

General Conditions of Purchase



Attachment no. Z01_P1009

1st issue, valid from 27.06.2023

1. GENERAL

- 1.1 These General Conditions of Purchase (the “Conditions”) are an integral part of the contract/purchase order (the “Contract”) between the purchasing FLSmidth entity (“FLSmidth”) and the supplier (the “Supplier”) and shall unless otherwise expressly agreed upon take precedence over any conditions of the Supplier. Headings of these Conditions shall not be taken into consideration when applying these Conditions.
- 1.2 Changes, instructions, notifications, agreements, authorisations, approvals, acknowledgements, waivers etc. shall be in writing. All communication in connection with the Contract shall be in English.
- 1.3 The FLSmidth Group as a signatory to the UN Global Compact, expects its suppliers and contractors to maintain and apply policies and procedures that ensure compliance with the law and which support generally acknowledged sustainable business practices, including, but not limited to:
 - 1.3.1 Respecting human rights as set out in the principles of the UN Declaration of Human Rights, including to refrain from any use of forced labour, and to respect ethnical, cultural, religious and political diversity;
 - 1.3.2 Respecting the UN Convention on the Rights of the Child with respect to any use of child labour;
 - 1.3.3 Respecting basic labor rights as stated by the International Labour Organization (ILO), including the freedom for employees to organize themselves and to collectively bargain employment terms;
 - 1.3.4 Avoiding conflicts of interest and to refrain from any use of corruption in their business practices, including bribery, extortion and kickbacks, and from participation in any kind of money laundering;
 - 1.3.5 Complying with anti-competition and export control regulations
 - 1.3.6 Conducting its business in full respect of FLSmidth’s and/or any third party’s intellectual property.

2. SCOPE OF SUPPLY

- 2.1 The scope and nature of the supply (the “Supply”) is described in the Contract. The Supplier shall provide the Supply to FLSmidth in accordance with the Contract.
- 2.2 The Supplier shall deliver any documentation forming part of the Supply in the medium set out in the Contract. If no specific medium is set out in the Contract, the supplier shall deliver 3 (three) hardcopies and 1 (one) digital copy of the documentation.

3. PRICE

- 3.1 The price stated in the Contract (the “Price”) shall constitute full payment for the Supply including costs, taxes, duties, fees and charges.

4. TERMS OF PAYMENT

- 4.1 FLSmidth shall pay each instalment of the Price net 90 days after receipt of valid invoice issued after completion of the corresponding milestones set out in the Contract. Payments do not constitute acceptance of the Supply nor does it relieve the Supplier of any obligations hereunder.
- 4.2 An invoice must in order to be valid state Contract no. and country of origin, comply with the Contract and relevant EU regulations on import/export numbering, and must be sent to the attention of the Account Payable Department.

5. TITLE TO AND CARE OF MATERIALS AND EQUIPMENT

- 5.1 Title to the Supply shall pass to FLSmidth as soon as the Supply is identified, marked or separated for the purpose of the Contract.
- 5.2 The Supplier shall until delivery at its cost insure and provide storage, care and protection against damage, loss and theft of the Supply.
- 5.3 Title to materials, drawings, specifications, documents and information furnished to the Supplier by or on behalf of FLSmidth before or after signing of the Contract shall remain with FLSmidth. The Supplier shall only use such for the purpose of execution of the Supply and shall upon request return such to FLSmidth and destroy all copies thereof.

6. ACCESS TO AND INSPECTION AND TEST OF THE SUPPLY

- 6.1 FLSmidth and third parties approved by FLSmidth shall have the right to inspect and test the Supply (including all materials, supplies and equipment for the Supply) at all reasonable times in order to ensure that the quality of the Supply is in accordance with the Contract (“Tests”). Tests or the absence thereof shall not relieve the Supplier of any of its obligations under the Contract.
- 6.2 Reasonable costs incurred by FLSmidth or third parties covered by clause 6.1 in connection with (i) postponement of a Test due to reasons attributable to the Supplier and (ii) repetition of failed Test(s) shall upon demand be paid by the Supplier.

7. TERMS OF DELIVERY

- 7.1 Terms of delivery shall be according to the latest version of INCOTERMS valid at the time of the Contract. Partial delivery or early delivery may only take place if approved or instructed by FLSmidth.
- 7.2 The Supplier shall no later than (a) 14 (fourteen) days prior to (i) the expected delivery date notify FLSmidth hereof, and (ii) submit copies of packing lists to FLSmidth, and (b) at the date of delivery submit (i) remaining shipping documentation and (ii) documentation which is to be delivered to FLSmidth electronically as per the Contract. The Supplier must inform FLSmidth and accept such special forwarding procedure as set out by FLSmidth, if the Supply includes dangerous goods and/or goods subject to export/import restrictions.
- 7.3 The Supplier shall at his own cost deliver such documents as and when reasonable required by FLSmidth for the purpose of checking of the Supply or parts thereof and if relevant, to effect customs clearance by FLSmidth.
- 7.4 All deliveries must be packed, protected and marked in accordance with FLSmidth’s shipping instructions. If seaworthy packing or packing for container transport is part of the Contract, the weight information from the Supplier must comply with the IMO, International Convention for the Safety of Life at Sea (SOLAS) regulations, chapter VI amendments of November 2014. The weight stated in the packing slip by the Supplier must be the Verified Gross Weight (VGM) in accordance with the SOLAS regulations, method 1 or 2. Supplier shall not estimate the weight in the packing slip for the packages and/or containers. If the SOLAS regulations are violated, Supplier can incur sanctions or fines, including having the shipment of the Supply delayed. Supplier shall indemnify FLSmidth for any fines and cost incurred by FLSmidth that are due to Supplier’s failure to comply with the SOLAS regulations.
- 7.5 Any electronic documentation shall be delivered as open documents or with necessary licenses, passwords, tools to open, access, save, print and copy both partially and in full.

8. ACCEPTANCE

- 8.1 The Supplier must deliver the Supply completed. Should FLSmidth choose to preliminarily accept the Supply in an incomplete state, a punch list of outstanding items shall be established. Clause 18 shall with necessary changes apply to the completion of items on such list.
- 8.2 Acceptance of the Supply will take place after commissioning/take-over by the ultimate purchaser of the Supply. Any acceptance etc. according to clause 6 and clause 8 shall not relieve the Supplier of any responsibility or obligation under the Contract.

9. ASSIGNMENT, TRANSFER AND SUBCONTRACTING

- 9.1 The Supplier is not entitled to assign, sublet, transfer or subcontract any or all of his rights or obligations under the Contract.
- 9.2 The Supplier has been duly informed that FLSmidth and its parent company may merge. The Supplier accepts that FLSmidth may without any further consent novate this Agreement, including all its rights and obligations, to the merged company by written notice to the Supplier. Such notice must (1) state the date when the merger takes effect and (2) state that the merged company subrogates into all rights and obligations of the original contract party.

10. HEALTH AND SAFETY & SUPPLIER CODE OF CONDUCT

- 10.1 The Supplier is responsible for the safe execution of the Supply in compliance with all local regulations, and shall take all necessary safety measures, including safe working conditions and training in safe working methods, appropriate personal safety equipment, and other precautions to protect all persons and property against injury or damage.

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- 10.2 The Supplier must ensure that its employees are provided with access to normal health services in its country, and that all mandatory social insurances for the employees are being complied with.
- 10.3 The FLSmidth Group, as a signatory to the UN Global Compact, expects its suppliers and contractors to maintain and apply policies and procedures that ensure compliance with the law, and which support generally acknowledged responsible business conduct.

The Supplier agrees to conform to the FLSmidth Supplier Code of Conduct disclosed on www.flsmidth.com/supplychain. The Supplier warrants that the Supplier and all its employees involved in the delivery of Goods and performance of the Service have read and understood the FLSmidth Supplier Code of Conduct. Upon request, the Supplier shall provide information on its level of compliance with the FLSmidth Supplier Code of Conduct enabling the FLSmidth to assess whether the Supplier complies with the FLSmidth Supplier Code of Conduct, or not

11. STANDARDS AND SPECIFICATIONS

- 11.1 The Supply must be of good, professional and proven quality in all respects, including, but not limited to, workmanship, materials and methods used. The Supply must adhere to all relevant standards, codes and regulations at the place where the Supply will be delivered to the end-customer by FLSmidth (the "Standards") and to specifications, instructions, procedures and similar supplied by FLSmidth (the "Specifications"). Deviations from the above shall not be accepted without the prior written consent of FLSmidth. To the extent that Specifications are not supplied by FLSmidth, the Supplier must comply with generally acknowledged professional specifications at the time of execution.
- 11.2 The Standards shall prevail in case of any discrepancy or inconsistency with the Specifications. However, the Supplier shall promptly inform FLSmidth of such discrepancy or inconsistency and comply with FLSmidth's instructions, if any.
- 11.3 The Supplier shall promptly and in detail notify FLSmidth of any changes in the Standards implemented after the Contract date, if such changes affect the Supply. FLSmidth shall then decide, if the Contract and/or the Supply shall be amended as per clause 12.
- 11.4 The term "Standards" shall without limiting effect for deliveries to EU/EFTA countries include relevant EU directives including EU directives providing for CE marking substantiated by appropriate declaration of conformity and restriction on use/content of hazardous substances. For deliveries to non-EU/EFTA countries the above shall apply with respect to the technical aspects of such EU directives, to the extent that they do not contradict the relevant standards, codes and regulations at the place where the Supply will be delivered to the end-customer by FLSmidth

12. CHANGES

- 12.1 FLSmidth may request the Supplier to alter, omit, add to, or otherwise change the Supply (a "Change"). The Supplier must within 7 (seven) days of receipt of such request notify FLSmidth of any costs/savings and/or the extension/reduction of time associated with the Change or be deemed to have waived right to increase and time extension. The Supplier shall not effect a Change until FLSmidth subsequently has authorised the Change and any cost/savings and/or adjustment to time associated herewith.

13. INTELLECTUAL PROPERTY RIGHTS & LICENSES

- 13.1 Except for transfers and licenses to FLSmidth 1) set out in clause 13.2 and 13.3, and/or 2) specifically set out in the Contract, each party shall retain its own intellectual property rights, and the Contract shall not in any way, directly or indirectly, wholly or partly, transfer any intellectual property rights between the parties.
- 13.2 The Supplier grants FLSmidth a perpetual, royalty free, non-exclusive, sublicensable global license to all intellectual property rights associated with the Supply (including, without limitation, software) necessary for the sale, installation, commissioning, operation, upgrade and maintenance of the Supply as well as for FLSmidth to integrate or incorporate the Supply into its own range of products and/or services, including, without limitation, for FLSmidth to use, reproduce, insert and/or extract any documentation included in the Supply in electronic and non-electronic documentation compiled or created by FLSmidth.
- 13.3 All new creations, inventions, works, compilations, processes, know-how or other proprietary information or trade secrets created in the course of the execution or performance of the Contract (whether partially or in full) and the intellectual property rights associated therewith, shall be solely owned by FLSmidth. Supplier assigns all of its rights, title and interest thereto to

FLSmidth and shall take such actions reasonably required by FLSmidth to assist FLSmidth in protecting such rights.

- 13.4 The Supplier shall indemnify and hold FLSmidth harmless from and against all claims, proceedings, demands, costs and expenses arising from or incurred by reason of infringement or alleged infringement by the Supply of any patent or other intellectual property right belonging to any other than the Supplier, except if and to the extent such infringement results from strict compliance with the Specifications. FLSmidth shall not, unless and until the Supplier shall have failed to take over the conduct of the negotiations or litigations and/or immediately to eliminate such infringement, make any admission, which might be prejudicial hereto. The Supplier shall upon request replace the part of the Supply subject to the (alleged) infringement with a similar part with the same characteristics, which does not infringe any intellectual property right.

14. SETOFF

- 14.1 FLSmidth is entitled to set off any amount owed by the Supplier to FLSmidth against amounts owed by FLSmidth to the Supplier.

15. SUSPENSION

- 15.1 The Supplier shall upon and in accordance with FLSmidth's instruction suspend the performance of the Contract. The Supplier shall then take all reasonable steps to properly protect the undelivered part of the Supply and work in progress, materials, supplies and equipment acquired by the Supplier for the execution of the Supply, and make every effort to limit the consequence and cost of the suspension. The Supplier's reasonable direct costs incurred because of the suspension according to this clause 15.1 exceeding 3 months shall be reimbursed by FLSmidth.

16. TERMINATION FOR CONVENIENCE

- 16.1 FLSmidth may at any time terminate the Contract in whole or in part upon notification to the Supplier. FLSmidth shall, to the extent not already paid, then against delivery pay to the Supplier the value of the Supply completed prior to such termination. If FLSmidth within thirty (30) days from the said notice has informed the Supplier that FLSmidth does not want to take over the or part of the undelivered Completed part of the Supply, then the Supplier shall use best efforts in using such for its other customers and not charge FLSmidth to the extent the Supplier has or should have so used such part(s). Partial termination shall not relieve either party of its obligations with respect to the part of the Supply delivered prior to the termination.

17. TERMINATION FOR DEFAULT

- 17.1 FLSmidth may by written notice to the Supplier terminate the Contract in whole or in part, if a) the Supplier 1) is subject to any kind of insolvency proceeding or suspends payments, 2) is struck by death of key personnel, 3) shows reasonable evidence of inability to deliver the Supply as specified, 4) fails to observe the conditions of the Contract, or 5) is unable to perform its obligations under the Contract due to Force Majeure (as defined below) for a total period of at least 4 weeks and/or b) any cap on liquidated damages is reached. FLSmidth shall be entitled, at the Supplier's sole expense, to acquire the Supply related to the terminated part of the Contract from any available source as replacement.

18. WARRANTY

- 18.1 The Supplier warrants that the Supply will be 1) new and unused, 2) will conform in every respect with the Contract, including but not limited to in relation to design, engineering, materials, workmanship, service, Standards and Specifications, and 3) be free from any other errors or defects. Normal wear and tear is excluded.
- 18.2 The warranty period shall expire twenty-four (24) months from date of commissioning of the Supply, or thirty-six (36) months from the date of the last delivery of the Supply, whatever occurs first (the "Warranty Period").
- 18.3 This clause 18.3 shall apply in case the Supply fails to conform to clause 18.1 at any time before the expiry of the Warranty Period (a "Defect"). FLSmidth shall as soon as reasonable possible after becoming aware of such Defect, however in no event later than 30 days after the expiry of the warranty period, forward a written complaint to the Supplier. The Supplier shall immediately, however never later than fourteen (14) days after receiving such complaint, at FLSmidth's option and at no cost to FLSmidth, commence repairing or replacing the said Defective part of the Supply. Such repair or replacement must take place at such place where the said part of the Supply is located or at the place as reasonable instructed by FLSmidth and must be completed as soon as practically possible. The Supplier must on an ongoing basis inform FLSmidth on status and planned actions.

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- 18.4 If the Supplier fails to comply with clause 18.3 or if urgent repairs is required due to risk of damage to the Supply, goods, places or persons, FLSmidth may by written notice fix a final time for commencement and/or completion (as the case may be). If the Supplier fails to comply with such notice, FLSmidth may then undertake the necessary remedial works at the risk and cost of the Supplier, reduction of the Price in proportion to the reduced value of the Supply or to terminate the Contract in accordance with clause 17.1.
- 18.5 The Supplier's obligations under this clause 18 shall without limitation include to bear all remedial costs including dismantling, reinstallation, transportation, commissioning, supervision and related costs.
- 18.6 Any part of the Supply repaired or replaced under the Supplier's warranty shall be covered by a similar warranty for an additional period of twenty-four (24) months from the latest date of (i) when the replacement or repair performed was finally accepted by FLSmidth and taken over by the then owner of the Supply or (ii) commissioning of such repaired or replaced equipment. Otherwise clause 18 shall apply, to such extended warranty period.

19. LIABILITY, INDEMNITY AND LIMITATION OF LIABILITY

- 19.1 The Supplier shall defend, protect, indemnify and hold harmless FLSmidth and its personnel from and against all claims and expenses whatsoever in respect of injury to or death of any employee of FLSmidth, the Supplier and third parties or loss of or damage to property belonging to any of the before-mentioned, if caused by product liability, defects, remedial work and/or the Supplier incl. any sub-supplier.
- 19.2 Neither party shall outside clause 13 be liable for loss of profit, contracts, business or use or for any indirect, incidental or consequential loss or damage.

20. DELAYS

- 20.1 The Supply must be delivered at the agreed time or within the agreed period. The Supplier shall in case of anticipated or actual delay immediately inform FLSmidth, stating the cause and expected extent of the delay. The Supplier must immediately take all steps to the furthest extent possible to eliminate or reduce the delay and inform FLSmidth of such steps. Late delivery of the Supply or parts thereof shall entitle FLSmidth without prejudice to other rights and remedies of FLSmidth to liquidated damages of 1 (one) per cent of the Price per commenced week, claim losses in excess and/or to terminate according to clause 17. The total liquidated damages for delays shall not exceed 10 (ten) per cent of the Price.

21. FORCE MAJEURE

- 21.1 Force majeure ("Force Majeure") shall mean events or causes beyond a party's reasonable control, which were not foreseeable at the time of execution of the Contract, making such party's performance impossible and which cannot be reasonably overcome by such party.
- 21.2 Neither FLSmidth nor the Supplier shall be considered in default or in contractual breach to the extent that a party's (excluding a party's subcontractor/-supplier etc.) performance of obligations is prevented by Force Majeure which arises within the period covered by the Contract, provided that the party invoking Force Majeure (i) promptly notifies the other party of the cause, the estimated duration and the impact on the overall performance of obligations under the Contract, and (ii) makes every effort to avoid and limit the consequences of the Force Majeure. Such notification shall be accompanied by proper documentation for the events or causes considered as Force Majeure.

22. CONFIDENTIALITY

- 22.1 The Supplier shall observe confidentiality concerning the Contract and FLSmidth and may not publish or in any other way exploit any material or other information relating hereto. FLSmidth shall have the sole right to use the Contract in respect of advertising and public relations.

23. SURVIVAL OF TERMS

- 23.1 Clauses 5, 13, 14 18, 19, 22, 23 and 24 shall survive the termination or expiry of the Contract.

24. GOVERNING LAW AND DISPUTE RESOLUTION

- 24.1 The Contract shall be governed by and construed in accordance with the substantive laws of the country of incorporation of FLSmidth (excl. CISG and renvoi).
- 24.2 Any dispute or claim arising out of or in connection with the Contract, or the breach, termination or invalidity thereof (a "Dispute") shall be settled by

arbitration in accordance with the Rules of Arbitration of the International Chamber of Commerce (ICC) by one or more arbitrators appointed in accordance with the said Rules. In case the Supplier is subject to any insolvency proceeding or suspends its payments, or if the monetary value of the dispute or claim does not exceed an amount equal to EURO 100,000, then the Dispute shall in FLSmidth's sole discretion be conducted as a simplified arbitration procedure or by litigation in the local courts of the country of incorporation of FLSmidth. The language of the arbitration shall be English. The place of arbitration shall be in the country of incorporation of FLSmidth. The proceedings and awards shall, save as may be required for defence and enforcement, be confidential and may not be published.