



SHI FW Energia Fakop Sp. z o.o.
GENERAL TERMS AND CONDITIONS OF PURCHASING

1 DEFINITIONS AND INTERPRETATION

In these General Terms and Conditions the following expressions shall have the meanings assigned to them below:

"Delivery" means the Supplier's delivery of the Materials and/or Services specified in the Purchase Order.

"Law" - shall mean any and all laws, statutes, treaties, judgments, decrees, rules, regulations and governmental authorizations of any court, arbitrator or authority as may be in effect from time to time

"Liquidated Damages" - means those liquidated and ascertained damages payable by the Supplier to the Purchaser in accordance with the Purchase Order which are an agreed genuine pre-estimate of the losses to the Purchaser deriving from the Supplier's default. The Purchaser shall be entitled to Liquidated Damages independently of any proof of damage or loss suffered by same.

"Client" - means the contract party of Purchaser to whom the Delivery will be handed over on Taking-Over as part of the Purchaser's scope of delivery.

"Plant" - means the boiler or power plant to be delivered to the Client.

"Purchaser" - means SHI FW Energia Fakop Sp. z o.o.

"Supplier" - means the company named in the Purchase Order supplying the Materials and/or Services under the Purchase Order.

"Materials" - means any goods, materials and/or equipment define in the Purchase Order.

"Services" Means any and all work including but not limited to advisory, provision of installation, erection, commissioning, and trial run services define in the Purchase Order.

"Site" Means the real estate on which the Plant is located, including such storage and prefabrication areas as may be designated by the Purchaser for use of Supplier

"Taking-Over" - means the date when the Client has certified to the Purchaser the commercial taking over of the Plant.

2 VALIDITY

2.1 These General Terms and Conditions apply to any Purchase Order made between Purchaser and the Supplier, hereinafter also referred to separately as a **"Party"** and jointly as the **"Parties"**.

2.2 By acceptance of the Purchase Order the Supplier agrees that these General Terms and Conditions supersede its own General Sales Conditions and he is deemed to have accepted these General Terms and Conditions without reservation.

2.3 These General Terms and Conditions can be modified only by the Purchaser in the Purchase Order.

3 ACCEPTANCE / EFFECTIVE DATE

3.1 Supplier shall send Purchaser a written acceptance of the Purchase Order without any reservation and notify Purchaser promptly in writing of any errors or inaccuracies in the Purchase Order issued by the Purchaser, which may affect the fulfillment of the Purchase Order. The date of acceptance shall constitute the effective date of the Purchase Order (the "Effective Date").

3.2 If Purchaser has not received an acceptance of the Purchase Order within 5 working days from the date of Purchase Order, Supplier shall be deemed to have accepted the Purchase Order.

3.3 Reserves, changes or additional terms and conditions in the order acceptance shall be null and void unless separately agreed in writing by the Purchaser.

4 SCOPE OF SUPPLY

4.1 The Supplier agrees to supply to the Purchaser the complete set of the Materials and/or Services in strict accordance with the Purchase Order and these General Terms and Conditions. Any materials or parts, which are essential for the technical completeness and necessary for the proper, regular and safe operation of the Materials, shall be deemed included in the scope of supply and the Price.

4.2 The Materials and Services shall be supplied based on the Delivery formula including the named place of destination stipulated in the Purchase Order with the exceptions stipulated in these General Terms and Conditions.

4.3 The Materials shall be suitably protected for shipping and marked according to Purchaser's shipping and marking instructions.

5 PRICE

5.1 In consideration of full and complete Delivery and all costs incurred in connection therewith, Purchaser shall pay to the Supplier the Price specified in the Purchase Order. The Price is firm, fixed and not subject to escalation.

5.2 The Price is inclusive of all and any related taxes, duties, fees or charges of whatever nature, except VAT, including any taxes payable on the import and/or export and re-import of the Materials and/or Services for the purposes of servicing, maintenance or repair or replacement of thereof. The amount of the VAT shall be clearly marked as a separate item on the Supplier's invoice.

6 TERMS OF PAYMENT

6.1 The payment shall be made by the Purchaser in accordance with the terms stipulated in the Purchase Order.

6.2 Each payment shall be made upon receipt by the Purchaser of the VAT invoice issued by the Supplier in strict accordance with the Purchaser's invoicing instructions and acceptance protocol undersigned by Purchaser representative.

6.3 The payment of any installment does not mean, and shall not be construed as meaning that the Purchaser has accepted the Delivery or that the Purchaser may not invoke any defects or deficiencies therein.

6.4 The date of payment is considered to be the date of transferring the payment by the Purchaser's bank, i.e. the date on which the Purchaser's account is debited by the bank transferring the money to the Supplier on the basis of the Purchaser's order.

6.5 Any and all claims need to be presented to the Purchaser not later than at the time of issuing the Supplier's final invoice. The Supplier is obliged to mark his final invoice with the wording: "Final Invoice". Any claims presented to the Purchaser after the final invoice is paid are void.

7 TIME OF DELIVERY AND TIME SCHEDULE

7.1 The Supplier shall be obliged to supply the Delivery according to the delivery term and schedule stipulated in the Purchase Order.

7.2 If the Supplier's progress is such that the Supplier's completion by the said completion dates is improbable, he shall take all such steps as shall be necessary to mitigate the delays, ensure the completion of the Supply by the completion dates without any cost to the Purchaser and reimburse to the Purchaser any direct costs incurred to him due to such measures. The Purchaser shall also be entitled to order the Supplier to take any such steps and the Supplier shall bear the costs arising thereof.

7.3 If any of the Materials and/or Services do not comply with the requirements of the Purchase Order the Purchaser is entitled but not obliged, to accept and use the portion of the Materials and/or Services that fully complies with the requirements of the Purchase Order or refuse to accept all of the Materials and/or Services.

8 DELAY IN SUPPLY

8.1 If the Delivery is delayed due to reasons not attributable to the Purchaser or the Force Majeure from any of the dates stipulated in the Purchase Order, the Supplier shall pay to the Purchaser Liquidated Damages at the rate stipulated in the Purchase Order.

8.2 If the Supplier's document delivery is delayed due to reasons not attributable to the Purchaser or the Force Majeure from any of the dates stipulated in the Purchase Order or in the documentation submittal schedule, the Supplier shall pay to the Purchaser Liquidated Damages at the rate stipulated on the face of the Purchase Order.

8.3 Any Liquidated Damages shall be due to the Purchaser within thirty (30) days after the Purchaser submits to the Supplier a notice therefore. The Purchaser shall be entitled to withhold any payments due to the Supplier to set-off any Liquidated Damages.

9 GUARANTEE ON DESIGN, MATERIAL AND WORKMANSHIP

9.1 The Supplier hereby represents and guarantees that the Materials shall be new at the date of the supply, be fit for the particular use defined in the Purchase Order; free of defects and deficiencies in design, materials, construction and workmanship and fully comply with specifications and drawings, the technical specifications and any other requirements of the Purchase Order.

9.2 The Supplier guarantees that it shall not use any materials where there are reasonable grounds for suspecting that such materials might pose a hazard to health and safety or a threat to the structural stability or performance or the physical integrity of the Plant or any part thereof or could have the effect of reducing the normal life expectancy of the Materials or any part thereof. Specifically the use or supply of asbestos or materials containing asbestos is strictly prohibited.

9.3 The guarantee period commences on the date of arrival of the Materials to the named place of destination and continues for 24 months from Taking-Over, unless otherwise set forth in the Purchase Order.

The guarantee period shall be prolonged by the total duration of time of the removal of defect made by the Supplier.
New guarantee period of 24 months will begin on the date of the completion of repair or renewal of any of the Materials and when such Materials are again in the use of Purchaser or Client as the case may be.

In no case shall the guarantee period be longer than 48 months from Taking-Over.

9.4 In case the Taking-Over is delayed for reasons not attributable to the Supplier, the Taking-Over shall, for the purposes of this Article 9, be deemed to take place at the latest after three (3) months from the estimated Taking-Over date in the Purchase Order.

9.5 If the Purchaser notifies the Supplier in writing of any breach of or non-conformity of guarantee or of a defect or deficiency occurred during the guarantee period, the Supplier shall promptly at his own risk replace the defective Materials or repair the defect or deficiency at no costs to the Purchaser. The repair or replacement shall be taken during the normal working hours and as accepted by the Purchaser and the Client and in a manner so as to minimize the adverse effect of the defect and of the repairs.

9.6 All costs incurred in connection with the foregoing, including the removal, replacement and reinstallation of equipment necessary to gain access to any Materials and all other costs incurred by the Supplier as a result thereof, shall be borne solely by the Supplier

9.7 In case the same items or parts need to be repaired or renewed three or more times, the Purchaser shall be entitled to terminate the Purchase Order or a part of it until the end of guarantee period.

9.8 Purchaser is entitled to perform any reparations, corrections or renewals or have them made by a third party at the Supplier's risk and cost in case the Supplier fails to correct the defects in timely manner, or if the Supplier fails to commence the corrective measures within three (3) working days, or fails to make such corrective measures in a manner or quality acceptable to the



Purchaser. The costs incurred by the Purchaser may be invoiced from the Supplier or deducted from the price.

10 INSURANCE

- 10.1 The Supplier shall, at its sole cost and expense, and before commencement of the supply of the Materials and/or Services hereunder, cause to be issued and thereafter maintained for the whole duration of his activities until the end of the last guarantee period the following insurance policies:
- third party liability insurance, including general liability, product liability and completed operations liability insurance in bodily injury and property damage, subject to a limit of liability of at least 500 000 EUR for any one occurrence .
 - property insurance for all property (equipment, tools, vehicles) brought and used at Site by Supplier.
- The Supplier shall provide Purchaser with certificates of insurance showing that the foregoing insurance has been effected.
The foregoing insurance shall be taken out with a reputable insurer acceptable to the Purchaser.
- 10.2 Supplier's insurance shall be primary to cover losses incurred by the Supplier.
- 10.3 In the event Supplier or any subcontractor of Supplier fails to provide insurance required hereunder, or if such insurance should not be renewed prior to its expiration or cancellation, without waiving its remedies under the Purchase Order, Purchaser may, but shall not be required to, obtain such insurance for Supplier's account.
- 10.4 The required coverage referred to and set forth in this Article 10 shall in no way affect, nor are they intended as a limitation of Supplier's liability with respect to its performance of the Purchase Order.

11 FORCE MAJEURE

- 11.1 "**Force Majeure**" means any circumstance beyond the reasonable control of either Party (acting and having acted in accordance with good industry practice) which prevents or impedes the due performance of the Purchase Order by that Party including, but not limited to, the following:
- government action or trade embargo;
 - war, hostilities or acts of terrorism;
 - riot or civil commotion;
 - epidemic;
 - earthquake, flood, fire or other natural physical disaster;
 - exceptionally severe weather conditions or the consequences thereof;
 - denial of the use of any railway, port, airport, shipping service or other means of public transport; or
 - industrial disputes, other than any solely confined to the Supplier and/or his subcontractors or their employees including employees of any affiliate of the Supplier or subcontractor.
- The mere shortage of equipment, labor, materials, or utilities shall not constitute Force Majeure unless caused by circumstances which are themselves Force Majeure.
- 11.2 Both Parties shall at all times use all reasonable endeavors to minimize any delay in the performance of their obligations under the Purchase Order, whatever may be the cause of such delay. If a delay is caused by a Force Majeure, the time of Delivery shall be extended at maximum by the corresponding time.
The Party wishing to claim relief by reason of any of the aforesaid Force Majeure circumstances shall notify the other Party in writing within one (1) day from receiving information of such circumstances. Such notice shall contain reasonable proof of its nature, anticipated duration and expected impact on compliance with the Purchase Order. In the event that either Party is delayed by Force Majeure each Party shall bear his own costs arising from such delay.
- 11.3 If performance of the Purchase Order is substantially prevented by Force Majeure for a continuous period of sixty (60) days, or causes unreasonable damage to either Party, a Party may terminate the Purchase Order by written notice to the other.

12 COMPLIANCE

- 12.1 The Supplier shall:
- Ensure that the Goods shall be safe in use- health and safety requirements and the functional safety of safety related systems (IEC 61508 "Functional safety of electrical/electronic/programmable electronic safety-related system" for electrical and I&C equipment) shall be fulfilled.
 - Provide all necessary code stamps, nameplates and certifications (e.g. CE, ASME etc.) required by the aforementioned. In particular, compliance has to be demonstrated by CE marking affixed to the Goods by EC declaration of conformity signed by the manufacturer or his representative within the community (in condition that European Directives are used for compliance and goods are covered by one of them).
 - Ensure that the Delivery as completed will fully comply with and be capable of operation in accordance with the requirements of this Purchase Order and all applicable Laws.
- 12.2 The Laws in force on the Effective Date and all Laws in existence on the Effective Date that by their terms, became or will become effective and applicable to either Party, have been taken into account in the calculation of the Price and shall be reflected in the Delivery.

13 LIABILITY FOR INJURY AND DAMAGE

- 13.1 The Supplier shall be liable for any and all direct damage he or the Goods causes to the Purchaser, or to any third party, as well as for damage caused by any of his sub-suppliers and own work force.

- 13.2 During the performance of the Purchase Order the Supplier shall take and ensure that his sub-suppliers shall take all necessary steps to prevent any personal, property or environmental damages in advance. The Supplier shall obey all work and safety regulations given by the Purchaser as well as those in applicable Laws.

14 INDEMNIFICATION

- 14.1 Supplier shall fully indemnify Purchaser, its officers, agents, employees and successors, assigns and affiliates from and against any and all loss, cost, damage, injury, liability, claims, demands, penalties, interest or causes of action (including without limitation reasonable legal advisers' fees) directly or indirectly arising out of or resulting from third party claims related to Delivery under the Purchase Order.
- 14.2 In case the Delivery are claimed to infringe intellectual property right of third parties, the Supplier shall ensure that the Purchaser may continue to use such Delivery without delay by immediately providing the Purchaser with either replacing the Delivery or license to use the infringing Material.

15 PASSING OF THE TITLE AND RISK

- Title in all Materials shall vest in Purchaser, free from liens, on the date of Delivery, or when the Materials can be identified to be part of the Delivery. The Supplier shall bear the risk of loss of the Materials according to the relevant Incoterms 2010 delivery term stipulated in the Purchase Order.

16 SITE CONDITIONS (FOR SERVICES ONLY)

- 16.1 The Supplier represents and warrants that it is or will be the holder of all permits required to allow it to operate or conduct its business as contemplated hereby.
Supplier's representatives and subcontractors shall observe and abide by all safety procedures defined in the Purchaser Order and its attachments. The Supplier shall be responsible for the health, safety and welfare of all its employees and subcontractors working at the Site and others who enter the Supplier's part of the Site for any purpose. The Supplier shall ensure that all of its subcontractors, employees and agents comply with all applicable laws relating to health and safety, as well as the Purchaser's health and safety regulations, while they are on the Site.
- 16.2 The Purchaser or the Client shall be entitled to stop work on unsafe position if the condition of that part of the Site is considered by the Purchaser or the Client to be unsafe. The Purchaser or the Client shall not be responsible for any delay to the time schedule as a result of stoppages due to unsafe of the Supplier's part of the Site. The Supplier shall remove from Site any persistent offenders.
- 16.3 The Supplier shall obey the regulations regarding the salary and compensation requirements of the collective labor agreements applicable at Site.
- 16.4 The Supplier must ensure that all employees of the Supplier and/or subcontractors working on Site have legally required identification card including personal tax number.

17 GENERAL CONDITIONS

- 17.1 The Supplier represents that it is fully experienced and properly qualified to supply the Materials and Services, and that it is properly licensed, equipped, organized and financed to perform the supply of the Materials and Services. The Supplier shall act as an independent Supplier and not as an agent of the Purchaser in performing the Purchase Order, maintaining complete control over its employees and all of its subcontracts.
- 17.2 Assignment of the Purchase Order or rights hereunder, in whole or in part, without the prior written consent of the Purchaser shall be void. The Supplier shall not subcontract with any third party for the performance of all or any portion of the Purchase Order without the prior written approval of the Purchaser.
The Supplier represents and warrants that it is or will be the holder of all permits required to allow it to operate or conduct its business as contemplated hereby.
- 17.3 All correspondence between the Parties shall be made in English unless mutually agreed otherwise.
- 17.4 The Supplier shall be the possessor and producer of waste to be generated during or in connection with the performance the Purchase Order, within the meaning of the provisions of Waste Law as of 27th of April 2001 (consolidated text: Dz. U. 2007, No. 39, pos. 251 wit subsequent amendments.), and shall be obliged to recycle waste produced during the performance of works, including selective waste collection and to deliver it to places indicated by Supplier as well as to perform hazardous waste utilization (if any) at its own expense, according to the above mentioned Act and Environmental Protection Law as of 27th of April 2001 (consolidated text: Dz. U. 2008 No 25, pos. 150 with subsequent amendments.). Supplier shall also be obliged to submit an information regarding produced waste and methods of their management to relevant state and local government agencies, with a copy of such information to Purchaser.
- 17.5 In addition to the foregoing, the Supplier declares that for the purpose of works' execution, all obligatory administrative decisions required by aforementioned acts have been obtained and are binding. At the request of Purchaser, the Supplier, within 3 days, shall submit such decisions for Purchaser's review.
- 17.6 Supplier shall be obliged to provide the Purchaser with a document evidencing method of waste management including but not limited to, and as condition of Take-Over of the Delivery, to present on the Take-Over of the Delivery date cards of hazardous waste handover issued by an authorized entity.
- 17.7 Supplier is obliged to strictly comply with SHI FW's Code of Business Conduct as well as Supply Chain Code of Business Conduct that consist Attachments to the Purchase Order. Acceptance of Purchase Order by the Supplier shall be



shall be deemed confirmation of receipt and learning the contents of above Codes. Supplier shall promptly inform the Purchaser of every circumstance of breach of above Codes. Any breach of above Code by Supplier may be result in termination of the Purchase Order by the Purchaser in accordance with Clause 18.2.

18 LIMITATION OF LIABILITY

With the exception of the Liquidated Damages, neither Party shall be responsible for loss of profit, loss of contract or loss of revenue unless such Party has been guilty of willful act.

19 TERMINATION

19.1 Termination by the Purchaser at Will

Until delivery of the whole Delivery at the Site the Purchaser, in its sole discretion, may terminate the Purchase Order, in whole or in part, for any reason at any time by written notice thereof issued in 5 days advance to the Supplier.

Termination payments to Supplier or refund to Purchaser, if any, shall be promptly and mutually agreed to by Purchaser and Supplier, based on portion of the goods supplied to the date of termination plus reasonable and necessary expenses resulting from the termination, as substantiated by documentation satisfactory to and verified by Purchaser and amounts previously paid by Purchaser.

19.2 Termination by the Purchaser for Cause

Until the end of guarantee period the Purchaser may terminate this Purchase Order forthwith by 10 days written notice to the Supplier in the event of any of any Supplier's disregard, inobservance or violation of provisions of the Purchase Order, if such failure or deficiency is deemed substantial;

The Supplier shall then return all sums paid under the Purchase Order so terminated with an annual interest of 3 months Euribor plus five per cent (5%) calculated from the payment to the day of refund to the Purchaser, as well as compensate the direct costs caused by the termination to the Purchaser as well as all other expenses reasonably incurred by Purchaser in completing the Supply, including the cost of dismantling and returning any part of the Delivery to the Supplier or otherwise disposing of only part of the Delivery in accordance with the Supplier's instructions. Alternatively, the Purchaser has the right to redeem from the Supplier parts of the Goods supplied until termination.

Upon Purchaser's notice the Supplier shall promptly arrange the dismantling and removal of the Goods at the risk and cost of the Supplier. However, if by this time the Supplier has failed to make a payment due to the Purchaser, these Goods may be sold by the Purchaser in order to recover this payment.

20 CONFIDENTIALITY

The Supplier is obliged to treat in strict confidence all technical, technological knowledge and other confidential information coming to Supplier's knowledge in the course of implementing the Purchase Order and not disclose, and to ensure that his employees shall not disclose or make available to any third Party any confidential information. The Supplier shall not use the confidential information for any other purpose than for the express purpose of this Purchase Order.

21 SETTLEMENT OF DISPUTES AND GOVERNING LAW

The Purchase Order shall be governed by and construed in accordance with the laws of Poland. Any dispute in connection with the Purchase Order shall be finally settled by the competent court in Katowice, Poland.