

GENERAL SALES AND DELIVERY TERMS – SSI SCHÄFER, UKRAINE

1. Definitions

1.1. *Agreement* means the documents listed in clause 3, including the order of documents referred to in clause 3.

1.2. *Party or Parties* means the Purchaser and SSI or both.

1.3. *Place of Delivery* means the place where the supply is to be delivered, as described in SSI's order confirmation and subject to Incoterms 2010.

1.4. *Purchaser* means any legal person referred to as "purchaser" in SSI's order confirmation.

1.5. *Purchaser's Order* means the document submitted by the Purchaser to SSI, containing all technical and commercial specifications and descriptions.

1.6. *Order Confirmation* means the Agreement entered into between the Purchaser and SSI as to the purchase of the supply subject to the terms and conditions and the price specified in the Agreement. Except if otherwise stated, the term "Order Confirmation" comprises all documents and appendices referred to in the Agreement.

1.7. *SSI* means SSI Schäfer.

1.8. *Technical Specifications* means all specifications, standards and data sheets, diagrams and drawings contained or referred to in the Order Confirmation, and with which the supply must comply.

1.9. *Third Party* means any legal person who is not a party to the Order Confirmation, except, however, the legal persons employed by the Purchaser.

1.10. *Supply* means all equipment and material and any performance associated with this to be delivered by SSI to the Purchaser under the Order Confirmation.

2. Application

2.1 These General Terms and Conditions apply to all Supplies by SSI to the Purchaser, thus superseding all agreements and customs being contrary hereto, unless otherwise stated in the Order Confirmation submitted by SSI.

3. Order of documents

3.1 Order Confirmation.

3.2 These General Terms and Conditions for SSI Schäfer.

3.3 SSI's quotation, specifications and drawings attached or referred to in SSI's Order Confirmation.

3.4 The Purchaser's order.

The documents rank mutually in the above order of priority. In case of any inconsistency between the individual documents, a higher ranking document takes precedence over a lower ranking document

4. Contract price

4.1 Unless otherwise stated in SSI's Order Confirmation as to the Supply of component parts, the contract price is a lump sum. In the case of system sales, the contract price is payable by instalments of 30 % on the entering of the Agreement, 30 % on delivery of the material, 30 % on completion of the assembly, and 10 % on delivery, unless otherwise agreed.

4.2 Any taxes and duties incurred in connection with the import to the Purchaser's country are payable by the Purchaser.

5. Payment

5.1 Payments must be made within 30 days as from the date of invoice.

5.2 If the Purchaser fails to pay within the agreed due date, interest equivalent to the official discount rate of the Ukraine Central Bank plus 8 % per annum will be added to the debt.

5.3 In case of non-payment or late payment, SSI is entitled to suspend the production or the installation of the Supply until due receipt of the payment, upon giving a reasonable notice in writing to the Purchaser. Any agreed date of delivery will be extended by any such period of suspension, with addition of 14 days.

5.4 If the Purchaser has not paid the amount due within three months, SSI is entitled to terminate the Agreement without notice, claiming compensation for any loss suffered in that connection.

6. Delivery

6.1 The time and the place of delivery are specified in the Order Confirmation.

6.2 If the Purchaser fails within a reasonable period to fulfil its contractual obligations under the Agreement, including the obligation to approve of drawings, Technical Specifications, etc. in due time, SSI is entitled to postpone the date of delivery by a period corresponding to the delay displayed by the Purchaser, with addition of 14 days.

6.3 If a delay in delivery is caused by force majeure, see clause 12, the delivery time will be extended by a period corresponding to the period legitimately affected by force majeure.

6.4 If delivery has not taken place by the agreed date of delivery for reasons solely attributable to SSI, i.e. without

any contributory act or omission on the part of the Purchaser, the Purchaser is entitled to liquidated damages for delay, counting from the agreed date of delivery.

6.5 The agreed liquidated damages are payable at a rate of 0.5 % of the net contract price for every full week of delay. The agreed liquidated damages are conclusive with respect to any actual damages for delay and may not exceed 5 % of the net contract price. Any remaining insignificant faults (minor damage) do not justify claims for delayed completion if such damage does not substantially impair the intended use of the contractual item.

6.6 If only part of the Supply is delayed, the calculation of the liquidated damages will be based on the part of the contract price that is attributable to the part of the Supply being unfit for the Purchaser's use as a consequence of the delay.

6.7 The liquidated damages under this clause 6 fall due for payment at the Purchaser's demand in writing but not until delivery has taken place or the Agreement has been terminated under clause 16.

6.8 The Purchaser forfeits its right to liquidated damages under this clause 6, if the Purchaser fails to make a demand in writing for the agreed liquidated damages within six months after having established a delay giving such right, however, no later than by the final delivery.

6.9 If the extent of the delay entitles the Purchaser to the maximum liquidated damages, see clause 6.5, and due delivery has still not taken place, the Purchaser is entitled to terminate the Agreement, subject to a prior written notice of four weeks, in respect of the Supply being unfit for the Purchaser's use due to SSI's delay.

6.10 If the Purchaser terminates the Agreement in full or in part, the Purchaser is entitled to compensation for any direct loss suffered as a result of such termination. Such compensation, including any unpaid or accrued liquidated damages for delay, must not, however, exceed 10 % of the part of the net contract price relating to the part of the Supply giving grounds for termination of the Agreement.

6.11 The liquidated damages together with the right to terminate the Agreement with the consequential right to limited compensation are the only remedies available to the Purchaser in case of SSI's delay. Accordingly, the Purchaser is not entitled to raise any other claims to SSI due to SSI's delay.

6.12 If the Purchaser anticipates being unable to accept delivery by the agreed date of delivery, the Purchaser shall immediately notify SSI thereof in

writing. Such notice must state the reason for why the Purchaser is unable to accept delivery in due time, and, if possible, also an indication of when the Purchaser expects to be able to accept delivery.

6.13 Even if the Purchaser may be unable to accept delivery by the agreed date of delivery, the Purchaser shall nevertheless pay the agreed contract price in accordance with the agreed instalment plan specified in the Order Confirmation, regardless of whether or not delivery has taken place. SSI shall arrange for storage of the Supply for the Purchaser's account and risk, until delivery has taken place. If so requested by the Purchaser, SSI shall also take out insurance for the stored Supply for the Purchaser's account.

6.14 Unless the Purchaser's failure to accept delivery may be attributed to force majeure, see clause 12, SSI is entitled to request the Purchaser in writing to accept delivery within a reasonable deadline fixed by SSI. If the Purchaser fails to accept delivery within such deadline, SSI may terminate the Agreement in whole or in part, subject to 14 days' prior notice. SSI is in that case entitled to compensation for any loss suffered due to the Purchaser's failure to accept delivery.

7. Product information, drawings and descriptions

7.1 All information and all data contained in general product descriptions and price lists, whether in electronic or any other form, are only binding on SSI, if explicitly referred to in the Order Confirmation.

7.2 All drawings and specifications relating to the Supply or the performance thereof and submitted by either Party to the other Party prior to or concurrently with the entering of this Agreement are to remain the property of the submitting Party.

7.3 Drawings, Technical Specifications or other technical information received by either Party may not without the other Party's explicit consent be applied for any other purpose than for the performance of the Parties' mutual obligations under this Agreement. Accordingly, any material comprised by this provision may not without the submitting Party's explicit consent be copied or otherwise disclosed to any Third Party, unless any such disclosure relates exclusively to the performance of the Parties' Agreement.

7.4 On delivery, at the latest, SSI shall provide the Purchaser with the information, drawings, and specifications, etc. required for permitting and enabling the Purchaser to construct, commission and maintain the Supply. Any information, operator's manuals and instructions, etc. comprised by this provision must be

supplied in one copy, unless otherwise stated in the Order Confirmation. SSI is not obligated to provide detailed drawings of the Supply.

8. Variations

8.1 SSI is not entitled without the Purchaser's written consent to make any variations in the Supply. Subject to the conditions hereof, the Purchaser is entitled to request from SSI in writing that SSI adapts, increases, restricts, or otherwise varies the Supply at any time during the performance of the Supply.

8.2 Within 14 days after SSI's receipt of the Purchaser's directions to vary the Supply, SSI shall inform the Purchaser of any expected costs and expected adjustments in the agreed delivery time caused by any such changes, provided always however that SSI shall be entitled to reject the requested variation if SSI, upon having carried out an impact assessment, reasonably believes that any requested variation would:

- be technically impossible to implement; or
- materially and adversely affect SSI's ability to deliver the Supply; or
- cause SSI to be in breach of any existing licence, consent or permit; or
- require the consent of a third party to enable the variation to be implemented and SSI is unable to obtain such consent; or
- result in additional costs or expenses to SSI, which the Purchaser has not proposed to be paid to SSI as part of the variation.

8.3 Further, SSI shall, if possible, inform the Purchaser about any matters relating to SSI's contractual obligations hereunder, including guarantee obligations which may be caused by the changes required by the Purchaser. SSI is not obligated to initiate any changes, until the Parties have agreed on the terms and conditions thereof and on any adjustment of price, delivery time or SSI's obligations in other respects.

8.4 Should the Parties' discussions of changes in the Supply result in any delay, the delivery time will be extended by a period equivalent to the period of any such discussions, with addition of 14 days.

9. Inspection and acceptance tests

9.1 Unless otherwise agreed by the Parties, inspection and acceptance tests prescribed by the Order Confirmation must be performed within normal working hours at the place where the Supply is being manufactured.

9.2 SSI shall notify the Purchaser in writing in due time prior to the performance of acceptance tests, thus enabling the Purchaser to be

represented at such tests. If the Purchaser is not represented during the acceptance tests, a test report to be considered true and fair must be sent to the Purchaser. If the Purchaser fails to contribute adequately to the performance of acceptance tests, delivery will be deemed to be completed after final assembly.

9.3 If an acceptance test substantiates that the Supply is not in compliance with the Order Confirmation, SSI shall repair any defect without undue delay for the purpose of ensuring that the Supply is in accordance with the Agreement. Subsequently, a new acceptance test must be performed, if so requested by the Purchaser, unless the defects established by the acceptance test first performed are deemed to be material.

9.4 SSI shall pay all costs incurred in connection with the acceptance test performed at the place where the Supply is being manufactured. The Purchaser's own travelling and accommodation expenses are, however, payable by the Purchaser.

9.5 Notwithstanding the lack of any acceptance test, etc., delivery will be deemed to have taken place by the Purchaser's operational use/commitment of the Supply, at the latest.

10. Warranties

10.1 SSI warrants that the Supply is in conformity with the specifications and drawings constituting part of the Agreement entered into between the Parties, and that the Supply is manufactured by means of good materials, thus being free from defects, and further that it complies adequately with the operational conditions required by the Technical Specifications.

10.2 SSI's warranty and liability for defects are limited to defects occurring and established within a period of 12 months, counting from the date of delivery or, in case of a purchase requiring installation, from the date of handover.

10.3 If the daily use of the Supply exceeds the Parties' assumptions or consensus at the time of entering in to the Agreement, the warranty period referred to in clause 10.2 will be reduced proportionately. In addition, SSI's liability and warranty are limited so as to comprise only defects clearly attributable to SSI's supply.

10.4 Upon the repair of a defective part of the Supply, SSI is liable for defects in the repaired or replaced part of the Supply, subject to the same conditions and for the remaining period of the warranty applying to the original Supply. SSI's liability in that respect is limited to one year from the performance of the repair, however, no more than two years from the delivery of the original Supply to the Purchaser.

10.5 The Purchaser shall without undue delay give notice in writing to SSI

of the lack of conformity, whenever a defect is established. Such notice must contain a description of the defect and may not under any circumstances be given later than two weeks after the defects has been or ought to have been established.

10.6 If the Purchaser fails to notify SSI in writing of the establishment of a defect, see clause 10.5, the Purchaser forfeits its right to any remedy in relation to SSI due to the establishment of a defect.

10.7 If the character of a specific defect results in additional property damage or personal injury, the Purchaser must immediately notify SSI thereof in writing. The Purchaser bears the responsibility and the risk of any further damage, in case the Purchaser fails to notify SSI immediately.

10.8 Upon receipt of the Purchaser's notice of lack of conformity, SSI shall without undue delay, on its own account, repair the defect complained of. Such repair must be performed at the place where the Supply is located, unless SSI recommends that the defective part of the Supply is returned to SSI for repair or re-placement.

10.9 SSI shall conduct the dismantling and re-installation of any re-paired or replaced parts, in case such dismantling or re-installation requires specialist knowledge. If such specialist knowledge is not required, SSI will have fulfilled its warranty obligation upon having delivered to the Purchaser a duly repaired or replaced part of the aggregate Supply.

10.10 If the Purchaser has given notice of defects, however, without having actually established any such defect for which SSI is responsible, SSI is entitled to compensation for any costs inflicted on SSI due to the misconceived notice of defects.

10.11 The Purchaser shall on its own account conduct any dismantling and remounting of any other equipment than the actual Supply, if this is required for re-pairing any defects in the Supply.

10.12 Unless otherwise agreed by the Parties, the Purchaser shall pay all additional costs, which SSI may have incurred in connection with the transportation, including the transport of materials and own employees, all as a consequence of the Supply being located elsewhere than at the Place of Delivery.

10.13 Defective parts having been replaced must be made available to SSI and be regarded as SSI's property.

10.14 If SSI fails in due time to fulfil its contractual obligations hereunder, the Purchaser is entitled to fix a final reasonable deadline for SSI to fulfil its obligations.

10.15 If SSI fails to fulfil its warranty obligations within such final fixed deadline, the Purchaser is entitled of its

own accord or through the agency of a third party, to carry out any work required for repairing the defects established, subject, however, to SSI's liability for the repair costs being equal to or below 10 % of the contract price.

10.16 When the Purchaser or a third party has duly performed any repair work required, SSI's re-imbursment of any costs incurred by the Purchaser in this connection is to be considered full and final settlement of SSI's liability for the defect concerned.

10.17 Any repair work performed by others than SSI will not be comprised by SSI's warranty or liability for defects.

10.18 If a defect has not been repaired or is not duly repairable, the Purchaser is entitled

a) either to a reduction of the Contract Price, equivalent to the reduced value of the Supply presumably caused by the defect, such reduction, however, never being in excess of 10% of the contract price;

b) or to terminate the Agreement at written notice, if a defect substantially prevents the Purchaser from using the Supply as presupposed. Further, the Purchaser is entitled to compensation for any loss suffered due to the termination of Agreement, however, only up to 10 % of the contract price, at a maximum.

10.19 SSI is not responsible for defects in the Supply caused by materials or design supplied or completed by the Purchaser.

10.20 SSI is solely responsible for defects occurring under normal operational conditions.

10.21 SSI is not liable for defects being due to incorrect or insufficient maintenance, incorrect installation performed by others, faulty repairs or changes made without SSI's prior written consent.

10.22 SSI's liability will further not comprise normal tear and wear.

10.23 Except in any of the situations referred to in this clause, SSI is not liable for any defects. Further, SSI is not liable for any indirect loss which may have been caused by an established defect, including any loss of earnings, interruption of production or any similar indirect loss.

10.24 This clause 10 contains an exhaustive list of the Purchaser's remedies for breach of warranty.

11. Risk and title

11.1 SSI shall obtain all permissions, licences, etc. required for exporting the Supply. The Purchaser shall obtain all permissions, licenses, etc. required for importing the Supply.

11.2 The risk of the Supply will pass to the Purchaser on delivery. In case of any commercial use prior to delivery, the risk will pass to the Purchaser on any such commercial use, and the Purchaser shall then have the full liability and risk of its own employees' acts and omissions, counting from the date of any such commercial use.

11.3 The title will pass to the Purchaser upon receipt of payment in full.

12. Force majeure

12.1 The following events will lead to exemption from liability, if preventing performance of the Agreement or rendering such performance unreasonably onerous:

Industrial conflicts or any other incident beyond the Parties' control, such as fire, war, military mobilization or call-up of similar extent, requisition, seizure, currency restrictions, riots or rebellions, lack of transport facilities, general scarcity of goods, seismic or volcanic activity, restrictions on power sources and lacks of or delays in supplies from sub suppliers caused by any of the incidents referred to in clause 12.

12.2 The incidents referred to in clause 12.1 will only give rise to exemption of liability, provided the influence thereof on the performance of the Agreement was unforeseeable on the entering of the Agreement.

12.3 The Party wishing to assert exemption from liability under clause 12.1 is responsible for notifying forthwith the other Party in writing about the occurrence and the end of the grounds for exempting liability.

12.4 Notwithstanding anything herein contained, either Party is entitled to terminate the Agreement by notifying the other Party in writing, if the performance of the Agreement is obstructed for more than 6 months due to an incident referred to in clause 12.1.

13. Product liability and liability for damage to third party or third party's property

13.1 SSI is only liable for property damage or personal injury caused by SSI's Supply, provided such damage or injury is demonstrably due to a defect or neglect on the part of SSI in respect of the Supply delivered by SSI, that SSI's Supply is proved to be defective, that the damage or injury is due to such defect, and finally that there is a causation between the damage or injury and the defect.

13.2 SSI shall be liable for and hold the Purchaser harmless from all costs and inconveniences of the following damages resulting from SSI's non-compliance with this Agreement:

- a) personal injury;
- b) damage to the delivery item covered by the contract caused by a defect of this delivery item;

c) property damage to items other than the delivery item covered by the contract;

d) loss of production, interruption of operation or other financial losses insofar as these damages are the direct consequence of such personal or property damage; and

e) financial losses through defects in the IT performance provided by SSI even if such damage has not been caused by this personal or property damage.

Liability for damage under (a), (c) and (d) is limited to a max. total of 10 million euros.

Liability for IT damage is limited to 2 million euros. Solely in the event that purely personal damage as per (a) exceeds the liability limit, the liability amount will be extended to the full amount of personal damage.

13.3 SSI has indemnity insurance with an amount covered of at least the agreed liability amounts.

13.4 Otherwise, the liability of SSI, its employees, subcontractors or other companies and persons participating in the fulfilment of the Agreement by order of SSI regardless of what the legal reason is and regardless of the location of the damages, is excluded unless the damage has been caused by gross negligence or intent on the part of SSI or its assistants.

13.5 SSI is liable neither for any damage to real property or goods, occurring while the Supply is in the Purchaser's possession, nor for any damage to products manufactured by the Purchaser and incorporating SSI's Supply.

Except otherwise stated in these General Terms and Conditions regarding the recovery of Liquidated Damages for delay, SSI shall not be liable to the Purchaser for any indirect, incidental, or consequential loss or damage, e.g. loss of production, loss of operation, loss of goods, loss of goodwill or reputation, loss of anticipated savings or profit, loss of or waste of management or labour, provided however, that this limitation is not applicable in case of gross negligence and/or intentional misconduct by SSI.

13.6 In case SSI is held liable beyond the abovementioned, or in case any such liability exceeds EUR 10,000,000, the Purchaser undertakes in that respect to hold SSI harmless. The Purchaser shall take out general liability insurance, including product liability insurance, covering any liability that may be alleged against the Purchaser.

13.7 The Purchaser accepts to be sued before the same court of law /- arbitration tribunal hearing the question of SSI's product liability.

13.8 Particular in respect of installation or work assignments to be physically performed elsewhere than at SSI's premises, the Purchaser shall compensate and indemnify SSI against any damage to SSI's property or any personal injury or death, which may happen to SSI's employees or SSI's contracting parties, provided any such damage, injury or death is not attributable to SSI's (including SSI's employees' or contracting parties') own negligence.

13.9 If SSI or its employees or contracting parties during or in connection with installation or work assignments to be physically performed elsewhere than at SSI's premises should cause any damage to the Purchaser's or third parties' property or any personal injury or death, SSI is responsible and obligated to pay compensation for any loss suffered, however, not in excess of EUR 10,000,000. The Purchaser shall indemnify SSI against any claim for compensation in excess of the aforementioned limit.

14. Confidentiality

14.1 The Parties shall respectively keep secret all matters pertaining to the entering of any agreement and the contractual basis and conditions thereof.

14.2 The Parties shall respectively ensure that any confidential information and knowledge deemed confidential by the other Party is applied only for the purpose of fulfilling the Parties' bilateral obligations under the Order Confirmation.

15. Notices

15.1 Any notice, approval, instruction or any other form of communication from any of the Parties must be given in writing, e.g. by email.

16. Termination

16.1 This Agreement is terminable by either Party subject to at least 4 weeks' prior written notice in case of the occurrence of one of the following events:

- a) If a Party is in material breach of the Agreement, provided any such material breach is not terminated within two weeks after having been complained of by the Party not in breach.
- b) If a Party becomes insolvent, enters into liquidation, is subject to insolvency or reconstruction proceedings, or the like, affecting or influencing the fulfilment of that Party's contractual obligations hereunder.

16.2 In case of a justified termination of the Agreement under this clause 16, the terminating Party is entitled to compensation for any calculated and proved direct loss suffered. Any such compensation is, however, in every

respect limited to the contract price. This remedy is only applicable in case the terminating Party's remedies are not specifically regulated elsewhere in these General Terms and Conditions.

17. Governing law and arbitration

17.1 Any dispute arising out of or in connection with this Agreement, including any dispute in respect of the existence or validity hereof, must be brought before the Ukraine Institute of Arbitration and settled under the said institute's rules of procedure in force at the time of instituting arbitration proceedings.

17.2 If so requested by either Party, the arbitration tribunal must consist of three members. The arbitration tribunal is to be seated in Kiev, Ukraine.

17.3 All disputes must be settled on the basis of Ukraine law, in Ukraine or English language.