

1- General

1.1 With reference to and subject to this quotation, offer and/or this order confirmation (as the case may be), these General Terms and Conditions for Sales ("GTC") of the SSI Schäfer Gesellschaft m.b.H., Etrichstraße 7, 4600 Wels, registered at the Regional Court of Wels under FN108974g ("SSI"), govern either: (i) design, planning, delivery, installation and commissioning of the construction works and systems for the respective (automated) logistic system and/or warehouse, or any other such contractual performance of work and services ("**Contract for Work and Services**") or (ii) the mere sale of products ("**Contract for Sale**") by SSI. SSI's contractual partner ("**Customer**") and SSI are hereinafter referred to jointly as the "**Parties**" or individually as a "**Party**".

1.2 Unless otherwise agreed mutually in "**Written Form**" (hereinafter meaning that the document must be signed by both Parties in person by means of autograph signatures) and insofar as not stated otherwise within these GTC clauses 1.2-1.3; 1.6 -1.7; 5; 6.3, sentences 1-2 and 4-5; 7-10 are compelling and therein stated topics are regulated conclusively and exclusively by these GTC. Any other contractual provisions on such topics are excluded and aforementioned clauses shall remain the sole and decisive contractual content regarding the respective topic hereof.

1.3 In the event of any contradictions, inconsistencies, ambiguities or doubts among or between provisions of these GTC and any provisions in other documents such as, but not limited to, request for quotation, quotation, offer and/or order confirmation, these GTC shall prevail. Further, any of Customer's general terms and conditions are excluded and not applicable. In particular, no inclusion is effected by conclusive behavior, i.e. should the Customer refer to any general terms and conditions and SSI does not object to their validity and/or SSI begins to fulfil contractual obligations.

1.4 Any quotations and offers are non-binding unless explicitly stated otherwise.

1.5 The Contract for Work and Services and Contract for Sale are only agreed upon by order confirmation.

1.6 Without prejudice to clause 1.2 of this GTC, the Contract for Work and Services, Contract for Sale and this GTC may not be altered, modified, supplemented or amended except by mutual agreement between the Parties in Written Form or in "**Text Form**" (means by telegram, telex, facsimile or by e-mail).

1.7 Insofar as individual provisions of these GTC are found to be invalid or unenforceable in whole or in part or become invalid and/or unenforceable due to changes in legislation after conclusion of a contract between the Parties, this does not affect the remaining provisions of the GTC or the validity of these GTC as a whole. The invalid or unenforceable provision shall be replaced by a valid and/or enforceable provision that comes as close as possible to the meaning and purpose of the invalid provision. In the event of omissions found in the GTC, those provisions

shall be deemed to have been agreed which correspond to the meaning and purpose of these GTC and would have been agreed in good faith if the Parties had considered such omissions when concluding the contract.

2 - Contract for Work and Services: On-site services and other (cooperation) obligations

2.1 Contractual performance, execution periods, and deadlines are subject to the Customer fulfilling the respective on-site services, obligations to provide materials, and other (cooperation) obligations free of charge, on time, completely and properly. In particular, any permits (e.g., building permits, operating permits) and authority requirements are the Customer's responsibility.

2.2 In case: (i) the Customer fails to comply with the respective on-site services, obligations to provide materials and/or its other (cooperation) obligations (free of charge, on time, completely and properly), and/or (ii) SSI cannot perform (on time, completely and properly) for reasons not attributable to SSI, and/or (iii) laws, standards and/or official requirements change after the conclusion of a contract that affect contractual performance and/or (iv) the Customer requests the suspension of contractual performance and SSI agrees to this, then SSI shall not be in default with its (corresponding) performance obligations, shall be entitled to reasonable extensions of time, a reasonable period to resume performance and compensation for any additional costs and/or damages (without prejudice to other rights and/or legal remedies). If the Customer fails to meet its payment obligations, after the expiration of a remedy period of at least ten (10) working days, SSI shall be entitled, at its sole discretion, to suspend or restrict contractual performance until the relevant payments are received (without prejudice to any other rights and/or remedies).

3 - Assignment, transfer, and retention of title

3.1 The Customer may only transfer or assign a contract and the rights and claims arising therefrom with SSI's consent in Written Form.

3.2 Products delivered and works provided by SSI remain the property of SSI until full payment of the contractually agreed remuneration.

4 - Force Majeure

Except for any payment obligations, neither Party shall be considered to be in default or in breach of their contractual obligations to the extent that performance of such obligations is prevented by any circumstances of Force Majeure. The affected Party shall be granted an extension of time required by reason of an event of Force Majeure, including any related delay and the project schedule shall be adjusted as necessary to compensate for such delay. If the COVID-19 crisis, or any other disease, epidemic, or pandemic leads to new or reinforced measures after conclusion of the contract that are causing delays, the Parties agree that this clause shall apply.

"**Force Majeure**" for purposes of these GTC means any event beyond the reasonable control of the affected Party, and

which prevents, hinders, or delays performance notwithstanding the exercise of reasonable care by the affected Party and shall include for the purpose of these GTC in particular the following:

(i) war, hostilities, or similar circumstances (whether a state of war be declared or not), invasion, act of foreign enemy, requisition and civil war;

(ii) rebellion, revolution, insurrection, mutiny, usurpation of civil or military government, conspiracy, riot, civil commotion or disorder, threat of terrorism and terrorist acts, any government, official or international sanctions, trade embargo or boycotts or restrictions on the transport of personnel, equipment, supplies or raw materials, governmental travel warnings or safety issue affecting the transport or availability of personnel to be dispatched on site;

(iii) confiscation, nationalization, mobilization, commandeering, or requisition by or under the order of any government or de jure or de facto authority or ruler or any other act or failure to act of any local, state, or national government or authority;

(iv) failing to issue or delays in issuing any required import or export permit, authority, license, permit, visa, or authorization duly applied for;

(v) strike, sabotage, lockout, embargo, import restriction, port congestion, lack of usual means of public transportation and communication, industrial dispute, shipwreck, shortage, or restriction of power supply;

(vi) earthquake, landslide, volcanic activity, fire, explosion, flood or inundation, tidal wave, typhoon or cyclone, hurricane, storm, lightning, drought or other inclement weather condition, nuclear and pressure waves or other natural or physical disaster or any natural event;

(vii) shortage of labor, supplies, components, transport, raw materials, or utilities (including in relation to any subcontractors or suppliers);

(viii) ionizing radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel, radio-active toxic explosives, or other hazardous properties of any explosive nuclear assembly or nuclear components thereof;

(ix) global health emergency, pandemic, or epidemic (including but not limited to pandemic and epidemic situations due to SARS Corona and/or similar viruses or diseases) as well as any official measures or health and safety Requirements imposed as a result thereof, including any measure taken by local, national, federal or European authorities, or the World Health Organization; as well as

(x) cyberattacks or the like, and the resulting shutdowns.

5 - Intellectual Property; Rights of Use; WAMAS® End User License Agreement and Data Protection

5.1 All intellectual property rights shall always remain the intellectual property of SSI. This applies in particular to technical

statutory property rights (such as patents, supplementary protection certificates, utility models or semiconductor protection), non-technical industrial property rights (such as trademarks, geographical indications of origin, registered designs or models, or business designations such as company names and work titles), trade secrets, with regard to the protection of performance under competition law and with regard to any copyrights or property rights related to copyright. Title to and copyright in the Software and all rights to commercial and other use in connection therewith shall remain at all times and without restriction with SSI or SSI's subcontractors. The Customer acknowledges that SSI retains ownership of all intellectual property, know-how, ideas, concepts and general techniques under applicable laws worldwide (including all renewals, reversals and extensions). With regard to the latter, it is irrelevant whether SSI already owns this intellectual property or acquires it in the course of the performance of the subject matter of the contract. SSI also retains all intellectual property rights, including moral rights, to Customer-specific adaptations that SSI develops for the Customer under a contract. Insofar as SSI's services are protected by copyright, SSI's moral rights remain unaffected.

5.2 Without prejudice to 5.1, in the case of a Contract for Work and Services, SSI shall grant the unlimited, non-exclusive and non-transferable right of use after acceptance and full payment of the contract price with regard to the contractual software as well as with regard to all documents and drafts created by SSI or all documents and drafts created by SSI or its vicarious agents for the plant construction project, in particular the plans, if and insofar as their use is necessary for the proper operation of the contractual plant. Foregoing mentioned rights of use relate exclusively to internal use by the Customer and may not be disclosed to third parties. However, the Customer is entitled to pass on documents, drawings and data to authorities if this is necessary in order to obtain any permits and approvals required for the construction and operation of the subject matter of the contract and the measures required in this connection. The Customer shall oblige all persons involved in the execution of the contract and/or in the procurement of the above-mentioned permits and approvals to maintain confidentiality. The consent of SSI must be obtained in Written Form before documents, drawings and data are passed on to third parties who are not involved in the procedures described in this section 5.2.

5.3 Provided the WAMAS® standard software is part of the contractual scope, the terms of such license are being set forth in the WAMAS® End User License Agreement available at:

[WAMAS End User License Agreement \(EULA\) | SSI SCHÄFER \(ssi-schaefer.com\)](#)

Such WAMAS® End User License Agreement shall prevail over any other conflicting, contrary, or deviating provision of this GTC.

Further, provided the WAMAS® standard software is contractual scope, the

processing of personal Data the Data Processing Agreement accessible under

<https://www.ssi-schaefer.com/en-de/data-processing-agreements>

applies.

6 - Warranty rights

6.1 SSI warrants that the contractual subject matter is free from defects in material and workmanship.

6.2 The warranty rights shall primarily include, at SSI's discretion and expense, the rectification of defects or the provision of a new contractual subject matter (hereinafter together: **"Subsequent Performance"**).

6.3 Customer shall only be entitled to remedy the defect by itself and/or have it remedied by a third party (**"Supplementary Performance"**) after the Subsequent Performance by SSI has failed three times to remedy defects in a reasonable and/or if the setting of a period of notice is dispensable according to the Applicable Law.

6.4 The right of price reduction shall only exist if, after Subsequent Performance has failed three times within a reasonable period of time (unless the setting of a deadline is dispensable under the Applicable Law) and there are still defects that prevent operation.

6.5 The limitation period for warranty rights shall in case of a Contract for Work and Services commence upon acceptance, commissioning or commercial use, whichever occurs first, and in case of a Contract for Sale upon delivery. Warranty rights shall become time-barred after 24 months for steel construction and regarding any other contractual scope 12 months after commencement of the limitation period for warranty rights. The mere Subsequent Performance shall in no case constitute an acknowledgment of defects and negotiations regarding warranty rights shall not restart, suspend, interrupt or extend the limitation period for warranty rights either generally or specifically with regard to scope of the negotiation. Notwithstanding the foregoing of this subsection, the following shall apply: In the event of Subsequent Performance, a single separate limitation period for warranty rights of 12 months shall commence upon completion of the Subsequent Performance with regard to the contractual subject matter affected by the Subsequent Performance alone; in the event of several Subsequent Performances with regard to a contractual subject matter already affected by the Subsequent Performance, no further separate limitation period for warranty rights shall commence. The foregoing of this subsection shall not apply to the extent that liability is mandatory by Applicable Law.

6.6 Warranty rights prior to acceptance shall be excluded.

6.7 In particular, defects caused by improper operation (i.e. non-compliance with operating and maintenance instructions) or external influences shall be excluded from warranty rights; this also applies to IT components; normal wear and tear also does not constitute a defect.

6.8 Customer shall comply with the respective requirements of SSI on site within the scope of what is necessary for Subsequent Performance free of charge, in good time, completely and properly; e.g. availability of the necessary energy, fuels and auxiliary materials as well as all operating facilities and equipment available on site, including the operating personnel required for the maintenance and operation of the contractual subject matter.

6.9 § 7 VGG shall be excluded.

7 - Liquidated damages for delay

7.1 In the event that SSI, for reasons for which SSI is solely liable, fails to meet the date for acceptance in case of a Contract for Work and Services, respectively in case of a Contract for Sale fails to meet the delivery date, the following applies: In case of a Contract for Work and Services, Customer may demand liquidated damages amounting to 0.5% of the original net contract price for each full week of delay, respectively, in case of a Contract for Sale, Customer may demand liquidated damages amounting to 0.5% of the net contract price of the products affected by the delay for each full week of delay (both **"Liquidated Damages for Delay"**). However, the maximum amount of Liquidated Damages for Delay payable by SSI in case of a Contract for Work and Services shall not exceed 5% of the original net contract price, respectively, in case of a Contract for Sale the maximum amount of Liquidated Damages for Delay payable by shall not exceed 5% of the net contract price of the products affected by the delay.

7.2 With the preceding provision above, all claims for damages due to delay shall be deemed settled and completed. Any further claims for damages due to delay shall be excluded, irrespective of whether the actual damage caused by delay reaches or exceeds the respective amount of the Liquidated Damages for Delay. The exceptions to the limitation on and exclusion of Liability according to clause 8 (6) shall also apply here accordingly.

7.3 In the case of Contract for Work and Services, the Customer shall notify SSI of the assertion of Liquidated Damages for Delay in Text Form no later than five working days after acceptance, and in the case of Contract for Sale no later than five working days after complete delivery. Failure to do so within such timely notification will exclude any claims by the Customer (preclusion period; "Ausschlussfrist").

8 - Liability, exclusions on and limitation of liability

8.1 These provisions regarding SSI's liability shall, regardless of the legal basis for the liability in the individual case (i.e. arising out of or relating to a contract, tort, breach of statutory duty, indemnities, any law or otherwise), apply to any liability of and/or claims for reimbursement of futile expenses against SSI (**"Liability"**).

8.2 These provisions regarding the Liability shall apply for the benefit of vicarious agents (e.g. subcontractors), suppliers, advisers, employees, executive staff members and other third parties if and to the extent acting for the benefit of SSI with regard to contractual performance of a contract.

8.3 In case of Contract for Sale, Liability for defects is limited to 100% of the respective net contract price of the defect products and for other Liability - including any Liquidated Damages for Delay pursuant to clause 7 - to 100% of the respective net contract price. Furthermore, the total liability - including any Liquidated Damages for Delay pursuant to clause 7 - is limited cumulatively to 100% of the respective net contract price.

8.4 In case of a Contract for Work and Services, the Liability - including any Liquidated Damages for Delay pursuant to clause 7 - is limited cumulatively to 100% of the original net contract price.

8.5 Without prejudice to the Liquidated Damages for Delay according to clause 9, the Liability for pure financial losses and indirect damages, respectively, consequential damages, in particular, but not limited to, for loss of use or production, loss of profits or sales, loss of business opportunities or orders, loss of expected savings, financing costs, increased operating costs or storage or interim storage

costs, shall be excluded. The foregoing applies accordingly to any Liability and/or claims for indemnification against SSI due to any claims by third parties against the Customer.

8.6 The foregoing exclusions of and limitations on Liability shall not apply (i) in the case of intent (excluding intent by vicarious agents) or gross negligence, (ii) in the case of injury to life, body or health, and (iii) insofar as mandatory, non-dispersible laws provide otherwise (e.g. mandatory, non-dispersible product liability laws).

9 - Place of jurisdiction

The place of jurisdiction is the registered office of the respective SSI company party to the contract.

10 - Applicable Law

The law of the Republic of Austria shall apply to the contractual relationship in all respects, all matters related thereto, including its fulfillment or any conflicts arising in connection with it excluding the Rules of the Conflict of Laws and the UN Convention on Contracts for the International Sale of Goods (CISG) (**"Applicable Law"**).

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