

**GENERAL PURCHASE TERMS AND CONDITIONS****1. Definitions:**

The definitions in this General Purchase terms and conditions have following meaning:

- »Purchase« means acquisition of the Goods by the Buyer from the Supplier;
- »Goods« means all goods, products, plant, equipment, machinery, stores, materials, documents (in any form or media, including but without limitation to data, diagrams, drawings, reports, certificates, declaration of origin, tariff number of product, list of recommended spare parts, manuals, export/import documents and specifications) and goods-related services.
- »Buyer« means companies of the LITOSTROJ POWER Group with registered address in Slovenia, Czech Republic, Canada and Turkey;
- »Final Buyer« means the legal entity/corporation which has entered into contractual relationship with the Buyer;
- »Supplier« means the legal entity/corporation to whom the Contract is awarded by the Buyer;
- »Parties« means both the Supplier and the Buyer;
- »Purchase Order« means commercial document issued by a Buyer to a Supplier, indicating types, quantities, parity, delivery date(s), material code and agreed prices for Goods;
- »SPC or Special Purchase Terms And Conditions « means written provisions of a contract that are specific to the particular Purchase and do not fall under these General Purchase Terms and Conditions or other, supplementary conditions;
- »Contract« consist of Purchase Order (if any), Special Conditions of Contract and these General Purchase Terms and Conditions.

**2. Scope**

Unless otherwise agreed upon, any Contract awarded by the Buyer, with any person (»the Supplier«) for any Goods (»the Goods«) expressly stated in Purchase Order and/or SPC shall be subject to these General Purchase Terms and Conditions.

All requested test certificates shall be according to the specification on the Buyer's drawings and 1. Delivered as original or 2. Submitted as electronic copy to the Buyer's inspection (wherein electronic copy shall be corresponding to original), at least 3 (three) days before the delivery date, in English language. The Buyer is entitled to refuse the Goods with no additional costs to be borne by the Buyer if the Supplier fails to meet the conditions of this paragraph.

If requested by the Buyer, the Supplier shall provide to the Buyer the list of minimum recommended spare parts for the Goods to reduce costly downtime in the event of potential damage or malfunction of the Goods.

The Goods shall be delivered completely i.e. including all accompanying parts required for flawless, reliable, permanent and safe operation, also in cases when not stipulated in Buyer's specifications and descriptions. The Supplier guarantees the quality and total functionality of the Goods supplied and the fulfilment of parameters required and determined in technical specifications in terms of Goods operation and maintenance.

The Supplier explicitly waives all demands towards the Buyer which are founded on or stemming from potential unfamiliarity or lack thereof regarding the conditions and circumstances for the realization of obligations stipulated in the Contract.

If the Buyer awards any such Contract in the name and for account of any other company of LITOSTROJ POWER Group (hereinafter referred to as: Intra-Group Company), these General Purchase Terms and Conditions shall apply to the relationship between said Intra-Group Company and the Supplier.

**3. Contracts**

The Buyer shall be under no obligation whatsoever to accept any Goods, unless the Buyer has issued a written Contract. Therefore any oral or written (including electronic) consent or agreement which is not integral part of the Contract shall be ineffective and the Purchase shall not be considered to be effective until the final mutual consent of essential commercial and technical Contract elements is achieved by Parties and until Parties entered into the Contract.

If any Purchase specification or any terms are specifically agreed by SPC, the special terms shall take precedence over these General Purchase Terms and Conditions in the event of any conflict between SPC and

these General Purchase Terms and Conditions. According to this, the Contract shall be interpreted in the following order of precedence:

- i. The Purchase Order (if any),
- ii. Special Purchase Terms And Conditions (SPC) and
- iii. These General Purchase Terms and Conditions (GCC).

The Purchase Order shall be regarded as unconditionally accepted either by express Supplier's statement or impliedly by fulfilling the Contract in whole or in part by the Supplier. No other oral nor written documentation or correspondence shall form part of the Contract, unless mutually agreed otherwise.

If any of the provisions of the Contract shall be invalid or unenforceable for any reason and/or extent, the remainder of the Contract shall remain in full force and effect. Any invalid or unenforceable provision shall be replaced by a new one or shall be applied in a greatest extent permitted by applicable law and shall be as close as possible to the original intent of both parties.

#### **4. Quality and Quantity**

Neither quality nor quantity of Goods shall differ from that which is specified in the Purchase Order or SPC unless different quality or quantity is explicitly agreed (in writing) by the Buyer.

The Buyer shall timely inform the Supplier of any excess quantity. The Buyer may return excess quantities back to the Supplier at Supplier's expense. Overcharged excess quantities on Supplier's invoice shall be either deducted by the Buyer automatically or by issuing a credit note by the Supplier within 8 days at the latest.

The Buyer may request from the Supplier performance and warranty bond. Performance bond and warranty bond shall be in the form accepted by the Buyer and provided as first-demand bond. Performance and warranty bonds shall be nominated in the currency in which the Contract is payable.

In case that Supplier shall not perform its obligations from the contract the Buyer shall have right to cash in Performance bond under conditions stipulated in SCC and Performance bond.

The Supplier shall constantly monitor the quality of his deliveries and services. He is obliged to observe and maintain a quality assurance system in compliance with OHSAS 18001, ISO 14001 and ISO 9001 or other standard comparable.

#### **5. Inspection in Progress**

If applicable, the Supplier shall provide to the Buyer the time schedule for delivery of the Goods including the milestones of production at least 8 (eight) days after receive of the purchase order.

Supplier agrees that the Buyer shall have the right of inspection of all work contained in the Purchase Order or SPC while in any stage of Contract duration. All actions of inspection shall be announced at least 5 working days in advance. The Buyer shall have the right to reject any work performed in a way that does not conform to the Contract. Any reasonably rejected work shall be redone at no additional costs of the Buyer.

Neither lack of inspection nor approval of Supplier's work by Buyer shall in no way relieve the Supplier of any its obligations under the Contract.

#### **6. Price and Payment**

In consideration of the Goods delivered by Supplier in accordance with the Contract, Buyer shall pay to Supplier the price stated in the Contract provided the invoice fulfils the requirements defined in the Contract. Unless agreed otherwise the payment is due 120 days after delivery (open payment terms).

The price stated in Purchase Order or SPC shall represent the full payment to the Supplier for all the Goods under particular Contract and shall be deemed to cover all costs/charges/expenses in connection with the performance of the Contract, including but not limited to the costs of Contract performance and other ancillary services.

The price is fixed and firm and shall not be subject to escalation unless mutually agreed by both parties in writing. VAT is not included.

Unless otherwise agreed between the Buyer and the Supplier, each price stated in Purchase Order or SPC shall be DDP Buyer's premises (INCOTERMS 2010).

Unless otherwise agreed between the Buyer and the Supplier, transportation insurance shall be Against All Risks (AAR) transportation insurance, DDP, delivery to site, Incoterms 2010, full A -terms. Coverage shall be extended to cover loading, unloading and interim storage during the contract term.

The Buyer agrees that the risk passes from Seller to Buyer when Seller delivers and unloads all the Goods to named destination (used for any mode of transportation).

The Supplier shall not have the right to pledge, assign or in any other way transfer any title to payment it may hold against the Buyer or to have any payment by the Buyer collected by any third party.

## **7. Invoices**

The Buyer shall pay each Good upon the receipt of a written invoice. Unless agreed otherwise in Purchase Order or SPC each issuance of invoice shall follow the delivery of the Goods.

Supplier shall submit invoices in an auditable form, complying with applicable laws, generally accepted accounting principles and the specific Buyer requirements, containing the following minimum information: Supplier name, address and reference person including contact details; invoice date; invoice number; Contract number and Supplier number; address of Buyer; quantity; specification of Goods; price (total amount invoiced); currency; tax or VAT amount; tax or VAT number; Authorized Economic Operator and/or Approved Exporter Authorization number and/or other customs identification number, if applicable; payment terms as agreed.

## **8. Delivery Terms**

The Supplier shall deliver the Goods to the Buyer according to delivery terms stated in Purchase Order or SPC. Delivery *ex Buyer's premises* is Monday to Friday, 8 am to 1 pm.

Each date agreed for the delivery of any Good by the Supplier shall be fully binding and is significant term of Contract. Therefore any modification of any such mutually agreed date shall be ineffective unless expressly accepted by the Buyer in writing.

For reasons attributable to the Final Buyer, the Buyer reserves the right to postpone the appointed terms for the period of minimum 60 (sixty) days. The Supplier agrees that in case of postponement of the terms the time schedule of the project shall be revised accordingly, with no additional costs to be borne by the Buyer. The Buyer shall notify the Supplier about the project time rescheduling in due time.

The Supplier shall not advertise its company with sign(s) on Goods without prior written approval of the Buyer.

## **9. Testing and Acceptance**

If applicable, Goods shall be subject to conduct a Factory Acceptance Test (FAT) prior to delivery. FAT shall be conducted at manufacturer's premises within normal working hours. The Supplier costs of the FAT shall be borne by Supplier. Supplier/Buyer shall notify the other party of FAT at least 5 working days in advance. The Buyers costs arising from the first FAT shall be borne by the Buyer, while all FAT repetitions (due to the reasons on the Supplier) shall be borne by the Supplier exclusively (i.e. all costs whether directly or indirectly related to FAT repetitions).

If applicable, inspection and testing shall be carried out immediately after installation/incorporation. If required by the Buyer, the Supplier shall be present during inspection and testing after installation/incorporation (Site Test). In case any non-conformity issue on delivered Goods maybe established during installation process at site, the Supplier shall resolve it immediately without any delay on installation work. All related costs regarding non-conformity case resolving shall be charged on Supplier's account.

To determine whether the Contract requirements are met, all Goods shall be subject to Final Acceptance. When the Final Acceptance is achieved, it shall be recorded properly by final acceptance and delivery record and Goods shall be permanently handed over to the Buyer. After Buyer's Final Acceptance is recorded, it continues the invoice interface process according to Article 6.

If upon or after any inspection/testing any Good is found to be unsatisfactory or fails to meet the agreed specifications or any other Buyer's requirements, the Buyer shall be entitled to return such Goods to the

Supplier at Supplier's expense or to demand repair of such Goods at Supplier's expense. Upon return/repair of any unsatisfactory Goods, the Supplier shall reimburse the Buyer for any amounts of costs suffered by the Buyer. Such payments shall not be deemed as a relinquishment of any claim in respect of possible defects.

Each testing, inspection and acceptance shall be properly recorded, mutually signed and in form, proposed by the Buyer and published on <http://www.litostrojpower.com/>.

## **A. Inspection in generally**

A warranty inspection shall be carried out prior to the expiry of the defects liability period upon the Buyer's request for the purpose of ensuring that the works are free from defects. Defects identified during the inspection shall be rectified without undue delay.

The Supplier shall remedy any defects in the works which are due to faulty materials or workmanship. Mutually agreed deviation of technical requirements regarding performance and other characteristics specified in the Contract shall not in itself be considered to be a defect under this article.

Defects shall be notified to the Supplier by written notice without unreasonable delay after the defect has appeared and in no case later than four (4) weeks after the expiry of the defects liability period.

On receipt of the Buyer's notice of a defect the Supplier shall take workmanlike measures to remedy the defect without delay.

If the Supplier fails to remedy a defect within a reasonable time after he received notice of the defect, the Buyer may specify by written notice a reasonable final period within which the Supplier shall have remedied the defect.

If the Supplier fails to remedy a defect within the final period specified by the Buyer, the Buyer may himself, at the Supplier's cost, take the measures necessary to remedy the defect. In such case the Buyer is entitled to a price reduction corresponding to the defect by compensating Supplier's invoices.

If the Buyer chooses not to take measures to remedy the defect or if the works, despite such measures, still suffer from a defect, the Buyer may either demand a price reduction corresponding to the defect which shall in no case exceed 15 percent of the Contract price or terminate the Contract.

It is also considered of mutual interest for quicker action in aid of the Buyer, and most cost-effective for the Supplier, that the Buyer has all the time the right itself repairs other defects at the Supplier's cost. In such case the Buyer is entitled to a price reduction corresponding to the defect by compensating Supplier's invoices. This does not relieve the Supplier of its responsibility for defects.

## **B. Inspection of castings**

Buyer's expenses of first casting inspection shall be covered by the Buyer. Buyer's expenses (including but not limited to indirect costs) for further or repeated inspections due to a bad quality of casting or unsuccessful first inspection shall be covered by the Supplier. All inspections shall be announced at least 2 (two) weeks in advance. Before welding, all welding documentation shall be subject to approval of the Buyer or by the Final Buyer. Working-plan and sketch of test-coupons shall be confirmed and approved by the Buyer or the Final Buyer. Production progress/status of production shall be presented to the Buyer every 2 (two) weeks until the Goods (castings) are entirely delivered. Report (production progress/status of production) shall be inclusive of required photos/pictures. Possible pattern of castings shall be stored in the Supplier's premises/warehouse on Supplier's costs and expenses for at least additional 3 (three) years after delivery terms meet their deadlines according to Purchase Order or SPC, unless mutually agreed otherwise; after such period the Buyer shall be informed by the Supplier for further instructions.

The Buyer shall have constant ("24/7") access to its models, documentation and Goods. The Buyer shall have the right to be present during internal tests proceedings. The Buyer shall announced the visits at least three (3) days in advance.

After production start-up, the Supplier shall submit to the Buyer a detailed report of production progress/status, which shall include the status of key milestones (manufacturing of pattern, pouring, heat treatment, inspection of excavations, final inspection). The Supplier shall submit the first progress report to the Buyer within 7 days after production start-up at the latest.

If the Supplier fails to meet its obligation according to each key milestone of production progress/status report and is in delay with any key milestone for more than three (3) weeks, the Buyer is entitled immediately to take-over the goods and delivery of the goods to its own premises for the purposes of the completion of works, without being liable for any damages occurred to Supplier. In this case, the Buyer shall reserve its right to charge the Supplier contractual penalty according to SPC or General Purchase terms and Conditions and all the cost of its completion of works.

#### Claim process of castings

The Buyer shall be aware that delivered castings have defects, which may be detected by machining of casting. Defects shall be repaired either by the Buyer or by the Supplier at Buyer's premises and at Supplier's expense. When such abnormal defects are to be detected during machining methods by the Buyer, the Buyer shall be obliged to notify the Supplier of the range and largeness of defects with sketch/map of defects which shall include relevant photos. The Buyer shall not in any case excavate and start to repair detected defects before the written consensus is concluded between the Supplier and the Buyer.

The Buyer shall be obliged to notify the Supplier of the costs/expenses of detected defects. Supplier shall be obliged to notify the Buyer of the method and costs of repair. Such notice shall be given no later than within the end of the working day after the Supplier is notified about detected defects. If such defect is deemed to be repaired by the Buyer, the Buyer shall have the right to issue the invoice in amount of incurred costs. The Buyer shall have the right to set-off such invoiced costs against payments to the Supplier. If defects shall be repaired by the Supplier, the Supplier shall bear all costs related to such repair. Repaired castings shall be delivered back to Buyer's premises no later than 2 (two) weeks after taking-over to repair.

For defects delimitation standard CCH 70-3 shall be applicable for Goods covered by the same standard.

## **10. Warranty and remedies**

The Supplier warrants that the Goods:

- will be in accordance with the applicable laws and regulations (including technical standards),
- will be in accordance with the Contract and all Buyer's instructions;
- will be free from defects in materials, design or workmanship and from any rights of third parties,
- will be fit for any particular purpose specified in the Contract or notified to the Supplier prior to the execution of the Contract or, in absence thereof, fit for the purposes for which such Goods would ordinarily be used,
- will be new and unused (unless agreed otherwise).

Unless separately specified by SPC, the warranty period shall begin with the date of proper delivery and shall be a 24 (twenty-four) months after complete and proper delivery.

In case of breach of any warranty which is not remedied within five (5) days from Buyer's notification, or in case of any other breach of the Contract, Buyer is entitled to enforce any or more of the following remedies at its discretion and at Supplier's expense:

- to give Supplier another opportunity to carry out any additional work necessary to ensure that the Contract is fulfilled, and/or to obtain prompt repair or replacement of the defective Goods;
- to carry out (or to instruct a third party to carry out) any additional work necessary to make the Goods comply with the Contract;
- to refuse any further Goods;
- to cash the Warranty bond;
- to claim such damages as may have been sustained by Buyer as a result of Supplier's breach of the Contract;

- to terminate the Contract; in such event Buyer has no obligation to compensate Supplier, and, at Buyer's option, Supplier shall pay back to Buyer any remuneration received from Buyer for the Goods and take back the Goods at Supplier's own cost and risk.

The rights and remedies available to Buyer under the Contract are cumulative and are not exclusive of any rights or remedies available at law.

The warranty period for repaired or replacement Goods shall be prolonged for the same time period as the original warranty period and shall begin with the date of proper repair or replacement.

## **11. Contractual Penalty**

### **A. Delay in delivery**

In the event of any late delivery under the Contract, the Buyer shall be entitled to a Contractual Penalty of 0.5 % (zero point five percent) of the price excluding VAT stated in SPC per each piece of Goods for each day of delay provided however that the total sum of the penalty shall not exceed 10% (ten percent) of the said price excluding VAT unless agreed otherwise.

### **B. Failure to meet Performance Guarantees**

In the event that Supplier fails to perform any of Performance guarantee under the Contract, the Buyer shall be entitled to a Contractual Penalty defined in the SCC, however that the total sum of the penalty shall not exceed 10% (ten percent) of the said price excluding VAT unless agreed otherwise.

### **C. Limitation of contractual penalties**

All contractual penalties according to the Contract including for delay and Performance Guarantees shall not exceed shall not exceed 20 % (twenty percent) of the said price excluding VAT unless agreed otherwise.

## **12. Indemnity**

The Supplier shall indemnify and keep harmless the Buyer, its employees, representatives and agents, against all claims, legal proceedings, costs, charges, expenses, suffered by the Supplier, its employees, representatives and agents, including claims by third parties, by reason or arising out of any act or default of the Supplier, its employees, representatives or agents. Supplier shall, without any limitations, indemnify and hold harmless Buyer for any claim made by a third party against Buyer in connection with the Goods, including but without limitation to claims that such Goods infringe a third party's intellectual property rights. Upon Buyer's request Supplier shall defend Buyer against any third party claims.

Supplier confirms that Supplier is the sole owner of the Goods, free and clear from any restrictions, agreements or contractual commitments of any kind, and that the Goods shall be sold and transferred to the Buyer free and clear of any restrictions, agreements or contractual commitments of any kind.

The Buyer shall not be liable to the Supplier for any indirect or consequential loss arising out of or in connection with the Contract, including but not limited to loss of profit, revenue, production, opportunity, goodwill or reputation.

The total liability of the Supplier for payment of any and all damages and other claims in connection with breach of the Contract shall not exceed the maximum amount of 100% (one hundred percent) of the total Contract price excluding VAT, unless otherwise specified by SPC.

Buyer has the right to set off any claims in connection with the Contract against any amounts owed to Supplier.

## **13. Termination / Withdrawal**

If the Supplier shall breach its obligations under the Contract or the Supplier shall become subject of insolvency proceedings or in any other cases that is evident the Supplier could not perform its obligations under the Contract, the Buyer shall have the right to immediately terminate the Contract in full and request the delivery of already produces Goods against payment.

Supplier's failure to comply with the principles or the spirit of the "Supplier Code of Conduct", published on <http://www.litostrojpower.com/>, will be considered as serious breach of the Buyer's policy and will be investigated by the Buyer. All such breaches shall result in immediate termination of the Contract.

Buyer may terminate the Contract for convenience in whole or in part by giving Supplier thirty (30) calendar days written notice. In such event Buyer shall pay to Supplier the value of the delivered but unpaid Goods and proven direct cost reasonably incurred by Supplier for the undelivered Goods, however in no event more than the price for the Goods agreed under the Contract. No further compensation will be due to Supplier.

**14. Assignments**

The Supplier shall not, without a prior written consent of the Buyer, assign, sell, pledge or in any other way transfer neither any rights, including receivables, nor any liabilities arising out from the Contract to any third party.

**15. Applicable Law and Jurisdiction**

The Contract is governed by the laws of the country (and/or the state, as applicable) where Buyer is registered, however under exclusion of its conflict of law rules and the United Nations Convention on International Sale of Goods.

Any dispute arising in connection with the Contract which cannot be settled amicably shall be submitted for resolution to the jurisdiction of the competent courts at the Buyer's place of registration.

**16. Notices and Amendments**

Any notices, demands, requests under the Contract shall be in writing and shall be deemed to have been given when delivered personally or when sent by registered mail or addresses of the respective party.

A written form is required for any Amendments to the Contract to become valid.

**17. Confidentiality**

Parties undertake to keep all technical, commercial, financial, economic and other business information it may become aware of in connection with the performance of the Contract, strictly confidential and not to release such information's to any other person other than employees, representatives or agents directly involved in the performance of the Contract.

Parties undertake to impose on each employee or representative or agent to whom such confidential information is released an obligation to keep such information strictly confidential even beyond the term of the Contract agreed by the Supplier and the Buyer.

The Supplier shall not publish any information about supply for the Buyer or use supply as reference without prior written approval of the Buyer.

Unless otherwise agreed by SPC, a confidentiality obligation under the Contract shall continue in force for a period of 5 (five) years commencing on the date of the delivery of the Goods.

**18. Exclusion of the Supplier's General Conditions**

Unless otherwise agreed by SPC, only documents under Article 3 of this General Purchase Terms and Conditions shall be considered as the only integral part of the Contract. No terms or conditions (including the Supplier's general conditions) delivered with or contained in Supplier's quotations, acknowledgements, acceptances, specifications or similar documents will form part of the Contract, and Supplier waives any right which it might have to rely on such terms or conditions.

**19. Anticorruption clause**

The Parties have agreed on observing the highest ethical principles and anti-corruption behaviour throughout the term of the Contract.

To meet this purpose, Parties define the below term: "Corrupt behaviour" involves making an offer, promise or provision as well as request for or receipt of any undue advantage, and further in an effort to speed up a proceeding, provide or accept a reward, inappropriate gift, form of hospitality, direct or indirect settlement of expenditures for a person or accepted by a person in a position of any employee or member of a statutory body in the private or public sectors (including a person who in any position or capacity makes decisions on behalf of or works for a company or organization in the private or public sectors), in order to get, keep or direct a business contract or gain any other advantage with regard to a tendering procedure or concluding and completing a contract.

The Parties shall ensure that also the persons controlled by them abide by these anti-corruption rules. Parties further undertake to request from their Workers to observe these rules toward the other party.

Each party shall have the right to terminate the Contract if he finds that the other party, or possibly his controlling or controlled person has used, directly or through their representative, corrupt behaviour during the contract implementation and has not adopted any timely and satisfactory corrective measure.

## **20. Severability**

If any of the provisions of the Contract shall be invalid or unenforceable to any extent, the remainder of the Contract shall not be affected thereby. Parties agree that any such invalid or unenforceable provision shall be replaced by a new one, or shall be applied in a way that is to the greatest extent permitted by law the closest to its original intent.

## **21. Entirety**

The Contract constitutes the entire agreement between the Parties and replaces any prior agreement between them with regard to its subject.

## **22. Other duties of the Supplier**

The Supplier is aware and familiar with the provisions of the Buyer's "Supplier Code of Conduct" and "CODE OF ETHICS AND SOCIAL RESPONSIBILITY", which represent the general guidance and minimum expectations of the Buyer, published on <http://www.litostrojpower.com/>.

Valid from: 01.01.2018