

# GENERAL PURCHASE AND TRADE TERMS – SSI SCHÄFER, UKRAINE

## 1. Scope

1.1 Any purchase is subject to these General Purchase and Trade Terms, being binding on all supplies performed between the Parties, thus superseding all agreements and customs inconsistent with the contents hereof, unless otherwise stated in the order confirmation submitted by SSI Schäfer.

1.2 The purpose of these General Purchase and Trade Terms is to govern the relations between the parties, whenever SSI Schäfer acts as a Purchaser or a principal.

## 2. Definitions

2.1 In these General Purchase and Trade Terms, the following words and expressions will have the following meaning:

### *"Agreement":*

means the written contract entered into by and between the parties in respect of the Supply together with all contract appendices, including any agreed changes and addenda to the said documents.

### *"Equipment":*

means all machinery, apparatus, stock of materials and components to be delivered to the Supplier under this Agreement.

### *"Purchaser":*

means SSI Schäfer or any other legal entities associated with that company, such as subsidiaries, affiliated companies or the like.

### *"Supply":*

comprises the Equipment and the result of the work to be performed by the Supplier under this Agreement. If the Supply under the Agreement is to be acquired in separate parts to be used independently of each other, these Terms will apply to each individual part on a separate basis. In such cases, "Supply" means the individual part.

### *"Assembling Place":*

means the place for the assembling of the Supply and the immediately adjacent areas being necessarily interrelated with these for purposes of transportation, unloading and storing of the Equipment and any outfit.

### *"Contract Sum":*

means the sum, exclusive of value added tax, payable for the Supply. The Purchaser shall submit an order confirmation, stating the Contract Sum. This Contract Sum is binding. If the accounts are to be settled according to vouchers submitted, the applicable terms will be stated in the order confirmation.

## 3. Product information

3.1 Product information and price lists are only binding, provided these are specifically referred to in the Agreement.

## 4. Drawings and other technical documents

4.1 All drawings and other technical documents relating to the Supply submitted to either party by the other party before or after the conclusion of the Agreement belong to the Purchaser. Any drawings or other technical documents or any technical information received may not without the Purchaser's prior written consent be used for any other purpose than the purpose intended by the submission.

4.2 On or before the takeover, the Supplier must provide to the Purchaser a substantial or an agreed number of drawings and other technical documents, being sufficiently detailed for the Purchaser to initiate the commissioning, operation and maintenance, including continuing repairs of the Supply.

## 5. Confidentiality

5.1 Any material being submitted from the Purchaser to the Supplier in connection with the conclusion of the Agreement, whether being of a technical or a commercial nature, are to be deemed confidential, provided any such material is not publicly available, or the Supplier has not in advance, and no later than 5 working days upon receipt of the material, proved to be in lawful possession of the information received.

5.2 Any material submitted to the Supplier must not be passed on to the Supplier's employees, consultants or sub-suppliers, unless where such submission is required for the Supplier's fulfilment of its contractual obligations. The Supplier is responsible for ensuring that its employees, consultants or sub-suppliers comply with this confidentiality clause.

5.3 The Supplier is not entitled to pass on any information under Clause 5.1 to any other person than the group of persons referred to in Clause 5.2.

5.4 Apart from the use of information or material comprised by Clause 5.1 required for the fulfilment of the Supplier's contractual obligations, the Supplier is not entitled to use or otherwise benefit from any material or information under Clause 5.1.

5.5 If the Purchaser renders probable that the Supplier has acted contrary to this provision, this will be deemed to be proved, unless the Supplier substantiates having acted otherwise than rendered probable by the Purchaser.

5.6 In case of any breach of this confidentiality clause, the Supplier will be liable to pay an agreed penalty of EUR 50,000. If any such breach may be excusable or of modest importance, the amount of the agreed penalty may be modified, if payment thereof would seem unreasonable.

5.7 Should the Purchaser suffer any loss in excess of the agreed penalty, see Clause 5.6, or if the Supplier has gained an enrichment exceeding the agreed penalty amount, the loss must be compensated, or the enrichment, if exceeding the loss, must be surrendered.

5.8 The payment of the agreed penalty and/or compensation will not entitle to any continued unlawful use or submission of information or material comprised by Clause 5.1.

5.9 The Supplier is not entitled, without the Purchaser's prior consent, to submit to third parties any such technical or commercial information referred to as being confidential by the Purchaser when entering into the Agreement or at any subsequent date. However, this does not apply, if any such information is required for the parties' fulfilment of their contractual obligations under the Agreement or for the operation or maintenance of the Supply.

5.10 The parties shall prevent any submission or use exceeding that described in Clause 5.2 of the above confidential information to or by any employees, consultants, sub-suppliers, other suppliers or other persons of or related to the party concerned, who may from that party gain or have gained access to any such information.

5.11 The consequences of any breach of this provision are separately determined in connection with the submission of confidential information or material. The confidentiality agreement entered into for that purpose constitutes an integrated part of these General Purchase and Trade Terms.

## 6. Scope of Supply

6.1 The scope of Supply must be as provided by the Agreement and/or the Purchaser's order confirmation. The Supply must comply with all statutes, rules and regulations or provisions applying at the time of quotation in the country where the Assembling Place is situated. The Supplier is obligated at any time to comply with current legislation and other rules applying to the Supply.

6.2 The Supplier shall perform any such changes of work as may be caused by any amendments of statutes, rules and regulations or provisions applying to the Supply and implemented during the period counting from the date of quotation until the date of takeover. The same applies to any amendments in the generally accepted construction of any such statutes, rules and regulations or provisions. Any such changes or work are included in the Contract Sum, see Clause 2.1, and the Supplier shall carry the risk thereof in every respect.

## 7. Working conditions

7.1 The Supplier warrants in relation to the Purchaser that the assembling is performed under conditions being in compliance with the current rules and regulations applicable at any time to the working environment at the Assembling Place, including without limitation any safety conditions; further the Supplier warrants that any local requirements of salary and employment conditions have been met.

7.2 Should the Supplier's employees be subject to the law of temporary employment / rules on hiring out of labour, the Purchaser shall withhold tax at source under the current rules of Ukraine law.

7.3 When accepting the order and commencing the work, the Supplier accepts the Purchaser's withholding of any and all tax at source, which the Purchaser is liable to withhold in the Contract Sum, see 2.1, and further the Supplier shall provide the Purchaser with any information required for that purpose.

7.4 The Supplier is obligated to register itself with any relevant public register and to pass on to the Purchaser any proof and information of any such registration.

## 8. Assembling and delivery

The Supplier shall inform the Purchaser when the Equipment and/or the Supply is ready for assembling and/or delivery in due time for the Purchaser to take any measures required for the completion of the assembling and/or delivery. Further, the Supplier shall give notice of any other relevant circumstances affecting the Supply.

8.1 Any expense due to faults or errors in the drawings, descriptions or information submitted by the Supplier occurring prior to the takeover, see Clause 16, is payable by the Supplier. The same applies to faults or errors occurring after the takeover, provided these may be referred to the Supplier's conduct.

## 9. Tests of the Equipment/Supply during production. Inspection

9.1 If a test of the Equipment/-Supply under the Agreement is required in connection with the production, any such test must be conducted at the place of production, unless another place has been agreed upon. If technical requirements of such test have not been agreed, the test must be performed in accordance with the usual practice for the industry in the country where the Equipment is being produced.

9.2 The Supplier must notify the Purchaser of the time for the testing referred to in Clause 9.1 in due time for the Purchaser to be present. The testing must not be conducted without the Purchaser's presence without the Purchaser's prior written consent. The

Supplier shall keep records of the testing and forward them to the Purchaser without undue delay. The test records will be considered to provide a correct description of the completion of the test and the result thereof.

9.3 If the result of the test referred to in Clause 9.1 shows that the Equipment is not in conformity with the contract, the Supplier shall as soon as possible ensure the Equipment's conformity with the contract. At the Purchaser's request, a new test must then be conducted at the Supplier's expense, unless the nonconformity is merely insignificant.

9.4 In other respects, the Purchaser is entitled, to a reasonable extent or to the extent provided by the Agreement, to inspect the production of the Equipment within normal working hours and upon giving three days' prior notice.

9.5 Unless another allocation of costs has been agreed upon, the Supplier shall carry all costs incurred in connection with tests completed at the place of production of the Equipment. In the case of any such tests and of the inspection referred to under Clause 9.4, the Purchaser shall, however, bear all costs of its representatives, including travelling and accommodation expenses.

## 10. Price

10.1 The Price is fixed, not subject to any amendments during the installation or delivery period, and covers all costs, expenses, and charges, including any stamp, tax or other duties and fees of any nature that the Supplier will or may bear for the performance of the Contract, DDP (INCOTERMS 2010).

10.2 The Supplier warrants and represents that it has assessed all factors and elements to be taken into account for the performance of the work scope, and that it has, at its own risk, offered, accepted and determined the Price on the basis of its own estimates, calculations and technical and economic evaluations considering it remunerative from every aspect.

## 11. Payment

11.1 Unless otherwise agreed, the Contract Sum is not due for payment until delivery and assembling etc. of the Supply-/Equipment has been completed under the parties' agreement and under Clause 16.

11.2 The Purchaser shall be entitled to offset against any sum due to the Supplier any sum owed to the Purchaser by the Supplier and to withhold payment (whether otherwise due under this Agreement and/or any other agreement) for Goods and/or Services which have not been provided in accordance with a particular contract or purchase order.

11.3 Further, delays in receiving invoices from the Supplier, as well as any material errors or omissions on invoices that are received, will be considered a just cause to withhold payments until such date that said invoice has been furnished and/or amended

(as applicable), without creating any interest payment liability. The Purchaser shall immediately notify the Supplier of any errors or omissions in invoices impeding the due payments hereunder.

11.4 Payment of the Price must be affected by the Purchaser within 30 days of receipt of a valid invoice in respect of each Order, submitted monthly in arrears, unless otherwise stated in the order confirmation.

## 12. Assembling

12.1 No later than 14 days prior to the commissioning of the Supply/delivery of the Equipment-assembling, the parties shall each appoint their representatives to act during the daily work at the Assembling Place.

12.2 The Supplier's representative shall be present at or in the neighbourhood of the Assembling Place during working hours.

12.3 The Purchaser's representative shall be available by telephone during normal working hours and shall get to the Assembling Place, if so required.

12.4 Unless otherwise agreed, the Supplier shall on its own account provide cranes, lifting gear, scaffolds and equipment for internal transportation to any extent required for securing the assembling.

12.5 The Supplier shall ensure that the safety rules applying at the Assembling Place are complied with by its employees.

12.6 The Purchaser may request that any of the Supplier's employees who fail to comply with these safety rules are permitted access to the Assembling Place.

12.7 The Supplier shall notify the Purchaser in writing of any specific risks to the surroundings which may incur in connection with the assembling of the Supply.

## 13. Purchaser's right to control

13.1 The Purchaser is entitled at any time during work at the Assembling Place to control the Supply on its own account.

## 14. Changes

14.1 Until takeover has been completed, the Purchaser may request changes in the originally agreed scope of Supply or in the construction or performance thereof. The Supplier may similarly suggest changes in the Supply, if considered appropriate.

Any request for such change must be made in writing to the Supplier and must contain a detailed description of the requested change.

14.2 As soon as possible, upon receipt of the request for a change or after having itself proposed a change, the Supplier shall notify the Purchaser in writing, whether and how any such changes may

be secured and shall further inform the Purchaser of any adjustments in the Contract Sum, the delivery time or in any other contract terms due to the change.

14.3 The Supplier shall further give similar notice to the Purchaser in case of any changes caused by amendments in statutes, rules or regulations. The risk and any derived additional costs incurred in connection with any such changes are incumbent on the Supplier, but see Clause 6.2.

## 15. Takeover tests

15.1 Upon the completion of the assembling work, takeover tests will be conducted, unless otherwise agreed upon, for the purpose of determining whether the Supply is in compliance with the agreement.

15.2 The technical requirements of such takeover tests are specified in the order confirmations.

15.3 Unless otherwise agreed upon in respect of the technical requirements applicable to the test, the test must be conducted in accordance with usual practice and generally applicable standards in the country, where the Assembling Place is situated.

15.4 The Supplier must notify the Purchaser in writing, when the Supply is ready for takeover.

15.5 At the same time, the Supplier shall fix a reasonable deadline for conducting the takeover tests. Subsequently, the parties shall jointly fix the date and hour for conducting the tests. Unless otherwise agreed, the tests will be conducted within the Purchaser's normal working hours.

15.6 The tests must be performed during the Supplier's control and must be attended by representatives of both parties. In case the Purchaser is prevented from attending the takeover tests at the time agreed upon, the Supplier shall request the Purchaser by written notification to fix a new date and hour for such tests. The Purchaser is entitled to be granted a reasonable time-limit before conducting any test.

15.7 The Supplier shall keep records of the takeover test. These test records must be submitted to the Purchaser for approval.

15.8 Should a takeover test show that the Supply is not in conformity with the contract, the Supplier shall as soon as possible ensure the Supply's conformity with the contract. Subsequently, a new takeover test must be conducted, unless the parties agree to omit it or the deviations from the condition required by the contract have no operational importance.

## 16. Takeover

16.1 The Purchaser will be deemed to have taken over the Supply upon final handing over and upon delivery of the Supply conforming to the contract and

completion of all tests referred to under Clause 15 and the Purchaser's approval of the Supply.

16.2 Unless otherwise agreed, the risk of the Supply will pass on the takeover/final handing over.

16.3 Any commissioning or commercial use will not constitute or be compared with a takeover.

## 17. Time of delivery / Delay

17.1 The Supply will be deemed delivered on the date of take-over under Clause 16.

17.2 The time of delivery is stated in the order confirmation, and all work, including the work referred to in Clause 15, must be completed by the time of delivery.

17.3 Should the Supplier find itself unable to complete the Supply in due time or in case of a probable delay on the Supplier's part, the Supplier shall without undue delay give written notice thereof to the Purchaser.

17.4 The Supplier shall at the same time explain the reason for the delay and shall, if possible, state when the Supply will be ready for takeover.

17.5 In case the Supply has not been taken over in due time under Clause 17.2, for reasons not attributable to any contributory act or omission on the part of the Purchaser, the Purchaser may charge a penalty for each week of delay amounting to 3 % but not exceeding a total of 15 % of the total Contract Sum, provided always that payment of such penalties does not relieve the Supplier from its other obligations and liabilities under the Agreement

17.6 The agreed penalty falls due for payment on demand upon written notification from the Purchaser and may be set off against any sum otherwise due to the Supplier.

17.7 In the event that a respective reservation of the Purchaser's entitlement under this clause is not given at the time of acceptance of the delivery, services or performance, the penalty may be claimed up to the date of the final payment.

17.8 If the Purchaser is entitled to the maximum agreed penalty under Clause 17.5, and the Supply is not yet prepared for takeover, the Purchaser may by written notification to the Supplier demand that the Supply is made ready for the takeover test, fixing a reasonable final deadline, however, not less than one week.

17.9 If the Supplier has not completed the Supply within the said deadline, and this is not due to any circumstances for which the Purchaser or the Purchaser's other suppliers are responsible, the Purchaser will be entitled to terminate the Agreement by written notice thereof to the Supplier.

17.10 Further, the Purchaser will be entitled to terminate the Agreement

between the parties by written notification to the Supplier, if the occurrence of a major delay is obvious.

17.11 Any claim for penalties on account of a termination of the Agreement by the Purchaser under this Section 17 does not derogate from the Purchaser's rights otherwise available under statute or at Law.

17.12 Title to the Supply furnished shall be transferred free and clear of all liens, claims, security interests or other encumbrances when title thereto passes to the Purchaser. Title will pass to the Purchaser on the earlier of the date: (a) payment for such goods has been made by the Purchaser; or (b) such goods are delivered to the Purchaser.

## 18. Liability for property damage prior to takeover

18.1 The Supplier is responsible for any damage to the Supply arising prior to the passing of the risk to the Purchaser. This applies irrespective of the cause of the damage, unless the damage was caused by the Purchaser or by someone under the Purchaser's control.

## 19. Liability for defects

19.1 The Supplier is obligated to remedy all defects due to faults or errors in construction, material or production by repairing or replacing the Supply.

19.2 The Supplier's liability comprises only defects occurring within two (2) years, counting from the date of final acceptance by the end customer.

19.3 As for the parts of the Supply being repaired or replaced in accordance with Clause 19.1, the Supplier assumes similar obligations as those applying for one year to the original Supply.

19.4 Should any demounting or mounting result in interventions in other equipment than the Supply, any work involved or costs incurred in that connection will be payable by the Supplier.

19.5 Any consignment in connection with a repair or a replacement will be for the Supplier's own account and risk.

19.6 The Supplier shall carry any additional costs incurring in connection with the remedy of defects due to the Supply being located elsewhere than at the Assembling Place.

19.7 Defective parts exchanged under Clause 19.1 must be placed at the Supplier's disposal and will remain the Supplier's property.

19.8 If, within a reasonable time, the Supplier fails to fulfil its contractual obligations hereunder, the Purchaser may be written notification to the Supplier fix a final deadline for such fulfilment. If the obligations have not been fulfilled within the expiry of such fixed deadline, the Purchase may at its own option either:

(a) take measures to have the required repairs made and/or have new parts manufactured for the Supplier's account and risk, provided such measure is taken in a reasonable and fair way; or  
(b) demand a proportionate reduction, however, not exceeding 15 % of the Contract Sum.

19.9 If the defect is material or incurable, the Purchaser may instead terminate the Agreement for breach by written notification to the Supplier.

19.10 A defect will be deemed incurable, in case the defect continues to be material even after taking the measure referred to under (a).

## 20. Product Liability

20.1 The Purchaser is liable for personal injury pursuant to the legislation on product liability in force in the country where any such injury occurs.

20.2 Further, the Supplier is liable for property damage, including damage to the Supply to the Purchaser and the product incorporating the Supply, provided any such damage is caused by the Supply.

20.3 The Supplier undertakes to be sued before the same court of law/arbitration tribunal hearing the issue on the Purchaser's product liability pursuant to the legislation on product liability in force in the country where the Supplier is being sued.

20.4 In case The Purchaser is liable to third parties, the Supplier shall indemnify the Purchaser, if such damage is due to the Supplier's product. If the Supplier is held liable to third parties, the Supplier has only a right of recourse against the Purchaser, provided the Supplier can prove that the product liability is due to gross negligence on the part of the Purchaser in connection with the use or installation of the Supplier's Supply.

20.5 The Supplier shall substantiate the taking out of valid general liability insurance, including cover for product liability, with an internationally reputable insurance company. Orders re-presenting a value of up to EUR 50,000 require a minimum insurance sum of EUR 1,000,000 per damage. Orders above EUR 50,000 and below EUR 10,000,000 require a minimum insurance sum of EUR 3,000,000 per damage and EUR 6,000,000 per year. Orders exceeding EUR 10,000,000 require an insurance sum of EUR 5,000,000 per damage and EUR 15,000,000 per year.

## 21. Code of Conduct

21.1 The Supplier shall comply with the Purchaser's Code of Conduct, a copy thereof being submitted to the Supplier on the formation of contract. Any breach of the Purchaser's Code of Conduct will be deemed a material breach of the parties' agreement.

## 22. Liability in other respects

22.1 The Purchaser is not liable for any personal injury or property damage arising with the Purchaser or third parties as a consequence of the Supplier's physical presence at the site, e.g. in connection with the assembling.

22.2 Should the Purchaser be held liable for the Supplier's acts or omissions, the Supplier shall indemnify the Purchaser for any claim derived.

## 23. Sub-suppliers

23.1 The Supplier is not entitled without a prior explicit acceptance to appoint any sub-suppliers. Provided a consent to such appointment is given, any such sub-suppliers will be subject to the same duties and obligations in relation to the Purchaser as those imposed on the Supplier under this Agreement. In relation to the Purchaser, the Supplier warrants that any such sub-suppliers will comply with the duties and obligations imposed upon them under this Agreement.

## 24. Exemption from liability (force majeure)

24.1 The following circumstances will lead to exemption from liability, if hindering the performance of the Agreement, or if the fulfilment thereof would seem unreasonably onerous:

Labour disputes or any other circumstance outside the parties' control, such as: fire, situations of war, mobilization or army call-ups of a similar extent, requisitioning, seizure, currency restrictions, riots and disturbances, shortage of transport facilities, general scarcity of goods, restrictions of driving power and shortage of or delays in supplies from sub-suppliers being due to any of the circumstances referred to in this provision.

Circumstances will only lead to exemption from liability, provided the influence thereof on the performance of the Agreement were unforeseeable on the conclusion of the Agreement.

24.2 A party wishing to invoke exemption from liability in accordance with Clause 0 shall without delay notify the other party in writing of the occurrence and cessation thereof.

24.3 Notwithstanding these General Purchase and Trade Terms in other respects, either party is entitled to terminate the Agreement by written notification to the other party, if the performance of the Agreement is hindered during more than 6 months by any of the circumstances referred to in Clause 0.

## 25. Choice of law and venue

25.1 Any dispute arising out of or in connection with this Agreement and everything related hereto are not to be subject to any judicial review but must be settled by arbitration in Ukraine pursuant

to the rules of procedure applying for arbitration in Ukraine.

25.2 All disputes must be settled on the basis of Ukraine law, in Ukraine or English language, and the arbitration tribunal must be seated in Kiev, Ukraine.