



Siempelkamp

Logistics & Service

PROVISION OF EXPERT PERSONNEL: GENERAL TERMS & CONDITIONS

§ 1 GENERAL

- 1.1 These Terms and Conditions apply to any orders, contracts or agreements of Siempelkamp Logistics & Service GmbH ("SLS") relating to the provision of expert personnel rendering services ("Services") including, but not limited to, supervision of any installation works, inspections, trouble-shooting, on-site trainings or any other services agreed upon. Unless expressly otherwise provided in writing and signed by SLS and the ordering party ("Customer"), any and all Services provided by SLS shall be subject to these terms and conditions.
- 1.2 SLS' offers, quotations or proposals are not binding. Any order shall become binding only if it has been confirmed by SLS in writing ("Order"). Customer's order and/or acceptance of the Services provided by SLS to the Customer constitute an acceptance of SLS' offer including these Terms and Conditions. Any terms and conditions of Customer conflicting with or amending these Terms and Conditions shall not become part of the Order even if not objected by SLS. The Order together with these Terms and Conditions shall constitute the entire agreement between them and supersede all previous agreements, representations, communications, either oral or written in relation to the Services. Any variation, amendment, cancellation or waiver of the Order and these Terms and Conditions and the agreement resulting from them and any acceptance of other terms and conditions is binding upon SLS only by a written acknowledgement signed by an authorized representative of SLS.
- 1.3 Unless expressly specified as binding in the respective documents, any document attached to the quotation, such as illustrations, drawings, and specified weights and dimensions are on an approximate and preliminary basis only.

§ 2 SCOPE OF SERVICES

- 2.1 The Services to be rendered are as set forth in the Order signed by both parties. Unless otherwise agreed by the parties in writing after the commercial and technical clarification, any and all times indicated for performance of the Services are only estimated. The time required for the provision of the Services shall be subject to site conditions as well as compliance of the undertaking and support granted by the Customer. The precondition for despatching the expert personnel is, as applicable, SLS' obtaining of the necessary approvals, permits, certifications, visas and import and export licences for the luggage and tools in a timely manner.
- 2.2 Should SLS notify the Customer that more than the quoted manhours are required, the increased amount of manhours shall be deemed as ordered, if the Customer does not object thereto within twenty-four (24) hours. If any work cannot be made on site or by SLS' expert personnel, it shall be the responsibility of the Customer to arrange for these works to be made.

§ 3. OBLIGATIONS OF THE CUSTOMER

- The Customer shall, as applicable, perform the timely and undisturbed installation, start-up and testing and/or other works and services to be required for SLS to render the Services. In particular the Customer shall plan and perform the following tasks at his own cost and responsibility:
- 3.1 Transport of the machinery and equipment to and on the site; storage of the machinery, equipment, materials and tools before and during Services, protecting them against weather, loss, improper handling and/or treatment and any other detrimental influences, including dry, heated and locked storage rooms as well as appropriate security for and at the site, if necessary.
 - 3.2 Preparation and maintenance of the site and its surroundings, and in particular the execution of all building, foundation and scaffolding works, clearance and consolidation of access roads and ways and of the site and implementation of all safety measures to prevent accidents, as well as the provision of lighting and ventilation and of adequately dimensioned building openings to allow for entry of all parts and equipment. Cleaning of the site and installation of parts before, during and after all work, proper removal of all residual and packaging materials which may occur.
 - 3.3 Provision of suitable rest and work rooms, complete with heating, illumination, washing facilities, sanitary equipment and first aid supplies as well as telephone and internet connection for use free of charge. Furthermore, a complete workshop shall be made available which shall be located at the site or in its immediate vicinity and shall be suitable for the performance of normal mechanical work as well as turning, welding, drilling, etc..
 - 3.4 Provision and use of the necessary equipment, tools and auxiliary supplies and especially adequately dimensioned lifting tackles, scaffoldings, welding equipment, welding electrodes, oxygen and welding gases, cleaning and lubricating materials, rigging wood, wedges, underlays, measuring- and testing devices/equipment and utilities such as electricity, steam and water, complete

with all necessary connections at the site, and as applicable, raw and auxiliary materials and all necessary organisational, manning and technical safety precautions in connection therewith, such as the provision of safety specialists, the performance of emission measurements, the provision of personal safety equipment for the expert personnel and other personnel.

- 3.5 Provision of experienced personnel ("Personnel") by Customer or its subcontractors such as but not limited to foremen, mechanics, electricians, welders and, if required, interpreters, all in the necessary numbers and for the lengths of time needed and having the requisite qualifications. The Customer is solely responsible that all such Personnel must be familiar with the general state of the art of the technique, SLS' technical documentation and the safety regulations applicable at the site. The Customer shall ensure that the instructions of SLS' expert personnel are followed by the Personnel and shall organise and coordinate their deployment. The Personnel employed by the Customer or by third parties on the Customer's behalf shall not become employees or contracting parties of SLS.
- 3.6 Timely procurement of any necessary residence and work permits, invitation letters and visas for SLS' expert personnel, licences and customs clearance for the import and re-export - free of any customs duties or fees - of equipment, tools and materials brought by SLS' expert personnel, as well as any other permits which may be required for the activities on the site, especially those relating to work safety and environmental protection. At the earliest possible, the Customer will hand out to SLS copies of each of such permits, complete with all relevant rules and regulations to be observed.
- 3.7 In case of dismantling, repair work and/or inspections the Customer shall clean the machinery and equipment and bring them to a zero energy status, unless otherwise expressly agreed upon in writing. The Customer undertakes to inform SLS' expert personnel about any defects and hazards known to him, which may result in damages and to make available the complete documentation for the machinery and equipment.
- 3.8 Overall responsibility for the safety of the site, the installation equipment, the work places, the start-up and the production operations as well as for compliance with all applicable labour laws shall remain with the Customer. The Customer shall regularly inform and train SLS' expert personnel on all safety regulations and measures. Any work carried out without direct supervision by SLS' expert personnel requires prior consent of SLS and may be performed only according to the instructions given by SLS and by skilled Personnel familiar with all safety standards and measures to be followed and under the control of Customer's safety officer.

§ 4 PRICE AND WORKING TIME

All prices are net prices; value added tax, if levied for any of SLS' Services will be added thereto. Unless otherwise indicated in the Order, the Services rendered shall be invoiced according to the Services actually performed and the "Price List for Field Services" of SLS applicable at the time of the Order. In particular the following shall apply:

- 4.1 Subject to the provisions of the applicable "Working Hours Act" ("Das Arbeitszeitgesetz") of the Federal Republic of Germany, the start and end of the daily working time will depend on the local regulations and the working hours applied internally by the Customer.
- 4.2 The daily rates and subsistence allowances are specified in "Price List for Field Services" of SLS applicable at the time of the Order. If shorter time is to be worked for reasons for which SLS is not responsible, the normal daily rates will nevertheless be invoiced. The price computation shall be based on the wages and salaries valid in the Federal Republic of Germany and at the time of the Order. In case of any changes, the hourly rates or daily rates and surcharges shall be correspondingly adjusted upwards or downwards.
- 4.3 Travel time as well as an adequate period of time for Order-related preparation and handling and for Order-related post processing handling after all work shall be deemed as working time and shall be paid at daily rates as set out in the "Price List for Field Services" of SLS at the time of the Order. The travel time shall be the shortest possible time from travel start until arrival at the accommodation at the place of Services, and until arrival at the place of domicile respectively. The necessary daily time for travel from the place of accommodation to the site and back shall be invoiced as working time to the extent that it exceeds a daily total time of 60 minutes.
- 4.4 Waiting time shall be deemed as working time. Waiting time is the time during which the performance of Services by SLS' expert personnel is hindered or interrupted, unless SLS or its expert personnel are responsible for such waiting time.



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- 4.5 SLS' expert personnel shall be entitled to a trip home between December 22 and January 04 of the next year and every 3 months of stay at site. The Customer shall bear the costs of the round trip including subsistence allowance and daily rates for the travel days, though not for the other days of absence from the site. The additional fee to be paid by the Customer for the working time on Sundays or the applicable public holidays are specified in the "Price List for Field Services" of SLS applicable at the time of the Order.
- 4.6 The costs for travel, for round trips, for daily travel from the place of accommodation to the site and back and for all other travel necessary for performing the Services, including all pertinent costs, such as freight and insurance of luggage and tools, shall be borne by the Customer and shall be paid or reimbursed directly by the Customer to SLS. Railway travel shall be at the first class fare and air travel at business-class fare. For travel in private cars, a mileage allowance will be charged and for rented cars the actual rent and operating costs incurred.
- 4.7 Accommodation costs during the journey and at/near the site shall be advanced by SLS' expert personnel and then invoiced to the Customer together with the other costs.
- 4.8 In cases where the provision of tools, measuring and testing devices, etc. is agreed upon, fees shall be calculated in accordance with separate agreements between the parties from the day of dispatch until the arrival back at the place of dispatch. Consumable tools shall only be sold to the Customer at the correspondingly valid prices and delivery conditions of SLS. The transportation as well as the importing and exporting of the above equipment shall be performed at the expense and risk of the Customer. Damage caused to tools and instruments shall be eliminated by SLS at the expense of the Customer.

§ 5 TERMS OF PAYMENT

- 5.1 Unless otherwise agreed in the Order, payments shall be made against invoice (every 14 days) on the basis of SLS' time sheets which shall be endorsed by the Customer or its representative. If the Customer does not sign the time sheets in a timely manner, the records of SLS' expert personnel shall serve as the accounting basis. The invoiced amounts shall be due 14 days after date of the invoice and payable to SLS without any deductions, costs or withholding. The Customer shall neither retain payment on account of any claim nor shall the Customer offset any claim against the payment due.
- 5.2 Any payments shall be considered made only if and when received in SLS' account at its free and unreserved disposal. No payment shall be made to SLS' expert personnel directly.

§ 6 TAXES, CUSTOMS DUTIES, FEES AND DUES

All taxes, duties, fees and dues (herein referred to collectively as "Taxes") which are levied on SLS or its expert personnel or on SLS' subcontractors or their personnel in connection with the performance of the Services shall be borne by the Customer. The Customer shall be responsible for the fulfilment of all formal obligations connected with the Taxes, including payment. If SLS or its expert personnel, SLS' subcontractors or their personnel should disburse such Taxes, the Customer shall reimburse such amounts to SLS within 14 days of presentation of invoices.

§ 7 ILLNESS AND ACCIDENTS

In the case of illness or accident of SLS' or subcontractor's expert personnel, the Customer shall arrange for the provision of medical treatment, medicines and drugs, hospitalisation and transportation. SLS shall bear the costs therefore, except in case of such work accidents of the expert personnel for which the Customer is responsible.

§ 8 WARRANTY AND LIABILITY

- 8.1 SLS shall be, under exclusion of any further warranty whether express or implied, responsible to the Customer for the performance of Services as agreed upon in the Order.
- 8.2 If a binding time for despatch of the expert personnel is agreed and SLS is in delay in despatch the expert personnel as agreed due to its negligence and the Customer has suffered damage as a result of such delay, as sole and exclusive remedy (i) SLS shall pay liquidated damage of 0,5% of the value of the delayed part of the Services for each complete week in delay, in aggregate however not exceeding maximum 5% of the value of the Order; (ii) the Customer may terminate the Order with respect to the delayed Services or portion thereof, however, not prior to the expiration of the period for which the maximum amount of damages of 5% of the value of the Order will become due and if SLS has failed to cure the delay within additional 14 days from Customer's written notice. In case of such termination, SLS shall refund to the

Customer all amounts which the Customer may have already paid in advance for the portion of the Order so terminated.

- 8.3 SLS is liable to the Customer for direct damages to tangible property and injury or death of any person caused by the negligence of SLS or its employees. SLS' liability for the direct damage to tangible property is limited up to 25% of the value of the Order and SLS' legal liability for personal injury and death is without any limitation. SLS' overall liability, to the extent permitted by law, is limited to the value of Order under exclusion of all other claims, irrespective of the legal nature. Any claim shall be notified by the Customer to SLS in writing immediately. Following such notice, SLS shall re-perform such Services to the exclusion of further remedies. Any and all claims shall expire 6 months after completion of the Services as defined in § 2 above.
- 8.5 The warranty obligations and liabilities of SLS and the rights and remedies of the Customer set forth in the Clause 8.1 to 8.4 hereto are exclusive and are in lieu of all other warranties, obligations, or liabilities, whether expressed or implied. SLS shall not be liable for any claim for any loss or damage other than set out hereinabove. Notwithstanding anything implicitly or expressly provided for to the contrary either in the Order or by the applicable law, in no event shall SLS be liable for loss of production, loss of profit, loss of contract, increased costs and the like whether based on contract, tort, negligence, warranties, law or otherwise and irrespective of their legal nature.
- 8.6 The Customer shall indemnify SLS for and hold SLS harmless from and against all claims by any third party and other costs and damage, including without limitation any accidents, consequences of accidents and damage to property that are attributable to the deficient condition of the devices, equipment and auxiliary materials made available by him, provided such damage is due to the negligence or wilful act or omission of the Customer or of a third party for which the Customer is legally liable.
- 8.7 The Customer shall take out and maintain adequate insurance at his own expense to cover all risks arising during the Services and submit the policy upon SLS' request. The insurance shall contain a customary waiver of subrogation against SLS and its expert personnel.
- 8.8 Unless otherwise expressly authorized by SLS in writing, its expert personnel shall not be entitled to sign any agreement or enter into any commitment which may be binding for SLS.

§ 9 SOFTWARE

Should any software be provided in connection of the Services, then the provisions of Siempelkamp Software Plant Licence as attached in the Order shall be applicable.

§ 10 CONFIDENTIALITY

The Customer hereby acknowledges that all specifications, drawings, descriptions and illustrations which are obtained from SLS are confidential and proprietary unless already in the public domain prior to its disclosure. The Customer shall not disclose such information to anyone for any purpose other than in relation to the Services.

§ 11 FORCE MAJEURE

Should the commencement and/or performance of Services be hindered or rendered impossible through events of force majeure (e.g. strikes, lockouts, mobilisation, war, civil disturbances, epidemics, natural disasters or any other circumstances which hinder the work and are beyond SLS' control), SLS reserves the right to adapt the terms and conditions for the performance of Services to the changed circumstances or to terminate the Order.

§ 12 MISCELLANEOUS

- 12.1 If any provision of the Order or these terms is or becomes void or invalid, this shall not affect the validity or effectiveness of the other provisions thereof. The void or invalid provision shall be replaced with an adequate valid provision, which comes closest to the economic meaning intended by the parties as inferred from the Order in its entirety.
- 12.2 Unless otherwise agreed, the Swiss substantive laws shall apply under exclusion of the UN-Convention on Contracts for the International Sale of Goods. Any and all claim, controversy or dispute arising out of or in connection with the Order shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by three arbitrators appointed in accordance with the said Rules. The place of arbitration shall be Zurich, Switzerland. The language of the arbitration proceedings shall be English.

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