



SKF Purchase Conditions for Equipment

valid from 2014-05-01

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 SI 14 GENERAL CONDITIONS FOR THE SUPPLY AND INSTALLATION OF MECHANICAL, ELECTRICAL AND ELECTRONIC PRODUCTS ("Orgalime SI 14"). In all cases of inconsistency between these Purchase Conditions and Orgalime SI 14, 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 SI 14.

Amendments of and additions to Orgalime SI 14

Definitions – Clause 2

The following definitions are added to Clause 2

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

"FAT": the Factory Acceptance Test at the Contractor where to perform the field acceptance test / pre acceptance test.

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

"Quality, Ethical and Environmental, Health & Safety requirements ": shall have the meaning as defined in the SKF Quality Standards for Suppliers. The SKF Quality Standard for Suppliers form an integral part of the Contract, which implies adoption of the principles of the SKF Code of Conduct, of the SKF Code of Conduct for suppliers and sub-contractors, 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.

"SAT": the Site Acceptance Test where to perform final taking over test at the site of the purchaser.

"Technical Documents": 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.

Drawings and Technical Information – Clause 4

The following paragraphs are added at the end:

Notwithstanding the foregoing,

- a) 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 relating to the commissioning, operations, maintenance work, software and risk analysis prepared or presented 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) Sections (a) and (b) above 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 Technical Information – Clause 5

The last sentence of Clause 5 is deleted

Tests before shipment - Clause 6

The following paragraph is added at the end:

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 7

Clause 7 is deleted and replaced with the following:

The Contractor shall notify the Purchaser In Writing of these tests in sufficient time to permit the Purchaser to be represented at the tests. The test report is always subject to Purchaser's written acceptance before it is confirmed as accurate.

Tests before shipment - Clause 8

The following is deleted from the last sentence:

"..unless the deficiency was insignificant".

Tests before shipment - Clause 9

The following sentence is added at the end:

In the event the first test before shipment has failed due to reasons attributable to Contractor or any subcontractor etc. of the Contractor, any costs for traveling and living expenses for Purchaser's representatives and any costs for measuring, test equipment and test material 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 of any remedial work or similar and all other direct costs 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 f) 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 g) 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.

Purchaser's Default – Clause 20

Clause 20 is deleted and replaced by the following:

Without prejudice to the Contractor's rights under Clause 21, if the Purchaser fails to fulfill, correctly and in time, his obligations necessary for completion of the Works, including to comply with the conditions specified in Clauses 11, 12 and 14, the following shall apply:

- a) The Contractor may, subject to Purchaser's prior written approval, choose to carry out or employ a third party to carry out the Purchaser's obligations, or otherwise take such measures as under the circumstances are appropriate in order to avoid or alleviate the effects of the Purchaser's default.
- b) If the Plant has not been delivered to the Site, the Contractor shall arrange for storage of the Plant at the Purchaser's risk. The Contractor shall also, if the Purchaser so requires, insure the Plant.
- c) If performance of the Contract is delayed by the Purchaser's default, he shall nevertheless pay any part of the Contract Price which, but for such delay, had become due.
- d) The Purchaser shall reimburse the Contractor for any extra direct costs which are reasonably incurred by the Contractor as a result of measures under a) or b) of this Clause.

Purchaser's Default – Clause 21

The last two sentences of Clause 21 are deleted and replaced by the following:

The Contractor shall then be entitled to compensation for the substantiated direct costs he incurs because of the Purchaser's default. The compensation shall not exceed the part of the Contract Price which is attributable to the part of the Works in respect of which the Contract is terminated.

Local laws and regulations - Clause 22

The last sentence of Clause 22 is deleted

Variations – Clause 28

Clause 28 is deleted.

Variations – Clause 29

The following shall be added at the end:

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 30

Clause 30 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 latest version of “Incoterms” in force at the date of formation of the Contract.

If not otherwise separately agreed, the delivery shall be “DDP” at the delivery address of the Plant.

The risk of loss of or damage to the Works will, if not otherwise separately agreed, pass over to Purchaser after Purchaser and Contractor have confirmed the taking-over In Writing (SAT) including the completion by Contractor of training of relevant personnel of Purchaser.

Taking-over Tests – Clause 31

The following paragraph is added at the end:

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, test equipment and test material in relation to any new test shall be on the account of the Contractor.

Taking-over – Clause 36

Clause 36 is deleted and replaced by the following:

If the taking-over tests show the Works not to be in accordance with the Contract, the Contractor shall without delay remedy the deficiencies at its own cost. If the Purchaser so requires In Writing, new tests shall be carried out in accordance with Clauses 31-35.

Taking-over – Clause 37

The last two paragraphs are deleted.

Taking-over – Clause 38

Clause 38 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 due to reasons attributable to the Contractor. The Purchaser shall inform the Contractor accordingly when the Purchaser intends to utilize this right. This use of the Works prior to taking-over, shall not relieve the Contractor of his duty to carry out taking-over tests.

Contractor's Delay – Clause 41

Clause 41 is deleted and replaced by the following:

If the Contractor anticipates that he will not be able to comply with his obligations within the times specified in the Contract, he shall forthwith notify the Purchaser thereof In Writing, stating the reason, and, if possible, the time when taking-over can be expected. If the Contractor fails to give such notice, the Purchaser shall be entitled to compensation for any additional costs, expenses and losses which he incurs and which he could have avoided had he received such notice.

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

Contractor's Delay – Clause 43

The second, third and fourth paragraph of Clause 43 is deleted and replaced by the following:

The liquidated damages shall be payable at a rate of 2 per cent of the Contract Price for each commenced week of delay. The liquidated damages shall not exceed 20 per cent of the Contract Price.

The liquidated damages become due at the Purchaser's demand In Writing.

The Purchaser shall forfeit his right to liquidated damages if he has not made a claim or expressed a willingness to make a claim within two years after the time when the completion should have taken place.

Contractor's Delay – Clause 44

The third paragraph of Clause 44 is deleted and replaced by the following:

If the Purchaser terminates the Contract, or parts of the Contract, he shall, in addition to the right to get back the paid part of the price, be entitled to compensation for the loss he suffers as a result of the Contractor's delay, including any consequential and/or indirect loss. The compensation for losses, including the liquidated damages which are payable under Clause 43, shall not exceed 40 per cent of that part of the Contract Price which is attributable to the part of the Works in respect of which the Contract is terminated.

Contractor's Delay – Clause 45

Clause 45 is deleted.

Payment – Clause 46

Clause 46 is deleted.

Payment – Clause 47

Clause 47 is deleted and replaced by the following:

All costs related to the installation and commissioning are included in the total price of the purchase agreement.

Payment – Clause 48

Clause 48 is deleted.

Payment - Clause 49

Clause 49 is deleted and replaced by the following:

If installation is delayed due to a cause which is attributable to the Purchaser, the Purchaser can compensate the Contractor for:

- a) waiting time and time spent on extra journeys.;
- b) costs and extra work resulting from the delay, including removing, securing and setting up installation equipment.;
- c) additional costs, including costs as a result of the Contractor having to keep his equipment at the Site for a longer time than expected.;
- d) additional costs for journeys and board and lodging for the Contractor's personnel.

Payment - Clause 51

Clause 51 is deleted and replaced by the following:

If the Purchaser fails to pay by a stipulated date, the Contractor shall be entitled to interest from the day on which payment was due. The annual interest rate shall be 2% of the due payment.

In case of late payment and in case the Purchaser fails to give an agreed security by the stipulated date the Contractor may, after having notified the Purchaser In Writing, suspend his performance of the Contract until he receives payment or, where appropriate, until the Purchaser gives the agreed security.

Liability for Damage To Property Before Taking-Over – Clause 54

Clause 54 is deleted and replaced by the following:

The Contractor shall be liable for all damages to the Purchaser's property and/or any third party's property, occurring before taking-over of the Works, only if such damage was caused by the Contractor or by anyone for whom he is responsible in connection with the performance of the Contract.

Liability For Defects – Clause 55

Clause 55 is deleted and replaced by the following:

Pursuant to the provisions of Clauses 56-71 inclusive, the Contractor shall remedy any defect or non-conformity (hereinafter termed defect(s)) in the Works resulting from non-compliance with agreed specifications and/or faulty design, materials or workmanship.

Liability For Defects – Clause 56

Clause 56 is deleted and replaced by the following:

The Contractor is not liable for defects arising out of materials provided, or a design stipulated or specified by the Purchaser if the Contractor has advised against such design In Writing.

Liability For Defects – Clause 59

Clause 59 is deleted and replaced by the following:

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

Liability For Defects – Clause 60

Clause 60 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 Works for a period of two years as of the remedy date.

Liability For Defects – Clause 61

Clause 61 is deleted and replaced by the following:

The Purchaser shall without undue delay notify the Contractor of any defect which appears. Such notice shall under no circumstance be given later than two months after the expiry of the period given in Clause 60.

Liability For Defects – Clause 62

The fourth paragraph of Clause 62 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 at Contractor's cost.

Liability For Defects – Clause 63

Clause 63 is deleted and replaced by the following:

The Contractor shall, at its own expense and risk, 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 65

Clause 65 is deleted.

Liability For Defects – Clause 69

Clause 69 is deleted and replaced by the following:

Where the defect has not been successfully remedied as stipulated under Clause 68:

- a) the Purchaser shall be entitled to a reduction of the Contract Price in proportion to the reduced value of the Works, provided that under no circumstance shall such reduction exceed 100 per cent of the Contract Price, or
- b) where the defect is so substantial as to significantly deprive the Purchaser of the benefit of the Contract, the Purchaser may terminate the Contract by notice In Writing to the Contractor. The Purchaser is then entitled to compensation for the loss he has suffered up to a maximum of 100 per cent of the Contract Price and to get back the paid part of the Contract Price.

Liability For Defects – Clause 70

Clause 70 is deleted and replaced by the following:

Notwithstanding the provisions of Clauses 55-69 the Contractor shall not, unless otherwise agreed, be liable for defects in any part of the Works for more than three years from taking-over.

Liability For Defects – Clause 71

Clause 71 is deleted.

Allocation Of Liability For Damage Caused By The Works – Clause 72
Clause 72 is deleted and replaced by the following :

- a) Notwithstanding any provision to the contrary in the Contract or elsewhere, the Contractor shall 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 property damage caused by a defect in design, material or workmanship of the Works or caused by the fact that the Works deviates from the agreed specifications or otherwise is defective. 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 shall 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) caused by the Works regardless of whether or not the Contractor has acted with negligence. 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) 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, constitute 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.
- d) If a claim covered by the indemnification pursuant to c) 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.

Consequential Losses – Clause 77

Clause 77 is deleted and replaced by the following :

Save as otherwise stated in these Purchase Conditions or as otherwise agreed In Writing there shall be no liability for either party towards the other party for loss of production, loss of profit, loss of use, loss of contracts or for any other consequential or indirect loss whatsoever.

Disputes and Applicable Law – Clause 78

Clause 78 is deleted and replaced by the following:

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.

Disputes and Applicable Law – Clause 79

Clause 79 is deleted and replaced by the following:

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 80

Designs, samples, tools, drawings, plans, programs or other information provided by Purchaser to Contractor must not be used by the Contractor 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 Purchaser.

Publication / Advertisement – Clause 81

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 82

Contractor guarantees availability of spare parts for a time period ten (10) years as a minimum from the date of planned taking over. If spare parts are not 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 83

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 84

- A) The Purchaser has the right to cancel the Contract for cause, 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 or any agreed milestone in relation to the Works, and this results in a delay in the completion of a specific milestone for 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;
 - 3) the Works does not reach the agreed technical availability; or
 - 4) the ownership or the management of the Contractor is changed
- 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 69. 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 84 A and 84 B 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.

Termination - Clause 85

The Purchaser has the right to cancel the Contract for convenience, in its entirety or in part at his own choice. If the Purchaser terminates the Contract, or parts thereof, for convenience, Purchaser shall pay Contractor:

- a) the price of all Works that Contractor has justifiably produced and completed in accordance with the Contract;
- b) the actual, documented and bona fide costs of settling any claims for necessary termination of subcontracts directly related to the terminated portion of the Contract with substantially the same terms as in this Clause.
- c) the cost to Contractor of any mutually agreed upon work in progress in respect of the Contract or terminated portion of the Contract.

The Purchaser's payment to Contractor under this Clause 85 will constitute full and final satisfaction of all claims arising out of the termination, and Contractor hereby releases Purchaser from any other obligations and waives any claims Contractor may have in connection with the termination for convenience.