

# Terms and Conditions

The terms and conditions for the provision of dynamic document services for the preparation of proceedings as per Act 134/2016, the Public Procurement Act, as amended (hereinafter the PPA), provision of services pertaining the profile of the contracting authority (CA) as per the PPA, and as per Directive 168/2016, on publication of forms for the PPA and essentials of the CA's profile (hereinafter the CA profile directive), and directive 260/2016, on the specification of more detailed conditions related to electronic tools, electronic actions associated with public procurement and certificates of compliance (hereinafter the electronic tools directive).

## 1. Subject matter of the terms and conditions and definitions

1.1. These terms and conditions (hereinafter the **conditions**) adjust the conditions for the provision of the service consisting of:

1.1.1. Provision of a web application used for the preparation of document (hereinafter the **final documents**) using the templates submitted by the provider (hereinafter the **dynamic documents**), which the CA uses in the selection procedure for the public procurements both in and outside the PPA (hereinafter the **zadavatel.cz service**),

1.1.2. Provision of a CA profile as per the PPA and the **CA profile directive**, receipt of electronic bids and functionality of an electronic tool as per the **electronic tools directive**, and the lease of a data storage area (hereinafter jointly as the "**CA profile service**")

1.1.3. Provision of an environment for the submission of offers as per the **electronic tools directive** (hereinafter the **e-zakazky.cz service**)

(jointly referred to as the **service** or **services**) of OTIDEA CZ s.r.o., address: Thámova 681/32, Prague 8 186 00, Reg. No.: 05844428 (hereinafter the **provider**) via the websites [www.zadavatel.cz](http://www.zadavatel.cz) and [www.e-zakazky.cz](http://www.e-zakazky.cz) (hereinafter the **portal**)

1.2. **Dynamic document** refers to a template proposal for a document which a **client or user** intends to adjust or intends to have adjusted by the provider based on their requirements and which is used for the preparation of the final form of documents and the completion of information from the user's side.

1.3. **Document or final document** refers to the final form of a dynamic document, after the completion and adjustments made by the user.

1.4. **Creation of a new order** refers to clicking on the menu item titled "New order" and the commencement of completing the new order card in the web application located at [www.zadavatel.cz](http://www.zadavatel.cz).

1.5. **Consultation** refers to contacting the provider's employees or employees of their partners in order to assist with the preparation of dynamic documents, their adjustment or completion.

1.6. **User's order** refers to the ordering or supplemental ordering of use dynamic documents for a certain period or ordering of credit.

1.7. **Credit** refers to the depositing of financial resources to the user's credit account, from which it will be possible to utilize this credit to pay for individual services provided by the provider. If the user has a sufficient amount of credit stored, then purchased services will be automatically paid from the stored credit. If the user prefers payment via an invoice rather than using credit, he/she must specify this; it is also possible to combine both payment methods.

1.8. **User account** refers to the registration of the whole organization, including its individual authorized employees.

1.9. **CA's profile** refers to the internet address of the electronic tool used by the CA to publish information regarding public procurements and which allows remote access.

- 1.10. **Electronic submission of a bid** refers to the function which allows the submission and receipt of electronic bids in compliance with the electronic tools directive.
- 1.11. **User** refers to a person who carried out the registration as a user of the portal in the database of the postal users, i.e., a person who created a user account in the portal.
- 1.12. **Supplier** refers to a user who during registration chose to register as a supplier.
- 1.13. **CA** refers to a user who during registration chose to register as a CA.
- 1.14. **Anonymous web visitor / user** refers to a supplier or CA who has not logged in and is browsing the information published on the portal
- 1.15. **Client** refers to a registered user who is using the paid services of the provider.
- 1.16. **Fee** refers to the amount paid for the service consisting of the provision of storage capacity as per the current price list.

## 2. Provided service

- 2.1. A user who intends to make use of a service or services as per article 1.1 of these conditions is obliged to register on the website [www.zadavatel.cz](http://www.zadavatel.cz) if he/she intends to register as a CA, or on the website [www.e-zakazky.cz](http://www.e-zakazky.cz) if he/she intends to register as a supplier.
- 2.2. A prerequisite for registration and creating a user account is the completion of a registration form and a verification of the registered entity's identity.
- 2.3. The user shall specify, among others, the following identification data in the registration form:
  - 2.3.1. For legal entities: name, company reg. no., name and surname of a person authorized to represent the legal entity.
  - 2.3.2. For entrepreneurs: name and surname, and also company name and company reg. no. when these have been assigned.
  - 2.3.3. For natural persons who are not entrepreneurs: name and surname, date of birth or personal ID No. if this has been assigned.
  - 2.3.4. An email which will serve as a login and where the login data will be sent, together with a phone number for the contact person.In the registration form, the user shall also specify the contact person who the provider should contact regarding the provided services, along with his/her phone number.
- 2.4. **Provision of the service** then refers to logging into the client's account on [www.zadavatel.cz](http://www.zadavatel.cz) for the CA and on [www.e-zakazky.cz](http://www.e-zakazky.cz) for the supplier (i.e., entering the login and password on the aforementioned websites, where the service is available). CAs can then work with dynamic documents, the CA's profile and receipt of electronic bids including electronic communication. Suppliers receive the service that allows them to submit electronic bids through the electronic tool and to access electronic communication with the CA.
- 2.5. The provider commits to, aside from the service specified in article 1.1., also provide the CA with the service consisting in electronic data retention in the duration specified in the currently effective directive. This volume applies to the user account as a whole, i.e., this volume includes both the data of orders that are currently being processed as well as orders in the system archive, data of submitted bids of applicants and data published on the CA's profile. IF the data volume is exceeded, the client is obliged to pay fees for the rental of the storage as per the currently valid price list.

## 3. Rights and obligations

- 3.1. The provider commits to:
  - a) Provide services in the standard quality in compliance with the client's requirements and these conditions,
  - b) Ensure that the system used to operate the websites [www.zadavatel.cz](http://www.zadavatel.cz) and [www.e-zakazky.cz](http://www.e-zakazky.cz) in a technical and operational state that guarantees standard quality,
  - c) Remove defects arising in the system used to operate the websites [www.zadavatel.cz](http://www.zadavatel.cz) and [www.e-zakazky.cz](http://www.e-zakazky.cz) without unnecessary delay, at most within 5 workdays,

- d) Provide the client with services for the whole duration specified by the client and duration of the operation of the web application,
  - e) Allow the client to submit warranty claims and defect reports for the provided services,
  - f) At the CA's request, provide the client with consultation consisting in the adjustment of dynamic documents, their completion or administration of the selection procedure in compliance with the PPA, based on the provider's offer and the pricing conditions specified in the price list or in a special offer of the provider.
  - g) Regarding the CA profile service:
    - a. Provide the client with the service for the whole duration specified by the client
    - b. At the client's request, secure, on behalf of the client, the completion of the appropriate form and its publication in the public procurement information system (IS) for the purpose of meeting the client's legal obligations as per the currently valid price list. The costs associated with the publication of this information in the public procurement IS are borne by the client
    - c. Allow the publication of information in the form of structured data and in the scope required by directive 168/2016, on the publication of forms for the purpose of the PPA and the essentials of the CA's profile and especially Annex 8 thereto,
- 3.2. The client is authorized to, notably:
- a) Properly utilize the provided services,
  - b) Contact the provider in order to report defects and make warranty claims,
  - c) Cancel their registration at any time (without compensation), by using the Cancel registration option in the web application, under the My account section. The price for prepaid services or credits is not returned automatically. However, the user may request for the finances to be returned within a period of 12 months.
- 3.3. The client commits to, notably:
- a) Make any required changes to their personal and identification data for the whole duration of the utilization of the service, especially regarding their name, legal form, address of business or headquarters, invoice address, e-mail address, phone and bank information, company reg. no. and VAT reg. no., at the latest within 7 workdays from the day of such a change – always through the web application in the My Account section. The provider may require the delivery of documents that demonstrate the correctness of the specified data,
  - b) Use the services only in manners which comply with these conditions and the provider's instructions,
  - c) Carefully read all of the information specified in the documents,
  - d) Pay the administration fees for the provided services as per article 4 of the conditions, duly and on time.
- 3.4. The user is obliged to specify truthful data in the registration form.
- 3.5. The user hereby declares that the creation of a profile and further tasks associated with the use of the service will be carried out on their behalf by a person authorized to perform such tasks.

#### **4. Pricing and payment conditions**

- 4.1. The fee for the use of storage capacity on the [www.zadavatel.cz](http://www.zadavatel.cz) website will be paid by the client in Czech currency based on a tax document – invoice. The invoice will be issued automatically when using more than the minimum free storage capacity as per the currently valid price list, always after the first whole month of duration of the service.
- 4.2. The tax document – invoice must contain all the essentials of a tax document as per the appropriate legal regulations, especially Act 235/2004, on VAT, as amended.

- 4.3. The client is responsible for ensuring that the payment of fees for the provision of services will be carried out in the correct amount and within the deadline specified on the invoice.
- 4.4. If the client does not settle a given invoice for the provision of storage capacity within its deadline, then the provider shall notify the client of this fact in a demonstrable manner and provide a new deadline for payment that is at least 5 workdays after the day of the delivery of the notice. After the vain expiration of this second deadline, the provider is authorized to restrict the client's use of the service by preventing active access to this service or to interrupt the provision of the service. The provider is in this case not responsible for damages or other problems caused to the client by this action.
- 4.5. If the client's access to the CA profile service was restricted or interrupted due to reasons on the side of the client (e.g., the client did not pay the aforementioned fee in time), the provider is authorized to require, even in advance, the payment of a fee for a restoration of the provision of services.
- 4.6. The client's obligation to pay the fee is met at the moment the appropriate amount is received at the designated bank account of the provider, with the appropriate variable symbol. Both the variable symbol and account number are specified on the appropriate invoice and may also be provided to the client by other means if he/she requests so, e.g., by phone.
- 4.7. If the user pre-pays credit for the use of other services or consultation offered by the provider and the credit is not utilized within a 12-month period, then the credit is not automatically transferred to the next 12-month period. The user must instead request for the return or transfer of the credit (its unused part).

## **5. Warranty claims**

- 5.1. The client is authorized to submit a warranty claim for a provided service to the provider without unnecessary delay, at the latest within one month from the day of delivery of the fee statement for the provided service, otherwise they lose the right to the warranty claim. Submission of a warranty claim does not have a suspensory effect on the obligation of paying the fee for the provided services.
- 5.2. The provider is obliged to process warranty claims without unnecessary delay, at most within one week from the day of the delivery of the warranty claim.
- 5.3. If the warranty claim is found to be justified, then the client shall receive a refund for their paid fees for the warrantied service or the amount that is incorrectly charged, in the manner explicitly designated by the client.
- 5.4. If the warranty claim for a provided service is not found justified due to a reason lying on the side of the client, the provider is authorized to require the client to provide compensation for justifiably exerted expenses associated with the processing of the warranty claim.
- 5.5. The client is not authorized to submit warranty claims regarding the content of dynamic documents, as this content is a proposal made by the provider based on their experience; the content of the final documents is the client's responsibility, both in terms of the PPA and controlling bodies.

## **6. Restriction or interruption of the provision of services**

- 6.1. The provider is authorized to, for a necessary period, restrict or interrupt the provision of services, notably:
  - a) Due to severe technical or operating reasons, especially as a consequence of damage or destruction of electronic communication equipment,
  - b) In case of emergencies, especially in case of conscription, disasters, state emergencies, epidemics,
  - c) If the provider is obliged to interrupt or restrict services as per valid legal regulations or based on a decision of a Czech state body,

- d) The client violates these conditions,
- e) The client is in delay with the payment of the fee for the provided services even after the expiration of a second deadline provided to this end as per article 4 par. 4.4 of these terms and conditions,
- f) For the required period to perform maintenance or planned service interruption. The provider is obliged to notify of such a maintenance or interruption at least 1 week before it takes place. In this case, the client is not authorized to a refund, i.e., a return of part of their payments,
- g) The client did not receive or accept a statement, notice or other written documents sent by the provider to the client's address specified in the client's order, or the client refused to accept such documents.

## **7. Responsibility and compensation for damage**

7.1. The provider is not obliged to provide damage compensation or compensation for lost profit to the client if these were caused by:

- a) restriction, interruption, non-provision or defective provision of a service,
- b) loss, theft, disclosure or misuse of the client's login data that the client is obliged to protect and secure against loss, theft, disclosure and misuse.

7.2. In all other cases, the provider is responsible for damage caused up to the amount of the paid fee for the provided service.

7.3. The client is responsible for damage caused to the provider especially as a consequence of a violation of these conditions or the provider's instructions.

7.4. The provider is not responsible for the content of documents prepared or edited by the client within the scope of provided service or consultation. The provider is not responsible for the use of incorrect, incomplete, unsuitable or untruthful data by the client. The provider has neither the capabilities nor the obligation to verify the correctness of published or transferred data and shall not take over any obligations or provide any guarantees for the data provided by the client.

7.5. The client furthermore commits not to make the provider responsible for any legal or financial claims of third parties made against the client originating based on the ordered service.

## **8. Final provisions**

8.1. Before using this service, the user is obliged to familiarize themselves with these conditions and consent with them. This consent is provided automatically upon commencement of the use of the service, even within a period that was offered to the user for free (e.g., as a free trial). If the client does not agree with these conditions, he/she is obliged to avoid using the service.

8.2. The user declares and commits that they are and remain fully competent to perform legal actions and that this competency has neither been revoked nor restricted in a manner which would prevent them to consent with these terms. The client also declares that, before commencing the use of the service, they have carefully read these conditions, fully understand them and agree with them.

8.3. The user hereby provides explicit consent with the collection and processing of their personal data required for the provision of the service(s) by the provider. This notably includes information provided during registration and the verification of his/her identity, i.e., the names of persons included in the organization, their email addresses and phone numbers, if such information was provided by the user. This consent is provided for the duration of the use of the service and may be revoked at any time via an email or registered letter or potentially by any other form. In case of a revocation of the consent with the processing of personal data, it will no longer be possible to provide the service(s) for the revoking person / entity. Data are not provided for advertising purposes.

8.4. Matters not adjusted by these conditions shall be governed by the appropriate Czech legal

regulations. The relationship between the provider and the user is governed by Act 89/2012, the Civil Code, as amended.

8.5. The conditions remain valid for the whole duration of the use of service(s) by the user, until the complete settlement of all associated rights and obligations.

8.6. The operator reserves the right to change these conditions and the amount of the fee.

8.7. A change of these conditions will be notified to the user via an information notice that appears after logging into the system.

8.8. The operator is authorized to change these conditions unilaterally, as long as this does not change the rights and obligations arising from already concluded contacts (e.g., in relation to the introduction of new products) or in case of changes directly caused by a change of legal regulations. The effect of such changes of the conditions shall begin on the day of the publication of the new wording of the conditions on the websites [www.zadavatel.cz](http://www.zadavatel.cz) and [www.e-zakazky.cz](http://www.e-zakazky.cz) or at a later date that will be specified in the notice regarding the change of the conditions. The provider shall inform the user of such changes of the conditions in a suitable manner.

8.9. If any provisions of these conditions are or become invalid or ineffective for any reason, then this shall not affect the validity or effect of the other parts of these conditions.

8.10. The text of these conditions in Czech is binding. Any translations into other languages are only of an informal nature.

8.11. These conditions enter into validity on the day of their publication of the websites [www.zadavatel.cz](http://www.zadavatel.cz) and [www.e-zakazky.cz](http://www.e-zakazky.cz).

**These conditions enter into effect on 1 October 2018.**