

SKF Purchase Conditions for Equipment

valid from 2008-05-01

These conditions of purchase ("Purchase Conditions") shall apply in full unless otherwise agreed in writing. Any other conditions of the Contractor shall not be applicable, even if they were not explicitly rejected in any individual case. These Purchase Conditions contain certain amendments and additions to Orgalime SE 01 General conditions for the supply and erection of mechanical, electrical and associated electronic products ("Orgalime SE 01").

In all cases of inconsistency between these Purchase Conditions and Orgalime SE 01, these Purchase Conditions shall prevail.

The headings and numbering of clauses used below correspond wherever applicable to the headings and numbering of clauses of Orgalime SE 01.

Amendments of and additions to Orgalime SE 01

Definitions – Clause 2

The following definitions are added to Clause 2

"Contractor" shall mean any company supplying Plants or Works to Purchaser under these Purchase Conditions.

"Purchaser" shall mean any company within the SKF Group of companies purchasing Plants or Works under these Purchase Conditions.

"Representative" shall mean a person appointed by either party and who is authorized to decide and agree on amendments to the Contract including changes in the Works, such authorization to apply until date for completion.

"Technical Documents" shall mean drawings, specifications, calculations, computer software and other technical documents of any kind, whether completed or not, as well as any information, design and inventions described therein, and any intellectual property rights with respect thereto.

"Quality, Ethical and Environmental, Health & Safety requirements" shall have the meaning as defined in the SKF Quality Standards for Suppliers. The SKF Quality Standards for Suppliers form an integral part of the Contract, which implies adoption of the principles of the SKF Code of Conduct and of SKF's Environmental, Health & Safety (EHS) policy (www.skf.com) and that any Sub-Contractor approved by SKF is legally bound to a similar compliance obligation.

Drawings and Descriptions – Clause 4

The following paragraphs are added to Clause 4:

a. Notwithstanding the foregoing, the Purchaser shall, without any compensation of any kind further than the one stipulated in the Contract, have a perpetual worldwide right to freely use and authorize others to use in its own business (including subcontracting) Technical Documents prepared by the Contractor in connection with the Contract. Upon request by the Purchaser, the Contractor shall deliver free of charge such Technical Documents to the Purchaser.

b. All Technical Documents which are the results of joint efforts of the parties in connection with the Contract shall be the joint property of the Contractor and the Purchaser. Both parties shall have a right to use and authorize others to use such Technical Documents in its own internal business (including sub-contracting). Any licensing to third parties or applications for patents or other registerable rights shall be made by the parties jointly.

c. Clauses 4 a.-4 b. shall not imply any limitations of a party's exclusive ownership to any part of a Technical Document which is developed apart from the Contract by that party.

Drawings and Descriptions – Clause 5

The last sentence of Clause 5 is deleted and replaced by the following:

Contractor's obligation to provide free of charge information and drawings shall include the providing of all information regarding the full business name and address of the party supplying spare parts, regarding spare part codes and any

other designation numbers, required for maintenance purposes after taking-over of the Works.

Tests before shipment - Clause 6

The first sentence of Clause 6 is deleted and replaced by the following:

The Purchaser shall be entitled to have all parts of the Plant tested before shipment. Unless otherwise agreed, such tests shall be carried out at the place of manufacture during normal working hours.

The following paragraph is added:

The Purchaser is entitled to have all parts of the Plant, both during manufacture and when completed, inspected and checked. Unless otherwise agreed, such inspections and checking shall be carried out during normal working hours. If as a result of such inspections and checking, the Purchaser shall be of the opinion that any material or parts are defective or not in accordance with the Contract, he shall state in writing his opinion and the reasons therefore.

Tests before shipment - Clause 9

The following sentence is added to Clause 9:

In the event the first test before shipment has failed, any costs for traveling and living expenses for Purchaser's representatives and any costs for measuring and test equipment in relation to any new test before shipment shall be on the account of the Contractor.

Preparatory Work and Working Conditions – Clause 13

Clause 13 is deleted and replaced by the following:

If an error or omission in the drawings or information referred to in Clause 10 is discovered by the Contractor or notified to him by the Purchaser, all the additional cost in relation thereto shall be borne by the Contractor.

Preparatory Work and Working Conditions – Clause 14

The last sentence of sub-clause d) of Clause 14 is deleted and replaced by the following:

Unless the Contractor's requirements concerning such equipment, tools, machinery, materials, supplies, instruments etc. are expressly set out in the Contract, the Contractor may not make any claim whatsoever against the Purchaser for any failure by the Purchaser in providing such items.

The following sentence is added at the end of sub-clause e) of Clause 14:

Unless the Contractor's requirements concerning such facilities are expressly set out in the Contract, the Contractor may not make any claim whatsoever against the Purchaser for any failure by the Purchaser in providing such facilities.

Sub-clause f) of Clause 14 is deleted and replaced by the following:

The access routes to the Site, (or drawings of the access routes, if only drawings of such routes are available), shall be inspected by the Contractor, before entering into the Contract. Unless the Contractor's requirements concerning changes of the access routes are expressly set out in the Contract, the Contractor shall be deemed to have accepted the access routes and may not make any claim whatsoever against the Purchaser with respect to such routes.

Local laws and regulations - Clause 18

The last sentence of Clause 18 is deleted and replaced by the following:

The Purchaser shall, at the request of the Contractor, assist the Contractor to obtain the necessary information concerning such laws, regulations and rules in writing.

Variations – Clause 24

Clause 24 is deleted.

Variations – Clause 25

The following two sentences are added:

Should the parties disagree on the terms and conditions for a change, the Purchaser shall have the right either to carry out the change himself or to use another contractor for carrying out the change, regardless of whether the change is suggested by the Purchaser or the Contractor. The Contractor shall, however, remain bound by the terms and conditions of the Contract except as regards those changes as are carried out by another contractor or by the Purchaser.

Passing of risk – Clause 26

Clause 26 is deleted and replaced by the following:

The risk of loss of or damage to the Plant shall pass to the Purchaser in accordance with the "Incoterms" in force at the date of formation of the Contract. If no delivery term is specifically agreed, the delivery shall be "DDP" at the location of the Plant. The risk of loss of or damage to the Works will pass over to Purchaser after Purchaser and Contractor have confirmed the taking-over In Writing including the completion by Contractor of education of relevant personnel of Purchaser.

Taking-over Tests – Clause 27

The following sentences are added:

The Contractor is responsible for demonstrating that the Works comply with the Contract. During the taking-over test, the Contractor shall notify In Writing if and to what extent the Works comply with the agreed function, performance and operating capabilities and other requirements of the Contract. The Purchaser shall have the right to postpone the date for the taking-over test, provided, however, that such postponement shall not exceed a two months period. In the event the taking-over test has failed, any costs for traveling and living expenses for Purchaser's representatives and any costs for measuring and test equipment in relation to any new test shall be on the account of the Contractor.

Taking-over – Clause 34

Clause 34 is deleted and replaced by the following:

If not otherwise stated in the Contract, the Purchaser is entitled to use the Works or any part thereof before taking-over if the taking-over is delayed. The Purchaser is further entitled to start a limited production by using the Works before taking-over. The Contractor shall inform the Purchaser accordingly four weeks, at the latest, prior to the agreed upon date of taking-over. This use of the Works prior to taking-over, shall not relieve the Contractor of his duty to carry out taking-over tests. Clause 63 shall apply, mutatis mutandis.

Completion. Contractor's Delay – Clause 36

The following sentence is added:

... and after the Contractor has cleared away and removed from the Site all his equipment, surplus material, wreckage and rubbish and left the Site and the Works in a clean and safe condition to the satisfaction of the Purchaser.

Completion. Contractor's Delay – Clause 38

The following paragraph is added:

The Contractor shall, in addition to its other obligations, have to pay for any extra freight charges and all other costs relating to such extra freights incurred in ensuring that delayed deliveries reach Purchaser on time or with as little delay as possible.

Payment – Clause 43

Clause 43 is deleted.

Payment – Clause 45

The following paragraph is added:

The Contractor shall pay a corresponding compensation to the Purchaser and other contractors employed by the Purchaser for similar costs of the kind described above incurred by the Purchaser or such other contractors due to interruptions or disturbances caused by the Contractor or any of his subcontractors.

Payment – Clause 46

The following paragraph is added:

Notwithstanding the foregoing, if the Purchaser is required under the laws or regulations of the Contractor's country to deduct or withhold any part of the payment to the Contractor under the Contract, the Contractor shall be deemed to have received the full amount of the payment, provided that the deduction or withholding does not exceed the minimum amount legally required and that the Purchaser furnishes to the Contractor an official receipt by the relevant authority or other entity involved for all amounts deducted or withheld as aforesaid.

Payment – Clause 47

The following paragraph is added:

Payment under the payment schedule is conditional upon the Works proceeding in accordance with the agreed time schedule. If there is any delay in relation to the time schedule, the Purchaser shall have the right to postpone affected partial payments by a time period equal to the delay, provided, however, that such delay is not the responsibility of the Purchaser. Part payments are not due until the agreed requirements for the actual part payment as well as for any prior part payment have been fulfilled. Payment does not imply any approval of the Works or any part thereof.

Liability for Damage To Property Before Taking-Over – Clause 50

Clause 50 is deleted and replaced by the following:

The Contractor shall be liable for damage to the Purchaser's property and/or any third party's property, occurring before taking-over of the Works, only if it is proved that such damage was caused by the Contractor or by anyone for whom he is responsible in connection with the performance of the Contract. The Contractor shall however under no circumstances be liable for loss of production, loss of profit or any other consequential economic loss.

Liability For Defects – Clause 52

Clause 52 is deleted and replaced by the following:

The Contractor's liability is, unless otherwise separately agreed in writing, limited to defects in the Works which appear within a period of two years from taking-over.

Liability For Defects – Clause 53

The first sentence of Clause 53 is deleted and replaced by the following:

When a defect in a part of the Works has been remedied, the Contractor shall be liable for defects in the repaired or replaced part under the same terms and conditions as those applicable to the original Works for a period of two years.

Liability For Defects – Clause 55

The fourth paragraph of Clause 55 is deleted and replaced by the following:

The Contractor is obliged, if requested by the Purchaser, to dismantle the Works to the extent necessary and to reassemble the Works.

Liability For Defects – Clause 57

Clause 57 is deleted and replaced by the following:

The Contractor shall, at its own expense, arrange for any dismantling and reassembly of equipment other than the Works, to the extent Purchaser makes such a request and that it is necessary to remedy the defect.

Liability For Defects – Clause 64

Clause 64 is deleted and replaced by the following:
Notwithstanding the provisions of Clauses 51-65 the Contractor shall not be liable for defects in any part of the Works for more than three years from taking-over.

Allocation Of Liability For Damage Caused By The Works – Clause 66

Clause 66 is deleted and replaced by the following:

a. Notwithstanding any provision to the contrary in the Contract or elsewhere, the Contractor shall, during the period similarly as defined in Clause 52, indemnify and hold harmless the Purchaser from and against any and all claims, suits, actions, damages, costs and expenses, including attorney's fees, which may be made or brought against the Purchaser or which the Purchaser may suffer as a result of bodily injury (including death) or property damage caused by a defect in design, material or workmanship of the Works. The Purchaser shall promptly notify the Contractor of any such claim, suit or action and shall not settle any such claim, suit or action without the Contractor's prior consent In Writing.

b. The Contractor warrants that the Works are being carried out with the permission of holders of patents and other intellectual property rights. The Contractor shall indemnify and hold harmless the Purchaser from and against any and all claims, suits and actions by third parties alleging that the Works or the design, manufacture, operation or maintenance thereof, constitutes an infringement of any such right, and against all losses, damages, costs and expenses, including attorney's fees which the Purchaser may suffer in connection therewith. The Purchaser shall promptly notify the Contractor of any such claim, suit or action and shall not settle any such claim, suit or action without the Contractor's prior consent In Writing.

c. If a claim covered by the infringement indemnification pursuant to a. and / or b. above has been made, Contractor shall have the right to, at its option and expense, either: (i) obtain for Purchaser the right to continue using the Works or (ii) replace or modify the Works so that such Works becomes non-infringing; provided, however, that such replacement or modified Works must provide equal or greater functionality than the replaced Works. In the event that, after exhausting commercially reasonable efforts, Contractor is unable to obtain either of the above two results, then Contractor shall return all amounts paid by Purchaser under the applicable purchase order/orders relating to the infringing Works including without limitation all fees associated with the shipping and installation of such Works. Upon receipt of the amounts to be repaid/paid, Purchaser shall cease using the part of the Works or the Plant causing the infringement.

Disputes and Applicable Law – Clauses 72 and 73

Clauses 72 and 73 are deleted and replaced by the following:

72. Any dispute, controversy or claim arising out of or in connection with the Contract, or breach, termination or invalidity thereof, shall be finally settled by arbitration in accordance with the UNCITRAL Arbitration Rules as at present in force. The number of arbitrators shall be three and at least the chairman shall be from the country in which the proceeding shall take place. The appointing authority shall be the International Chamber of Commerce in Paris. The place of arbitration shall be the capital city of the country in which the Purchaser has its principle place of business. The arbitration proceedings shall, unless otherwise agreed, be held in the English language.

73. The Contract shall be governed by the law of the country in which the Purchaser has its principle place of business, notwithstanding its conflict of laws rules. The United Nations Convention for the International Sale of Goods (CISG) shall not be applicable.

The following Clauses have been added:

Confidentiality – Clause 74

74. Designs, samples, tools, drawings, plans, programs or other information provided by one party to the other party must not be used by the receiving party for any other purpose than the fulfillment of the Contract and must not be reproduced or disclosed to a third party without the prior written permission from the disclosing party.

Publication / Advertisement – Clause 75

75. The Contractor shall not advertise or publicize in any way, without the prior written permission from Purchaser, the fact that he supplies, or has been contracted to supply to Purchaser. Further, the Contractor shall not use any of Purchaser's name, logo, trademark, or other identifying characteristic without Purchaser's prior written approval.

Spare parts – Clause 76

76. Contractor guarantees availability of spare parts for a time period ten (10) years as a minimum from the date of order. If spare parts not are available under reasonable commercial conditions e.g. due to age of the component insolvency, the Purchaser shall have the right in his sole option to obtain the drawings as needed as well as other design material.

Insurance – Clause 77

77. The Contractor shall provide evidence of a liability insurance and an erection all risk insurance, at an insured level which is adequate having regard to the business impact for the Purchaser when purchasing the Plant or the Works and must maintain such insurance with regard to the risks covered and the amount of coverage for the term of three years after final delivery. Such insurance shall also cover the actions of a sub-contractor or sub-supplier that the Contractor may utilize under this Contract.

Termination – Clause 78

a. The Purchaser has the right to cancel the Contract, in its entirety or in part at his own choice, in case
1) the Contractor should neglect his obligation to commence work or otherwise fail to take any action necessary for completion of the Works, and this results in a delay in the completion of the Works or it is likely that the completion of the Works will be delayed as a result thereof, provided that such delay can be considered as of significant inconvenience to the Purchaser;
2) the Contractor should be declared bankrupt or suspend his payments or otherwise be found to be insolvent; or
3) the Works does not reach the agreed technical availability.

b. Should the Purchaser terminate the Contract, in its entirety or in part, the Purchaser has the right within a reasonable time, to either claim damages amounting to the difference between the Contract Price and the costs to have the Works completed by another contractor, or to claim the maximum price reduction under Clause 41. Furthermore, the Purchaser has the right, on reasonable conditions to be agreed upon between the parties, to take over as much of the work performed and components, raw materials etc. manufactured or procured by the Contractor, as the Purchaser deems necessary for completion of Works. Such take over is effective upon a notification to that effect to the Contractor.

c. The provisions of Clauses 78 a., 78 b. and 78 c. shall not in any way limit or exclude any other right the Purchaser may have in case of breach of contract by the Contractor according to the Contract or to applicable law.