

Attachment no. Z01\_P1009  
1th issue, valid from 20.04.2018.

## I. General Conditions of Purchase

### 1. GENERAL

- 1.1 These General Conditions of Purchase (the “Conditions”) are an integral part of the Contract/Purchase Order (the “Purchase Order”) between FLSmidth MAAG Gear Sp. z o.o. (“MAAG”) 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.

**Note: Detailed conditions specified directly in the Purchase Order shall take precedence over General Conditions of Purchase.**

- 1.2 Changes, instructions, notifications, agreements, authorisations, approvals, acknowledgements, waivers etc. shall be in writing. All communication in connection with the Purchase Order – for Suppliers from outside of Poland - shall be in English.
- 1.3 „MAAG”, being part of 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 basic 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 labour 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 Purchase Order and adherent attachments. The Supplier shall provide the Supply to MAAG in accordance with the Purchase.

### 3. PRICE

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

### 4. TERMS OF PAYMENT

- 4.1 MAAG shall effect payment within net 90 days after receipt of valid invoice issued after completion of the corresponding milestones set out in the Purchase Order. Such payment does 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 Purchase Order no. and country of origin, comply with the Purchase Order and relevant EU regulations on import/export numbering, and must be sent to the attention of the Procurement Department.

**5. TITLE TO AND CARE OF MATERIALS AND EQUIPMENT**

- 5.1 Title to the Supply shall pass to MAAG as soon as the Supply is identified, marked or separated for the purpose of the Purchase Order.
- 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 MAAG before or after signing of the Purchase Order shall remain with MAAG. The Supplier shall only use such for the purpose of execution of the Supply and shall upon request return such to MAAG.

**6. ACCESS TO AND INSPECTION AND TEST OF THE SUPPLY**

- 6.1 MAAG and third parties as informed by MAAG or required by laws, ordinances or regulations shall have the right to inspect and test the Supply (including all materials, supplies and equipment for the Supply) at all reasonable times. MAAG is entitled at its own cost to perform further testing in order to ensure that the quality of the Supply is acceptable.

**Note: Detailed conditions of inspection to be performed by MAAG are presented in Attachment no. Z02\_P1009 - General Conditions of Order Execution, clause 7.**

Inspection, test and further test ("Tests") or non participation shall not relieve the Supplier of any of its obligations under the Purchase Order.

- 6.2 Reasonable costs incurred by MAAG and 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 Purchase Order. Partial delivery may only take place, if approved or instructed by MAAG.
- 7.2 The Supplier shall no later than (a) 14 (fourteen) days prior to (i) the expected delivery date notify MAAG hereof, and (ii) actual delivery submit copies of packing lists to MAAG, and (b) at the date of delivery submit remaining shipping documentation as per the Purchase Order. The Supplier must inform MAAG and accept a special forwarding procedure as well as the procedure concerning trading in commodities of strategic importance within the ICS (Internal Control System) being subject to Regulation (EC) No 428/2009, changed by 1832/2014, 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 MAAG for the purpose of checking of the deliveries and if relevant, to effect customs clearance by MAAG.
- 7.4 All deliveries must be packed, protected and marked in accordance with MAAG's shipping instructions. If seaworthy packing or packing for container transport is part of the Purchase Order, 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 MAAG for any fines and cost incurred by MAAG that are due to Supplier's failure to comply with the SOLAS regulations.

**Note: Detailed shipping requirements are specified in Attachment no. Z03\_P1009 - Basic transportation conditions.**

**8. ACCEPTANCE**

- 8.1 The Supplier must deliver the Supply completed. Should MAAG choose to 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 during commissioning/takeover 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 Purchase Order.

**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 Purchase Order, except for procurement of standard commodities.
- 9.2 The Supplier accepts that MAAG may without any further consent transfer this Agreement, including all its rights and obligations, to an entity arising from a merger of FLSmidth's companies by written notice to the Supplier.

**10. HEALTH & SAFETY AND ENVIRONMENTAL PROTECTION**

- 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 ensure environmental protection as well as protect all persons and property against injury or damage. The Supplier shall take all measures to limit the negative impact on the natural environment connected with the execution of the order.

**Note: Detailed requirements concerning environmental protection as well as health and safety are specified in Attachment no. Z02\_P1009 - General Conditions of Order Execution, clause 9 and 10.**

- 10.2 The Supplier must ensure that its employees are provided with access to normal health services in the country, and that all mandatory social insurances for the employees are being complied with.

**11. STANDARDS AND SPECIFICATIONS**

- 11.1 The Supply must comply with sound and proven quality in all respects. The Supply must adhere to all relevant standards, codes and regulations (the "Standards") and to specifications, instructions, procedures etc. specified by MAAG (the "Specifications"), and deviations from the above shall not be accepted without the prior written consent of MAAG. Outside Standards and Specifications, workmanship, materials and methods used must comply with acknowledged professional standards at the time of execution.
- 11.2 The Standards shall prevail in case of any discrepancy or inconsistency with Specifications. However, the Supplier shall promptly inform MAAG of such discrepancy or inconsistency and comply with MAAG's reply, if any.
- 11.3 The Supplier shall promptly and in detail notify MAAG of any changes in the Standards implemented after the Purchase Order date, if such changes affect the Supply. MAAG shall then decide, if the Purchase Order 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.

**12. CHANGES**

- 12.1 MAAG may request the Supplier to alter, omit, add to, or otherwise change (a "Change") the Supply. The Supplier must within 7 (seven) days of receipt of such request inform MAAG in writing of any costs/savings and/or the extension/reduction of time associated with the Change, or be deemed to have waived right to price increase and time extension. The Supplier shall not effect a Change in accordance with the above until MAAG in writing has authorised the Change and, subject to the previous sentence, determined any cost/savings and/or adjustment to time associated herewith.
- 12.2 The Supplier must within 7 (seven) days of receipt of any instruction, interpretation, comment or decision from MAAG or other, which in the Supplier's opinion is a Change, notify MAAG in writing hereof as well as the associated costs/savings and/or the extension/reduction of time, or be deemed to have waived right to price increase and time extension. MAAG shall without delay thereafter correct or confirm the Change. The Supplier shall not effect a Change until MAAG in writing has authorised the Change and has determined any cost/savings and/or adjustment to time associated herewith

**13. INTELLECTUAL PROPERTY RIGHTS & SUBLICENSE**

- 13.1 The Supplier shall deliver documentation in the medium as set out in the Purchase Order. Any documentation to be delivered to MAAG shall be deemed to include a license to reproduce and to insert such or extracts thereof in electronic and non-electronic documentation, which shall follow the Supply. Any electronic documentation shall be delivered as open document or with necessary license, passwords, tools to open, access, save, print, copy in full or partial and to make extract.

13.2 MAAG has the right to sublicense intellectual property right (incl. software) or part hereof received from the Supplier for the purpose of installation, commissioning, operation and maintenance of the Supply.

13.3 The Supplier shall indemnify and hold MAAG 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 and/or MAAG's design. MAAG 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 at least the same characteristics, which does not infringe intellectual property right.

**14. SETOFF**

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

**15. SUSPENSION**

15.1 The Supplier shall upon and in accordance with MAAG's instruction suspend the performance of the Purchase Order. 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 costs incurred as a result of the suspension according to clause 15.1 shall be reimbursed by MAAG.

**16. TERMINATION FOR CONVENIENCE**

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

**17. TERMINATION FOR DEFAULT**

17.1 MAAG may by written notice to the Supplier terminate the Purchase Order in whole or in part, if the Supplier is subject to any kind of insolvency proceeding, suspends payment, is struck by loss of key personnel, shows reasonable evidence of inability to deliver the Supply as specified and/or fails to observe the conditions of the Purchase Order, and/or if any cap on liquidated damages is reached. MAAG shall be entitled, at the Supplier's sole expense, to acquire the Supply related to the terminated part of the Purchase Order from any available source as replacement.

**18. WARRANTY**

18.1 The Supplier warrants that the Supply will be new, in relation to design, engineering, materials, workmanship and service conform in every respect with the Purchase Order including clause 11 above, and be free from any error or defect. 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.

18.3 This clause 18.3 shall apply if a defect or deficiency is ascertained in the Supply before the expiry of the warranty period or if in any other respect the warranty is not fulfilled (a "Defect"). MAAG 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 MAAG's option and at no cost to MAAG 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 MAAG and must be completed as soon as practically possible. The Supplier must on an ongoing basis inform MAAG on status and planned actions.

18.4 If the Supplier fails to comply with clause 18.3 or if urgent repairs is required due to risk of further damage to the Supply or other, safety or injury to person, MAAG 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, MAAG 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 Purchase Order in full or partially.

18.5 The Supplier's obligations under this clause 18 shall without limitation include 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 MAAG and taken over by the then owner of the Supply or (ii) commissioning of such repaired or replaced equipment. Otherwise clause 18 shall apply for any extended warranty period.

## **19. LIABILITY, INDEMNITY AND LIMITATION OF LIABILITY**

19.1 The Supplier shall defend, protect, indemnify and hold harmless MAAG and its personnel from and against all claims and expenses whatsoever in respect of injury to or death of any employee of MAAG, 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, the Supplier incl. any subsupplier.

19.2 The Supplier must possess civil liability insurance whose value corresponds to the value of the order.

19.3 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 MAAG in writing, 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 MAAG in writing of such steps. Late delivery of the Supply or parts thereof shall entitle MAAG, without prejudice to other rights and remedies of MAAG to liquidated damages, to claim losses in excess and/or to terminate according to clause 17.

20.2 Liquidated damages for delay consist of two parts: damages for delay and damages for unpredictability.

20.2.1. Damages for delay: In case of a delay in the date confirmed by the Supplier, the damages are calculated in the following manner:

in the first week - 0.25% for each calendar day of delay

in the second week - 0,5% for each calendar day of delay

in the third week - 1% for each calendar day of delay

in the fourth and further week - 2% for each calendar day of delay

The above include delays resulting from quality issues.

20.2.2. Damages for unpredictability: If the Supplier informs of a delay after the expiry of the execution contractual term - the damages amount to 10% of the contract value.

20.3 If the Supplier, during the order execution, informs of a new delivery date and such new date does not have any impact on MAAG's product execution, then the damages shall not be reckoned on condition that the proposed date is redeemed.

## **21. FORCE MAJEURE**

21.1 Neither MAAG 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 Purchase Order, 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 Purchase Order, and (ii) makes every effort to avoid or limit the consequences of the force majeure. Such notification shall be accompanied by proper documentation for the incidents considered as force majeure.

## **22. CONFIDENTIALITY**

22.1 The Supplier shall observe secrecy concerning the Purchase Order and MAAG and may not publish or in any other way exploit any material relating hereto. MAAG shall have the sole right to use the Supply in respect of advertising and public relations.

## **23. GOVERNING LAW AND DISPUTE RESOLUTION**

23.1 The Purchase Order shall be governed by and construed in accordance with the substantive laws of Denmark (excl. CISG and renvoi).

23.2 Any dispute or claim arising out of or in connection with the Purchase Order, or the breach, termination or invalidity thereof shall be settled:

- in case of deliveries between Polish entities, by Polish courts of general jurisdiction, provided that the case is examined by the court having jurisdiction over MAAG's registered office;
- in case of deliveries executed by foreign entities, by arbitration in accordance with the "Rules of Procedure of the Danish Institute of Arbitration (Danish Arbitration)". The tribunal shall be composed of three arbitrators appointed by the Institute. 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 arbitral proceeding shall on FLSmidth's decision be conducted as a simplified arbitration procedure. The chairman or the single arbitrator must be domiciled in Denmark. The language of the arbitration shall be English. The place of arbitration shall be Copenhagen, Denmark. The proceedings and awards shall, save as may be required for defence and enforcement, be confidential.