 2.1

## In the event of any defects of the Subject Matter of the Agreement upon its takeover by the Buyer, the Buyer is entitled to refrain from paying the amount specified in par. 4.1(c) hereof to the Seller up to 10% of the total Price (hereinafter referred to as “**Suspension**”), the Suspension being due within 15 days of the complete removal of all defects objected to upon takeover of the Subject Matter of the Agreement. However, if at the moment of the payment deadline at the latest, the Buyer objects to any defect to which warranty under Art. **Chyba! Nenalezen zdroj odkazů.** of the Agreement applies, the Suspension becomes due within 15 days of complete rectification of the defect; if any other defects are objected to before the postponed Suspension payment deadline, the procedure described in this sentence before the semicolon shall be repeated until no other defect is objected to by the Suspension payment deadline.

## The Buyer is obliged to notify the Seller of the Suspension application in writing before the payment deadline together with the specification of the above Suspension.

## The Price or any portion of the Price shall always be paid by the Buyer to the Seller based on a duly issued invoice.

## After takeover of the Subject Matter of the Agreement by the Buyer pursuant to Art. 5 of the Agreement, the Seller is obliged to issue a final invoice that shall include at least the charges for the respective portions of the Price, the amounts paid by the Buyer for the respective portions of the Price, the outstanding amounts of the respective portions of the Price and the payment due dates of these outstanding amounts; in the final invoice, the Seller is entitled to charge the portion of the Price set forth in par. 4.1(c) hereof. The above shall not affect the right of the Buyer to the Suspension.

## Any invoice issued by the Seller under the Agreement shall include the particulars set forth by applicable laws and regulations (including but not limited to tax and accounting laws and regulations). If the invoice does not include the particulars set forth by applicable laws and regulations and the Agreement or if the information stated in it is incorrect, the Buyer is entitled to return it to the Seller, specifying the missing particulars or incorrect information. In such a case, the payment due date shall be based on the date of delivery of the corrected invoice to the Buyer.

## Any invoice issued by the Seller is payable within thirty (30) days from the date of delivery to the invoice address of the Buyer stated in the header of the Agreement.

## Any payment made under the Agreement shall be considered paid at the moment when the amount is debited from the Buyer’s account and credited to the Seller.

# HANDOVER AND TAKEOVER OF THE SUBJECT MATTER OF THE AGREEMENT

## Unless the Equipment and its operation after due supply, assembly and testing under Article 10 hereof demonstrates any defects or drawbacks impeding its use, the Buyer shall accept the Subject Matter of the Agreement. A handover report shall be drawn up on the handover and acceptance, with the Buyer explicitly stating whether the Subject Matter of the Agreement is accepted with reservations or without reservations (hereinafter referred to as “**the Handover Report**”). However, if the Equipment or its operation demonstrate any defects or drawbacks impeding its use, the Buyer shall inform the Seller about the drawbacks or defects impeding its use and request rectification; this process shall be repeated until the Seller rectifies all drawbacks and defects impeding the use of the Equipment that are objected to.

## Upon acceptance of the Subject Matter of the Agreement, the Seller is obliged to submit to the Buyer:

## Any and all documents, including but not limited to instructions, manuals, certificates, declarations of conformity, etc. the Seller is obliged to hand over to the Buyer, which are required for operation of the Equipment;

## Any documents relating to the performed tests and their results.

## Unless the Parties agree otherwise, the documents under this paragraph hereof shall be submitted in Czech. Failure to submit any of the above constitutes a defect pursuant to the Agreement.

## The Buyer is obliged to accept the Subject Matter of the Agreement and confirm its acceptance, even if the supplied Equipment and/or its operation demonstrates defects, drawbacks or snags not impeding its use. If the Buyer accepts the Subject Matter of the Agreement with defects, drawbacks or snags, such defects, drawbacks or snags shall always be listed in the Handover Report.

## Unless the Parties agree otherwise, the Seller is obliged to rectify the defects and snags listed in the Handover Report within ten (10) days of drawing up the Handover Report.

## The Parties agree that the Subject Matter of the Agreement is deemed duly supplied and handed over to the Buyer even if no representative of the Buyer is present for the handover and/or the Buyer refuses to confirm its takeover, although the Buyer is obliged to accept the Subject Matter of the Agreement hereunder and confirm the acceptance. If the Subject Matter of the Agreement is handed over as described above, a record of substitute handover of the Subject Matter of the Agreement shall be drawn up by the Seller.

# WARRANTY

## The Seller provides warranty of quality to the Buyer, meaning that for the period stated in par. 6.2 hereof, the performance provided to the Buyer hereunder shall be without defects, usable for the purpose of the performance and shall meet all the requirements stated in the Agreement (hereinafter referred to as “**the Warranty**”).

## The Buyer provides Warranty for 12 months from the handover of the Subject Matter of the Agreement to the Buyer pursuant to Art. 5 of the Agreement (hereinafter referred to as “**the Warranty Period**”).

## The Seller shall be liable for any defects of the Equipment at the time of its handover to the Buyer as well as for any defects that occur or develop in the course of the Warranty Period.

## The Warranty under this article hereof shall not apply to:

1. Any defects resulting from an event not related to the performance provided hereunder;
2. Any defects resulting from any use and/or usage of the performance provided hereunder for a purpose different from the intended purpose;
3. Any defects resulting from any act (act or omission) or handling of the performance provided hereunder contrary to the submitted documentation, including but not limited to instructions and manuals (i.e. e.g. defects resulting from incorrect operation, insufficient maintenance, etc.);
4. Any defects occurred in relation to unprofessional interference with the performance provided hereunder by any person other than the Seller.
5. Usual wear and tear of the Equipment caused by its use and/or operation and all its parts and components subject to wear and tear or consumption (e.g. seals, plugs, etc.), if their damage or function restriction was caused by wear and tear resulting from use and/or operation of the Equipment. A list of the parts of the Equipment subject to wear and tear and/or consumption shall be submitted together with the execution documentation. The list will be updated upon the Equipment handover.

## The Seller represents to the Buyer the Equipment will allow service through remote online access, allowing an analysis of errors and their solution by the Seller in particular. The remote access will allow access to the whole control programme including the control panel and transfer of any updates and changes.

## If the Buyer establishes a defect of the Equipment, the Buyer is entitled to make a warranty claim with the Seller in writing; for the purpose of this provision, a written form also includes notifications made by e-mail, even by e-mail with a guaranteed electronic signature, and/or an online interface assigned for this purpose. The Seller is obliged to respond to the notified defect by means of remote support within 1 hour of the defect (breakdown) notification, daily from 9 a.m. to 5 p.m., except for Sundays and 24 December, 25 December, 31 December and 1 January.

## If the notified defect (breakdown) may not be removed by means of remote access, the Seller is obliged to remove the defect immediately after the Buyer has made the claim with the Seller, i.e. from the day when the written warranty claim has been delivered to the Seller. In the event of a defect that has a serious impact on the activities of the Buyer, the Seller is obliged to rectify the defect as soon as possible.

## The Seller is entitled to remove the claimed defect by a repair of the defective part of the Equipment or by supplying a new item in exchange for the defective item or supplying a part of the item in exchange for the defective part of the item (however, always at its own discretion).

## If the Seller fails to rectify any rightfully claimed defects by the agreed deadline pursuant to par. 6.7 hereof, the Buyer is entitled to:

## An adequate discount;

## Have the repair of a duly claimed defect done by a third party at the Seller's cost;

## Withdraw from the Agreement.

## Exercising the liability for defects shall be without prejudice to any entitlement arising from the Seller’s liability for defects, entitlement to damages or enforcement of contractual penalty.

## The Seller is not obliged to provide warranty service to the Buyer (solving a duly claimed defect) if the Buyer is in default of payment of any part of the Price exceeding fourteen (14) days. In such a case, the Seller is obliged to follow the procedure described in par. 6.6 hereof immediately after the payment of the part of the Price that is the subject of the Buyer's default.

# TITLE, RISK OF DAMAGE AND RIGHT OF USE

## The title to the Equipment shall be acquired by the Buyer upon the payment of the Price in full. The Buyer is obliged to inform the Seller without undue delay in writing about any third party measures relating to the Equipment with a reservation of title. The Buyer is obliged to notify the third person of the reservation of title.

## The risk of damage to the Equipment, its parts as well as any of the items to be supplied together with the Equipment shall be transferred from the Seller to the Buyer upon handover to the Buyer.

## In case any performance of the Seller provided hereunder results in an item protected as a copyright work pursuant to Act No. 121/2000 Sb., on Copyright and Rights Related to Copyright and on Amendment to Certain Acts (the Copyright Act), as amended (hereinafter referred to as “**the Copyright Work**”), the Seller grants a usage licence for the Copyright Work to the Buyer in line with the purpose hereof and under the terms and conditions set forth in this Art. 7 hereof, from the day when the Price has been paid to the Seller. Until the payment of the Price in full, the Buyer is entitled to use the Copyright Work to the extent and in a way necessary for takeover of the Subject Matter of the Agreement hereunder and check of the Equipment functionality.

## The Seller shall provide a licence unrestricted in terms of time and territory to the Buyer for all Copyright Works created in relation to the performance of the Subject Matter of the Agreement. Under the provided licence, the Buyer is entitled to use the Copyright Work in any known way of use. Under the provided licence, the Buyer is also entitled to change or alter the Copyright Work, to merge or connect the Copyright Work to other works or their parts, even through a third party. Any and all licences under this paragraph shall be provided for the internal purposes of the Buyer solely and the Buyer is not entitled to spread the Copyright Work in any way or make it available to a third party and/or allow any use of it by a third party. The Seller represents that all licence fees including the licence provision remuneration and other costs related to the transfer of rights and licence provision have already been included in the Price.

## The Seller represents that the Subject Matter of the Agreement is and will not be encumbered by any third party right and if it was encumbered in the past, the Seller has settled the encumbrance completely; the above shall apply mutatis mutandis to any Copyright Work.

## If the performance provided within the Subject Matter of the Agreement includes any item protected by any other intellectual property right apart from copyright, including but not limited to an industrial right, the provisions of this Art. 7 shall apply to this item mutatis mutandis.

## If the activities of the Seller hereunder result in an output subject to any industrial or another intellectual property right (including copyright) or any other similar output, the Seller is entitled to provide such an output to third parties, without any restrictions.

## Unless they cease to exist earlier, the licences for the use of the Copyright Work and/or another performance subject to industrial or another intellectual property right terminate on the day of withdrawal from the Agreement by any of the Parties.

## The Parties agree neither of them shall apply the know-how obtained in relation to the performance hereof within 5 years of the conclusion hereof. The above shall not affect the right of the Buyer to due use of the Equipment and any rights granted to the Buyer by applicable laws and regulations and/or this Agreement.

## Moreover, the Seller undertakes to refrain from using the know-how obtained in relation to the performance hereof within 5 years of the conclusion hereof for a supply and/or installation of the Filling Line in the territory of the Czech Republic, the Slovak Republic, the Federal Republic of Germany and the Republic of Poland.

## Based on the explicit will of the Parties, this Article is severable from the remaining provisions hereof and shall remain in force even if the Agreement is terminated.

# SELLER’S RESPONSIBILITIES

## The obligation of the Seller to deliver the Equipment in a timely and proper manner is met upon the due delivery of the Equipment, its assembly, connection, commission, training, test performance pursuant to Article 10 hereof and upon the handover to the Buyer pursuant to Art. 5 of the Agreement, all in accordance with the provisions stipulated herein.

## The Seller is obliged to provide performance to the Buyer hereunder, in a manner and under the conditions stipulated herein. Unless the Agreement implies a particular manner of a certain performance, the Seller is obliged to perform in a usual manner while maintaining professional care with regard to the purpose of the Supply. The Buyer is not entitled to give any instructions to the Seller.

## The Seller represents that the Equipment and all its parts are new, unused, undamaged, fully functional, in the quality in accordance herewith and, if the quality is not explicitly defined in the Agreement or the annex hereto, in the usual quality, together with any and all licences and rights required for its due and undisturbed use by the Buyer.

## The Seller represents the Equipment and all its parts, at the moment of starting the delivery, at the latest, shall:

1. Meet the technical and functional requirements stated in Annex No. 1 to the Agreement,
2. Meet all the requirements set forth by applicable laws and regulations, including but not limited to laws and regulations governing hygiene, health, safety, technology, as well as any similar standards set forth for the Equipment or its parts (standards governing hygiene, health, safety, technology and other similar standards), including the ČSN standards that are of recommending nature solely;
3. Be equipped with all certificates and approvals necessary for their undisturbed and safe use, and
4. Not be encumbered by any rights of third parties and free of any defects; the above is without prejudice to par. 5.3 and 7.5 hereof.

## The Seller undertakes to deliver receipts and documents related to the Equipment pursuant to the provision of Section 2087 of the Civil Code to the Buyer together with the Equipment, and these receipts and documents shall always be submitted to the Buyer in Czech at least.

## Moreover, the Seller undertakes to perform the Subject Matter of the Agreement independently, with as little cooperation with employees and other similar persons on the part of the Buyer, while Buyer’s assistance shall be provided solely on the Seller’s request where necessary and to the minimum possible and usual extent, if such assistance may be reasonably requested from the Buyer at the same time. The Seller is not entitled to require the Buyer to provide any assistance comprising performance, work, etc. that the Seller is objectively capable of arranging.

## If the Subject Matter of the Agreement also includes any Equipment assembly, the Seller undertakes to:

1. Keep an assembly logbook recording the progress of the assembly and submit the logbook to the Buyer after the assembly is completed;
2. Before covering any parts of the Equipment whose extent and quality may not be established later, invite the Buyer or a person authorised by the Buyer to inspect such parts of the Equipment; if the Seller breaches this obligation, the Seller is obliged to uncover the parts of the Equipment on the Buyer’s request, enable their inspection and cover them without any damage, all at the Seller’s cost;
3. Account for the operating needs of the Buyer and organize the respective assembly work in cooperation with the Buyer;
4. Provide all necessary assistance to persons appointed by the Buyer as assembly supervisors. In particular, the Seller is obliged to enable inspections of all performed works as well as the quality and quantity of materials used to the supervisors. The supervisors are entitled to give their opinions on the assembly quality and compliance with the Agreement and the submitted documentation. Moreover, the Seller is obliged to enable other activities that are usually performed in relation to similar activities to the supervisors;
5. Ensure compliance with all applicable laws and regulations as well as other binding documents during the Equipment assembly, including but not limited to the area of occupational health and safety;
6. Dispose of all wastes and other obviously useless materials produced during the Equipment assembly by the Seller’s activities or in relation to them and maintain the assembly site and its surroundings clean; if the Seller fails to meet the obligation under the previous clause, the Buyer shall be entitled to arrange adequate performance at the Seller’s cost;

## The Buyer is entitled to ask the Seller for an additional inspection of any covered or otherwise inaccessible performances, although the Buyer has duly requested the inspection pursuant to par. 8.7 clause (ii). However, in such a case the costs of the inspection shall be borne by the Buyer.

## The Seller is obliged to provide all the necessary assistance to the Buyer and the persons appointed by the Buyer. Among other things, the Seller is obliged to enable the Equipment inspection in the course of the delivery, as well as an inspection of the quality and quantity of the used parts of the Equipment.

## The Seller is obliged to enable the persons authorised to inspect the Rural Development Programme for 2014–2020, which the Subject Matter of the Agreement is funded from, to perform an inspection of any documents related to the performance, throughout the term set forth by applicable laws and regulations of the Czech Republic for their storage (Act No. 499/2004 Sb., on Archives and Record Service and on Amendments to Certain Acts, as amended, Act No. 563/1991 Sb., on Accounting, as amended, and Act No. 235/2004 Sb., on Value Added Tax, as amended).

## In accordance with the provision of Section 2(e) of Act No. 320/2001 Sb., on Financial Auditing in Public Administration, as amended, the Seller is a person obliged to cooperate in the financial audit performed in relation to the payment of goods or services from public expenditure. The Seller is obliged to provide the required information and documentation to the employees or attorneys-in-fact of the Ministry of Regional Development, Ministry of Agriculture, Ministry of Finance, the European Commission, European Court of Auditors, Supreme Audit Office, the respective tax office and other authorised public administration authorities and to create conditions for the performance of the audit of the Subject Matter of the Agreement and provide assistance to them.

## The Seller shall, at the Seller’s cost, indemnify the Buyer for any third party claims resulting from the fact that any part of the Subject Matter of the Agreement violates any copyright, patents or other intellectual property rights of third parties or unlawfully uses a trade secret protected by the law. For the purpose of indemnity under the previous sentence, the Buyer shall: (i) notify the Seller immediately about any claim the Buyer becomes aware of; (ii) enable effective defence against the claims or their settlement on the part of the Seller; and (iii) provide all reasonable assistance to the Seller at the Seller's cost in the course of defending or settlement of the claims.

# BUYER’S RESPONSIBILITIES

## The Buyer is obliged to pay the Price to the Seller under the terms and conditions stipulated herein.

## The Buyer is obliged to enable the performance hereunder to the Seller, including but not limited to the provision of the necessary assistance, including but not limited to the Buyer:

1. Allowing the Seller access to the Place of Performance for the purpose of performance of the Subject Matter of the Agreement, and for this purpose, allowing persons appointed by the Seller access to equipment and other items at the Place of Performance;
2. Providing the Seller with available documents and materials necessary for due performance of the Subject Matter of the Agreement;
3. Arranging the presence of the appointed person at steps that require the presence in order for the performance of the Subject Matter of the Agreement to be completed.

# TESTS

## The Seller’s obligation to provide performance hereunder also includes the obligation to perform professional test of the Equipment, checking its functionality and compliance with the requirements and characteristics specified in Annex No. 1 hereto. Unless stipulated otherwise, the costs of test performance are included in the Price.

## The Buyer is obliged to obtain the raw materials to be processed by the Equipment as well as the supply of energy (e.g. electricity) required for the Equipment operation for the time of test performance at the Buyer's cost.

## After the supply and installation of the Equipment, the Seller shall notify the Buyer of the Equipment readiness for the tests, which shall be performed within 14 days of the notification. The notification shall be in writing; for the purposes of this provision, a written form also includes notifications made by e-mail, even by e-mail without a guaranteed signature. The Seller's notification under the previous sentence shall include a specific date (day and time) of the start of the tests. The Buyer undertakes to be present and participate in the tests on the date notified by the Seller as described above.

# PENALTIES

## In the event the Seller is in default of the obligation to perform the Subject Matter of the Agreement in a timely and proper manner by the deadline, in the scope and quality set forth herein, the Parties stipulate a contractual penalty of 0.1% of the Price for each commenced day of the default, and individually for each breached obligation separately.

## If the Seller fails to rectify the defects objected to and snags within the period stipulated under par. 5.4 or if the defects appear in the Warranty Period, under par. 6.7, the Seller is obliged to pay a contractual penalty of CZK 10,000 to the Buyer for each commenced day of such default.

## In case a part of the Subject Matter of the Agreement fails to meet all the requirements arising from applicable laws and regulations or standards governing the performance within the Subject Matter of the Agreement, including standards of a recommending nature, or if any of the representations made by the Seller herein is untrue, the Parties stipulate a contractual penalty of 0.1% of the Price for each individual case this paragraph of the Agreement is applied to.

## In case of a breach of any other obligation of the Seller under the Agreement, for which a contractual penalty is not stipulated in par. 11.1 to 11.3 hereof, the Parties stipulate a contractual penalty of 0.05% of the Price for each commenced day of the default of the Seller's obligation, for a breach of each individual obligation separately.

## The total amount of contractual penalties is not limited in any way. The payment of any contractual penalty under this article hereof shall not affect or restrict the right of the Buyer to damages and the sanctioned obligation of the Seller does not cease to exist.

## All contractual penalties are due within five (5) days of their enforcement with the other Party. The contractual penalties may be enforced in whole or in parts, without limitation, at the Buyer's discretion.

# AGREEMENT TERMINATION, AGREEMENT WITHDRAWAL

## The legal relationship established by this Agreement may be terminated in the following ways:

Written withdrawal from the Agreement under the conditions set forth herein and in Section 2001 et seq. of the Civil Code in the event of a serious breach of the Agreement by the other Party;

Written agreement of the Parties.

## The following situations, without limitation, shall be regarded as a material breach of the Agreement by the Parties:

### Seller’s default of due and timely supply of the Equipment exceeding 15 days;

### Buyer’s default of due and timely payment of the Price or its part exceeding 15 days;

### Recurrent breach of an obligation by a Party that the breaching Party has been notified of by the other Party before, without prejudice to the above in this paragraph.

## Withdrawal from the Agreement due to a material breach hereof is possible solely after the deadline of no less than fifteen (15) days provided by the withdrawing Party to the other Party in a written notification of the withdrawing Party (duly delivered to the other Party), requesting the other Party to remove the circumstances establishing grounds for the withdrawal, expires to no avail.

## Each Party is entitled to withdraw from the Agreement also if a decision has been made on insolvency of the other Party and/or a decision has been made on resolving insolvency of the other Party by bankruptcy or reorganization and/or the insolvency motion to declare bankruptcy of the other Party has been rejected due to lack of assets, or if the other Party is in liquidation. The Parties are obliged to inform each other about such circumstances immediately, no later than within 24 (twenty-four) hours from their occurrence and the Party in question learning about them or being able to learn about them. Paragraph 12.3 hereof shall not be applied to withdrawal under this paragraph.

## The effects of the withdrawal herefrom start on the day of the delivery of a written withdrawal notice to the other Party.

## In the event of a withdrawal from the Agreement, the Parties shall return all considerations provided to each other under the Agreement since the day of its conclusion.

## Withdrawal from or termination of the Agreement shall be without prejudice to any claims of the Parties based on or related to a breach hereof, if any, including but not limited to claims for damages and contractual penalties. Moreover, withdrawal from or termination of the Agreement shall be without prejudice to the provisions concerning the limitation of contractual penalties and damage, provisions included in the previous and this paragraph hereof as well as any provisions hereof that remain in force based on an explicit agreement of the Parties or the nature of the provisions.

# FINAL PROVISIONS

## Any changes of and amendments to the Agreement shall be in writing in the form of amendments numbered in ascending order signed by the authorised representatives of the Parties. For the purposes hereof, unless explicitly stipulated otherwise in the Agreement, a written form means solely a paper document with signatures of the persons representing the Parties, under the conditions set forth in Section 561 of the Civil Code. The possibility to conclude an amendment in the form specified in Section 562 of the Civil Code is excluded. Any change, including a waiver of the written form requirement, or an amendment in a form other than written under the conditions specified above in this paragraph is not allowed. A response of a Party with an additional or deviation clause pursuant to Section 1740(3) of the Civil Code shall not represent an acceptance of an offer to conclude an amendment to or a change of the Agreement, even if the offer conditions are not changed in a material way.

## Neither Party is entitled to unilaterally offset any monetary receivable from the other Party, or a part of the receivable, including any receivables obtained by assignment, against any monetary receivable of the other Party; this restriction shall not apply if the Party offsets a receivable awarded to it by a final decision of a court of general jurisdiction of the Czech Republic.

## The Parties undertake to resolve any disputes that may or will arise from the Agreement or in relation to the Agreement by settlement. In case a settlement is not reached and a dispute arises, the Parties stipulate that all disputes arising from the Agreement or in relation to the Agreement shall be resolved solely by courts of general jurisdiction of the Czech Republic. The Parties stipulate that in the event of a dispute arising from the Agreement, the court having territorial jurisdiction in the first instance shall always be a court of general jurisdiction of the Czech Republic, according to the registered office of the Seller. Authority and jurisdiction of a court of a country other than the Czech Republic is excluded.

## Unless the Agreement expressly stipulates otherwise, any invitation, notification, request or another communication to be made or given to a Party hereunder shall be considered duly made or given to the other Party, if delivered in person or by certified mail or by e-mail, solely if the e-mail communication is allowed by the Agreement, to the below address of the Party in question:

## Buyer

**DELIMAX a.s.**

Bratislavská 1647/3, 695 01 Hodonín, Czech Republic

Company identification No. 26916371, incorporated in the Companies Register kept by the Regional Court in Brno, Section B, Insert 4086,

Represented by Ing. Jan Vrba, authorized agent, sekretariat@delimax.cz

## Seller

## **[TO BE FILLED IN BY THE TENDERER]**

## Any invitation, notification, request or another communication under the Agreement shall be considered delivered:

## On the day of a physical notification, if the notification is delivered in person; or

## On the day of delivery stated on the delivery confirmation, if the notification is sent by certified mail; where the delivery day may not be determined in either of the above ways, on the fifth day after provable sending; or

## An e-mail shall be considered delivered at the moment of delivery of the following to the e-mail address of the sending Party:

## Confirmation of e-mail delivery to the other Party (e-mail delivery notification), or

## E-mail from the recipient confirming the delivery of the e-mail in question.

## The above addresses may be changed by a unilateral written notification delivered by the Party in question to the other Party, such a change becoming effective after ten (10) days from the delivery of the notification to the other Party.

## The Agreement represents the complete agreement of the Parties concerning the Subject Matter of the Agreement and replaces any previous agreements.

## If a provision hereof is or becomes invalid or ineffective, the invalidity or ineffectiveness of the provision shall not result in the invalidity of the Agreement as a whole or other provisions hereof, if the invalid or ineffective provision is severable from the remaining provisions of the Agreement. The Parties undertake to replace the invalid or ineffective provision, without undue delay following a request of any Party, by a new, valid and effective provision whose content will be as close as possible to the essence and meaning of the original provision, and which shall not include the defect that caused the invalidity or ineffectiveness. If the Agreement as a whole is or becomes invalid or ineffective, the Parties hereto undertake to conclude, without undue delay following a request of any Party, no later than within twenty business days of the request delivery, a new agreement whose meaning and purpose shall correspond hereto, and which shall not include the defect that caused the invalidity or ineffectiveness hereof. Based on the explicit will of the Parties, the obligation stipulated in this paragraph hereof is severable from the remaining content of the Agreement and shall be applied even if the remaining content of the Agreement is invalid.

## The Agreement is executed in four (4) counterparts, two to be received by each Party.

## The following annexes form an integral part of the Agreement:

*- Annex No. 1: Specification and Scope of Requested Performance*

*- Annex No. 2: Budget of the Subject Matter of the Agreement (Price Breakdown)*

## The Agreement comes into force and effect on the day of its execution by both Parties.

13.11 The Czech version of the document/documents shall always prevail over its/their English version, which is provided by the contracting entity/buyer.

IN WITNESS OF the Parties agreement with the content of the Agreement, the Parties understanding and undertaking to perform the Agreement, the Parties affix their signatures and declare the Agreement is concluded of their free and considerate will and not under duress, including but not limited to financial duress.

|  |  |
| --- | --- |
| In [TO BE FILLED IN BY THE TENDERER], [TO BE FILLED IN BY THE TENDERER]  Seller | In Hodonín, [TO BE FILLED IN]  Buyer |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  **[TO BE FILLED IN BY THE TENDERER]** | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  **DELIMAX a.s.** |

1. If the Party is not a VAT payer in the Czech Republic, the following part of par. 3.1 shall be left out: “VAT amounts to CZK [TO BE FILLED IN BY THE TENDERER], i.e. CZK [TO BE FILLED IN BY THE TENDERER] incl. VAT ([TO BE FILLED IN BY THE TENDERER]”.

   If the Party is not a VAT payer, the following part of par. 3.1 shall be left out: “excl. VAT ([TO BE FILLED IN BY THE TENDERER]), VAT amounts to CZK [TO BE FILLED IN BY THE TENDERER], i.e. CZK [TO BE FILLED IN BY THE TENDERER] incl. VAT ([TO BE FILLED IN BY THE TENDERER]”. [↑](#footnote-ref-1)