

# General Terms and Conditions of Purchase (GTCP)

of Schoeller-Bleckmann Oilfield Technology GmbH

As of November 2020

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### 1 Scope

The following General Terms and Conditions of Purchase (hereinafter referred to as "**GTCP**") of Schoeller-Bleckmann Oilfield Technology GmbH, FN 152516p, Hauptstrasse 2, A-2630 Ternitz, Austria (hereinafter referred to as "**SBOT**") in the version valid at the time of the conclusion of the contract shall govern all and any relations between SBOT and its suppliers (hereinafter referred to as "**Supplier**"), especially in connection with both, entering into and performance of a contract and all inquiries and orders. Deviations between these GTCP and other agreements with Supplier shall only be effective if they have been confirmed by SBOT in writing.

General terms and conditions of Supplier shall be deemed superseded and of no effect, unless explicitly accepted by SBOT in the respective contract. SBOT expressly objects to the terms and conditions of Supplier. The GTCP of SBOT also apply if SBOT carries out his obligations to Supplier unconditionally in the knowledge of conflicting terms and conditions of Supplier.

These GTCP shall also apply to future relations between SBOT and Supplier, even if they are not expressly referred to. Supplier agrees to their application always in their latest version, which shall be the version available on SBOT's website at [www.sbot.co.at](http://www.sbot.co.at).

### 2 Entering into Contract and Form

Unless explicitly agreed otherwise between SBOT and Supplier, an offer by Supplier shall constitute an invitation to SBOT to place an order with Suppli-

er. The contract shall enter into effect upon confirmation of SBOT's order within 5 (five) business days from receipt. Should Supplier neither confirm nor reject the order within the 5-day period, SBOT may notify prolongation of the period of confirmation / rejection by up to another 3 (three) business days, otherwise the order shall be deemed rejected by Supplier upon expiration of the period.

Deviations in Supplier's confirmation to SBOT's order shall entitle SBOT to replace by another order meeting Supplier's confirmation within 5 (five) business days from receipt of the confirmation, otherwise SBOT's order shall be deemed rejected upon expiration of respective period. The replacement order shall be confirmed by Supplier accordingly.

Any offer, order and confirmation shall be made in writing, including via EDI, e-mail or fax, by an authorized representative on behalf of SBOT / Supplier. The confirmation shall make clear reference to the order by setting out the order number. Those requirements shall also apply to any amendments, modifications, or replacements thereof.

Cost estimates shall be binding on Supplier and free of charge.

Supplier confirms that persons acting on his behalf within his sales department are duly authorized to make legally binding statements and have the power to internally request performance of the contract as agreed with SBOT.

### 3 Performance

#### 3.1 Proper and Complete Performance

Performance of the contract shall require to have the products (containing goods and services) provided and delivered properly, completely, and as set out in the contract and / or these GTCP. The following shall apply to both, goods and services, the latter, however, *mutatis mutandis* as nature of such products allows.

Except for norm and standard parts meeting the standards of Supplier, Supplier shall inform SBOT about any intended sub-contracting of production or (parts of) products in a timely manner and obtain approval thereto in writing, including via EDI, e-mail or fax.

Proper performance shall require having products at least compliant with and carefully checked against the state of the art, taking into account the principles efficiency, expediency and maintenance-

friendliness and the statutory requirements and technical standards applicable at the place of performance and of final destination. Furthermore, to have all documentation set up and provided, including, but not restricted to technical specifications, records and documents (e.g., licenses, CE certificates (as applicable), labelling / signage, technical and quality inspections) for putting into operation, repair, maintenance and replacement. Documentation shall be in German or English language.

Supplier guarantees the lawfulness of the products, including but not limited to competition law, trademark law, copyright law and administrative law. SBOT shall not be liable for any violation of such rights and / or laws. If SBOT is held liable for an infringement of such rights and / or laws, Supplier shall fully indemnify and hold harmless SBOT and shall reimburse any disadvantages suffered by SBOT due to third-party claims.

Supplier shall take any and all (additional) measures that may be required for proper performance at no additional cost for SBOT, even if those have not been explicitly stated in the contract or included by Supplier in his original calculation. Where the products include machines for the production space of SBOT, Supplier shall procure to have spare parts provided for a reasonable period of utilization of the product, which shall be a period of at least 15 (fifteen) years.

Subsequent modifications or amendments to the products (e.g. modified technical designs, etc.), which (i) are not attributable to the sphere of SBOT or (ii) have not been expressly requested by SBOT require prior approval by SBOT. Prior approval shall not be required to minor modifications / amendments in order to comply with the state of the art standard, including where this is required from administrative or statutory changes and provided this does not compromise SBOT's interests in efficiency, expediency and maintenance-friendliness. Modifications and amendments in the sense of this section shall not entitle Supplier to additional claims for remuneration.

Complete performance shall include having the products delivered in all parts and full as agreed between SBOT and Supplier together with all documentation required and, where applicable, title to the products transferred to SBOT, giving SBOT the unrestricted power to have the products put into operation as intended. This, however, shall not preclude Supplier to retain intellectual property (IP)

rights not necessary for proper putting into operation of the products.

Where performance in tranches or parts is agreed, performance shall be deemed effected upon proper and complete delivery of the last tranche / part. Acceptance of parts by SBOT shall not constitute a waiver with respect to any rights out of the contract and / or these GTCP.

### **3.2 Delivery and Transfer of Risk**

Unless otherwise agreed, place of performance shall be the facility of SBOT in Ternitz, Austria, the incoming goods reception as applicable. Delivery shall be effected Delivered Duty Paid (DDP) according to the Incoterms® 2010 and during ordinary business hours. Risk and title shall transfer with the first entry examination after unloading with the exception of transfer of title according to Section 4.1 of these GTCP. Supplier shall not be entitled to retain title beyond this point in regard to the products or parts thereof. The acceptance of products delivered under retention of title as well as the signing of invoices or shipping notes containing a retention of title clause has no explanatory value whatsoever in this regard and all deliveries shall be effected without being subject to retention of title.

Where performance also includes setting up, installation, assembly and / or putting into operation in collaboration with or with the aid of Supplier, risk shall transfer not earlier than upon proper and complete delivery as agreed in the contract.

All costs and risks related to the shipment, including, but not limited to tariffs, transport fees and expenses, transport insurance, statutory export control permits, customs clearance, oversize and dangerous goods transports, special shipment measures, etc. shall be borne by Supplier. SBOT and Supplier may agree to have an appropriate transport insurance purchased by Supplier, in which case this shall be at the expense of Supplier. Every shipment shall be accompanied by appropriate, customary shipping documents, including, but not limited to the delivery note clearly indicating the order number. However, the invoice shall be submitted to SBOT as set out in Section 4.2 of these GTCP.

Delivery shall be made within the periods or on the date specified in the contract. In all other cases, delivery shall be made without undue delay until 30

(thirty) days from receipt of the order by Supplier. Periods and dates shall be binding and fixed.

Supplier shall notify SBOT immediately should delivery, for whatever reason, not be makeable on time. Following notification, SBOT may decide to have delivery postponed by a certain or "reasonable" period of time, otherwise the contract shall be deemed withdrawn for good cause following a grace period of 5 (five) business days from receipt of the notification. Postponement may be declared repeatedly. For proper assessment on whether postponement of delivery might be appropriate, SBOT shall be entitled to request further information from Supplier on the status of delivery and the reasons for the delay. Postponement and withdrawal shall not restrict SBOT to claim damages due to late delivery (or non-fulfilment), including as set out in Section 5.2 of these GTCP (liquidated damages), and to have the contract performed on its own or with the aid of a third person at the cost and risk of Supplier.

### 3.3 Shipping and Packaging

Shipping and packaging shall be procured by Supplier and appropriate to have the products delivered safely, undamaged and compliant with international standards and the requirements and standards applicable at the place of performance and of final destination. Any additional costs resulting from non-compliance with this Section 3.3 shall be reimbursed / borne by Supplier.

At SBOT's request, Supplier shall take back or dispose of the packaging materials free of charge after delivery has been made. Should Supplier not fulfil such request within reasonable time, SBOT may dispose of the packaging materials at the cost and risk of Supplier. This shall, in particular, apply to all packaging materials falling below a recognized definition of hazardous waste.

Only recognized freight forwarders, specialized in international transports, shall be used to carry out paperwork and shipment and to provide respective support.

## 4 Payment

### 4.1 Terms of Payment

Unless otherwise agreed, prices for products shall be deemed fixed lump-sum prices, inclusive of all taxes, fees and charges, however, exclusive of value added tax (VAT) and in accordance with Deliv-

ered Duty Paid (DDP) pursuant to the Incoterms® 2010. It shall also include all packaging, shipping and documentation required for proper and complete provision (and delivery) of the products. Any costs exceeding these fixed lump-sum prices may only be charged if accepted by SBOT in writing beforehand.

Payment shall be effected within 60 (sixty) days from receipt of the invoice according to Section 4.2 of these GTCP, however not earlier than following proper and complete delivery of the products to SBOT. SBOT shall be entitled to a cash discount of 3 (three) % from the total amount invoiced (exclusive of value added tax (VAT)) if payment is effected within 45 (forty-five) days. If late payment occurs due to SBOT's fault, late payment interest of 4 (four) % p.a. may be applied.

Where SBOT has agreed to a down payment exceeding a threshold of EUR 10,000, such down payment shall be secured by a free, irrevocable and abstract bank guarantee carried out by Supplier until proper and complete delivery and issued by a first-class bank or insurance company acceptable to SBOT whose registered office is in the European Union, Switzerland, Iceland or Norway. To the extent SBOT has made a down payment, it acquires title to a (joint) ownership share of the products already produced corresponding to the payment to the total value of respective items. Supplier shall make sure that products whose ownership has already transferred to SBOT are kept separate and labelled in an appropriate way setting out the ownership of SBOT. The provisions on transfer of risk shall remain unaffected hereby.

Payments shall not be considered as a recognition of fulfilment of the respective contract and thus do not constitute a waiver of any claims based on warranty, guarantee, damages, etc.

### 4.2 Invoicing

Invoices shall be presented to SBOT in electronic form by separate e-mail to [accounting@sbo.co.at](mailto:accounting@sbo.co.at). Invoices attached to the products are considered to be not duly received. Furthermore invoices shall meet all requirements of section 11 of the Austrian Value Added Tax Act / UStG as amended and include VAT, order number, the date of the order, the shipping order number, the delivery date and the UID number of Supplier. SBOT shall be entitled to reject invoices not meeting those requirements, these invoices shall not constitute maturities until

their arranged correction and shall entitle SBOT to hold back payment.

Supplier shall not be entitled to offset his own claims against counterclaims out of the same transaction or other transactions, unless those counterclaims have been ascertained by court in a non-appealable manner or are expressly acknowledged by SBOT.

## 5 Warranty and Liability

### 5.1 Warranty

Supplier warrants freedom of defects of the products as regards quality, quantity and title of any kind, as well as intellectual property (IP) rights and that the products fully comply with the provisions explicitly set out in the contract, both at the date of delivery and throughout the warranty period. That agreed, products have the usually expected and, in particular, the specifically set out properties and meet all requirements as agreed in Section 3.1 of these GTCP, excluding normal wear and tear and damage caused through improper / incorrect use by SBOT within the warranty period after the date of delivery. Declarations by Supplier, which limit his liability, are invalid.

Warranty shall be subject to a period of 24 (twenty-four) months for movable items, and 36 (thirty-six) months for immovable items from delivery. For latent defects and defects in title the warranty period shall commence not earlier than from the time they are noticed. Improvement or replacement shall let commence the warranty period anew from delivery for the improved / replaced products, or, where the defect considerably affects the whole delivery, for all products of the same transaction.

Supplier shall remedy defects arising during the warranty period free of charge and with shipment from / to the place of performance within a short but reasonable period of time not exceeding 15 (fifteen) days at SBOT's choice, either by improvement or replacement. Can improvement or replacement not be effected sufficiently or within this period of time, SBOT may decide to improve / replace on its own or with the aid of a third person against reimbursement of the costs incurred by Supplier, or to withdraw from the contract where the defect considerably affects the usability of the products. Any other rights to which SBOT may be entitled shall remain unaffected hereby.

Specifications concerning material, function, features, configuration and / or application of the products are considered to be explicitly guaranteed.

Supplier shall face the burden to prove non-existence of a defect arising during the warranty period. SBOT shall have no duty to inspect the products or object at the time of delivery or any time thereafter. Accordingly, the provisions of sections 377 ff of the Austrian Commercial Code / UGB shall not apply and Supplier waives the plea of late notice of defects.

SBOT shall be entitled to withhold payments on the ground of complaints.

### 5.2 Liquidated Damages

Supplier shall be liable according to statutory provisions (including product liability provisions, irrespective of whether such claims can be traced back to the delivered products completely or only in part) for damages, pecuniary loss, replacement of consequential / subsequent damages, lost profit, non-achieved savings, loss of interest / revenues and replacement of pure financial loss suffered by SBOT and caused by him, directly or indirectly, and persons attributable to him, without any limitations to liability. The same applies to costs of legal proceedings, lawyer's fees of SBOT, costs of publication of judgments, for claims for damages, if any, or other claims of third parties; Supplier shall indemnify and hold harmless SBOT in this respect.

Supplier acknowledges that on time delivery is critical to SBOT and the amount of loss or damages likely to incur in case of improper or incomplete performance cannot be precisely estimated. Therefore, he agrees to the payment of liquidated damages of 0.5 % per commenced week of late performance until up to, or in case of non-performance, 5 (five) % of the total contract value upon first notification by SBOT; reference is made to Section 3.2 of these GTCP. This liquidated damages clause shall apply *mutatis mutandis* to Section 7 of these GTCP, in particular, as it refers to the Code of Conduct (Section 7.1), EU Declaration of Conformity (Section 7.2) and Confidentiality and Intellectual Property (Section 7.5), and not be subject to mitigation by court, nor preclude any claims exceeding the amounts claimed hereunder.

## 6 Termination and Force Majeure

Apart from the rights to withdrawal stipulated in these GTCP, the contract or the law, SBOT explicit-

ly reserves the right to terminate for good cause at any time with immediate effect, which shall apply, in particular, but not restricted to

- severe infringement of major contractual obligations by Supplier,
- failure to comply with delivery terms (in this or any other transaction between SBOT and Supplier in his role as supplier),
- when circumstances occur that justifiably make doubt Supplier's creditworthiness or that may essentially endanger the realization of entitlements, e.g. substantial reduction or entire cancellation of credit insurance limits by renowned credit insurers, restructuring, insolvency or other proceedings with similar effect applied for or opened upon Supplier or a petition for opening of such proceedings is dismissed for lack of assets to cover the costs,
- major changes in the ownership structure / shareholding relationships of Supplier that make it unreasonable for SBOT, e.g. as a result of imminent loss of reputation or image or (possible) serious effects on the relationship of SBOT with other suppliers or customers, to continue execution of the contract,
- major negative changes in the technical, legal or economic basic conditions / circumstances which make it no longer tolerable for SBOT to adhere to the contract, or
- impossibility of delivery of the products due to reasons for which Supplier is responsible or further delay.

Withdrawal shall be restricted if performance is hindered by events of *force majeure*, which shall exclusively be war, strike organized by a union, riot, acts of god and fire, in the sense that periods or dates for performance shall be extended by the duration of the effects of *force majeure*. If an event of *force majeure* lasts longer than 4 (four) weeks, SBOT and Supplier shall enter into negotiations for amicable solution of the problem. After in total 8 (eight) weeks, provided that no amicable solution can be reached, SBOT may withdraw from the contract in whole or in part.

Supplier may only claim *force majeure* if he notifies to SBOT start and expected end of the disruption immediately and not later than 3 (three) business days after the event occurred. The parties shall use all efforts to remove and / or minimize the difficulties and expected damage caused by the event of

*force majeure* and shall keep the other party informed on a regular basis.

## 7 Compliance and Code of Conduct

### 7.1 Code of Conduct

SBOT commits itself to SBO Group's Code of Conduct available at [www.sbo.at/compliance](http://www.sbo.at/compliance) in the latest applicable version. According to Article 1 of the Code of Conduct, it shall also apply to persons undertaking activities for or on behalf of SBOT.

Supplier herewith acknowledges the Code of Conduct and agrees to its application *mutatis mutandis*.

### 7.2 EU Declaration of Conformity

Supplier confirms to comply with all applicable EU regulations and directives, harmonized standards and Austrian laws in a way that can be proved and checked at any time, also with respect to products imported from non-European countries.

He confirms to have prepared the entire technical documentation and the EU declaration of conformity as required by those rules and regulations and to indemnify and hold harmless SBOT in that respect. CE and other relevant certificates shall, in general, be acquired by Supplier.

### 7.3 Taxes, Tariffs and Customs

All quoted amounts are, unless otherwise agreed, in EUR. The sales tax is levied according to the legal regulations.

Pursuant to Section 3.2 of these GTCP, Supplier is responsible for export and import of the products. Any taxes, tariffs and customs duties incurred by export or import of the products shall be borne by Supplier, including any taxes, tariffs and customs duties incurred by changes to respective laws after SBOT has placed an order or the contract has been signed. SBOT and Supplier may mutually agree upon details.

### 7.4 Export Control and Sanctions

Supplier shall be obliged to comply with all applicable national and international export control regulations with respect to the products.

Performance of the contract shall be subject to any required export permits issued. Furthermore, it shall be subject to the express proviso of no conflict with any applicable import or export control regime, including, without limitation, sanctions (primary and secondary sanctions), embargos and other barriers

to trade. This shall apply whether those barriers apply to SBOT directly or to any SBO Group company or the SBO Group as such, with or without effect on SBOT.

Supplier acknowledges that the imposition of any of those barriers constitutes an event beyond the control of SBOT, the effect of which is to have SBOT released from its contractual obligations. Release shall not incur any damages or other claims against SBOT, such as reimbursement of any costs or expenses, direct, indirect or consequential, which arise to Supplier in connection with such release. However, SBOT and Supplier may consult in good faith regarding compliant alternative delivery options.

### 7.5 Confidentiality and Intellectual Property

Supplier acknowledges the confidentiality of business secrets of SBOT. Business secrets are to be understood in a broad sense and shall cover trade secrets and intellectual property (IP), business ideas, processes, forecasts and strategies, customer, supplier and product information including price lists and price determination mechanisms, capacity and production information, SBOT's requests and orders, machines, research and development (R&D) information and development plans, manager and employee related records, etc. Any transfer, duplication, disclosure or publication of documents or information provided by SBOT to Supplier shall, in general, be prohibited and subject to approval by SBOT. Supplier shall use the disclosed information and documents exclusively for the placing of an offer and the fulfilment of the respective contract. Furthermore, Supplier agrees to neither access, use, appropriate nor register intellectual property (IP) made accessible by SBOT other than access and use for performance of the contract. Ownership of the intellectual property (IP) shall remain with SBOT.

The aforementioned provisions shall apply for an indefinite period of time, which may go beyond termination of business with SBOT. Upon termination, all documents and information received or created in course of the business shall be returned (handed over) to SBOT. Where this is impossible or impractical, it shall be destroyed (deleted). Should destruction not take place, whether due to mandatory provisions under public law or separate agreement with SBOT, SBOT shall be informed immediately.

Should Supplier provide products (including documentation) subject to intellectual property (IP) rights and transfer of those rights for specific reasons, not be part of the performance to SBOT, he agrees to grant the unrestricted right to access and use for the purposes they have been provided for. Where respective rights are with a third party, Supplier shall procure to have them transferred to SBOT accordingly and indemnify and hold harmless SBOT in that regard.

SBOT shall be entitled to make reference to Supplier to point out the cooperation with Supplier and mention his name, display the logo and link the reference to Supplier's website on all advertising means and in any advertising and promotion measures, in particular on the website, in publications and reference lists of all kinds, for an unlimited period of time without Supplier being entitled to any payment in this respect, but with Supplier having the right to revoke his consent at any time.

### 7.6 Data Protection

On 25 May 2018, Regulation (EU) No 2016/679 (EU-General Data Protection Regulation) has entered into effect which forms the basis for SBOT's protection of natural persons in the processing of personal data.

Supplier acknowledges that his and his employees' personal data are processed by SBOT as required for the purposes of the business relationship with Supplier. This shall not restrict to have personal data processed for other purposes if those are compatible with the purpose for which they were collected, including by any other SBO Group company for those purposes.

Further information on personal data processing by SBO and the rights relating thereto has been made available at [www.sbo.at/privacypolicy](http://www.sbo.at/privacypolicy).

SBOT requires Supplier to comply with the same, who shall therefore process data in a manner that ensures appropriate security, including protection against unauthorized or unlawful processing and against accidental loss, destruction and damage, using appropriate technical and organizational measures (integrity and confidentiality).

As regards processing of personal data, he shall, in addition to the requirements of integrity and confidentiality, comply with the principles (a) lawfulness, fairness and transparency, (b) purpose limitation, (c) data minimization, (d) accuracy, and (e) storage

limitation, all of them as stipulated and specified in the EU-General Data Protection Regulation.

Processing of personal data – including use and transmission to SBOT – shall only be made based on a valid legal ground and the data subject shall be properly informed in line with Articles 13 f of the EU-General Data Protection Regulation. SBOT may request evidence by Supplier as required to comply with the EU-General Data Protection Regulation.

Supplier shall indemnify and hold harmless SBOT for any penalties imposed on or damages arisen, to SBOT or any of its managers or employees, due to non-compliance with obligations on data protection by Supplier.

## **8 Salvatory Clause**

Should parts of the GTCP be invalid or void, lose their effectiveness as a result of a later circumstance, gaps exist or application of (certain provisions in) these GTCP be denied by court decision, the effectiveness of the remaining provisions and the contracts concluded on the basis of the same shall not be affected and it shall be applied what comes closest to the industry standard in comparable cases, otherwise the law. SBOT and Supplier may expressly agree on valid and effective provisions meeting those requirements.

## **9 Legal Venue and Choice of Law**

All disputes arising out of or in connection with the business relationship, these GTCP and the contract between SBOT and Supplier, including the question of the conclusion, the validity, the dissolution or nullity of the contract, shall be subject to Austrian laws, excluding international conflict of law rules and the UN Convention on Contracts for the International Sale of Goods (CISG), as amended.

Legal venue shall be the court having jurisdiction over the subject matter at the seat of SBOT.