

GENERAL TERMS AND CONDITIONS

for the sale of machinery and equipment (latest updated on 6 June 2019).

Background and application

- 1 Store Norske Gruvedrift AS ("**SNGD**") is working on a liquidation of its coal mine operations in Svea and Lunckefjell and is therefore selling its machinery and equipment.
- 2 These general terms and conditions have been prepared to regulate these sales and will be applicable if the parties, in writing or in any other way, have agreed that they shall be applicable. Any waivers or exceptions from these general terms and conditions must be agreed in writing.

Product information

- 3 The "**Product**" shall mean the relevant objects (including the main object, the supplementary equipment and any spare parts) to be sold by SNGD to the buyer.
- 4 All information and data contained in any marketing material, price lists and other product documentation shall be binding only to the extent that they are by written reference expressly included in the agreement.

Documentation, information and intellectual property rights

- 5 Subject to these general terms and conditions, SNGD assigns and transfers to the buyer its title to, or right to use, all intellectual property rights, including software and licences, relating to the Product that SNGD may assign and transfer without obtaining consents from, or paying compensation to, the relevant right holders.

The buyer is obliged to, and liable for, clarifying all legal and financial rights with the relevant right holders, including obtaining the right holders' consent to its use of the Product and/or to pay any required compensation in order to continue its use.

SNSG is not liable for any legal or actual infringements with respect to intellectual property rights, including software and licenses.

Payment, transfer, passing of risk etc

- 6 Unless otherwise agreed, payment shall be made as follows:
 - (a) For purchases of Products with a purchase price of up to NOK 500,000, the buyer shall pay the purchase price in full within five (5) business days after the parties have entered into an agreement to formalize the sale (the "**Purchase Agreement**").
 - (b) For purchases of Products with a purchase price exceeding NOK 500,000, the buyer shall pay a deposit in the amount of 10% of the purchase price within five (5) business days after the parties have entered into the Purchase Agreement. The remaining part of the purchase price shall be paid prior to the buyer's commencement of any work with the Products, hereunder amongst other things,

dismantling, assembly, packing and transportation, and in any event within 35 business days after the entry into of the Purchase Agreement.

- 7 The buyer's payment shall be free and clear for any set-off or counterclaim, and without any tax deduction or withholding. If a tax deduction or withholding is required by law, the amount payable by the buyer shall be increased to an amount which (after making the tax deduction or withholding) leaves an amount equal to the payment which would have been due if no tax deduction or withholding had been required.
- 8 If the buyer fails to pay any amount on its due date, SNGD has a right to:
 - (a) demand payment of default interest from the due date at the then applicable default interest rate according to the Norwegian Default Interest Act; and/or
 - (b) suspend the performance of its own obligations towards the buyer until payment has been made or any agreed security has been duly established.
- 9 Upon SNGD's irrevocable receipt of the full purchase price, the title to, and the risk for, the Product is transferred and passed from SNGD to the buyer. The buyer may not commence work with the Products, hereunder amongst other things, dismantling, assembly, packing and transportation, before the title to, and the risk for the Products has been transferred to the buyer.
- 10 The title to, and risk for, the Product is, unless otherwise agreed in writing, transferred to the buyer at the place where the Product is located at the relevant time. The buyer is, consequently, solely responsible for dismantling, assembling and transporting the Product. The buyer shall as soon as possible after the title to and risk for the Product has been transferred to the buyer, ensure that the Product is transported out of SNGD's property and area unless otherwise agreed in writing.
- 11 The Product's condition at the time title and risk is transferred to the buyer shall, unless otherwise agreed in writing, be the same as the Product's condition at the buyer's acceptance test (or at the time the parties entered into the Purchase Agreement if the buyer decided not to perform an acceptance test).
- 12 SNGD may, upon written request and against an agreed compensation, perform certain additional services to the buyer in connection with the dismantling, assembling and transporting of the Product.

Delay

- 13 The buyer shall promptly notify SNGD in writing if a delay is likely to occur. The buyer shall at the same time notify SNGD of the cause of the delay and, if possible, when the payment is likely to be made.

If full payment is not duly made within ten (10) business days from its due date, SNGD may by written notice to the buyer terminate the agreement in full or in part. If SNGD terminates the agreement, SNGD shall be entitled to compensation for the loss it suffered as a result of the buyer's delay or failure to perform. The total compensation shall not exceed the part of

the purchase price which is attributable to the part of the Product in respect of which the agreement is terminated.

- 14 If the buyer does not transport the Product out of SNGD's property and area within the agreed time, SNGD may procure storage and/or transport (including associated services) of the Product for the buyer's account and risk.

Sold "as is" and the buyer's duty to inspect

- 15 The buyer is aware that the Product is being sold in connection with SNGD's liquidation and clean-up of its coal mine operations in Svea and Lunckefjell and that SNGD consequently has a particular need to limit its liability and risk in connection with the sale.

- 16 The Product is being sold in the condition it is in at the time title and risk is transferred to the buyer ("*som den er*" / "*as is*") without any liability for SNGD, including for visible and/or hidden defects and nonconformities. This disclaimer of liability also includes any incorrect information that SNGD negligently has given with respect to the Product or information that SNGD had to be aware of but negligently did not give to the buyer.

SNGD hereby waives its liability pursuant to section 19 of the Norwegian Sale of Goods Act and any equivalent provisions.

This limitation of liability is not applicable if SNGD has acted with gross negligence or wilful misconduct.

- 17 SNGD has recommended that the buyer to performs a thorough inspection of the Product before the transfer date (acceptance test), including ensuring that the information received is correct and complete.

The buyer is responsible for making a protocol for the acceptance test. The protocol shall be included in the parties' agreement. The protocol shall be deemed to give a correct description of the acceptance test and its results.

- 18 If the acceptance test evidences that the Product is in a substantially worse condition than the buyer could reasonably expect considering the condition assessment of the Product provided by SNGD, other information received from SNGD and other relevant circumstances, the buyer may by written notice to SNGD withdraw its offer for the Product within five (5) business days after the acceptance test.

- 19 Upon receipt of a notice in accordance with clause 18, SNGD has a right, but not an obligation, to rectify the Product or replace the Product with a similar product. Such rectification or replacement shall be completed within reasonable time and for SNGD's account. If SNGD has decided to use its rights hereunder it shall within reasonable time notify the buyer in writing thereof, including information on when the rectification or replacement will be finalized and its proposed new payment date.

The buyer shall compensate SNGD for any work and cost incurred in connection with a notice given in accordance with clause 18, if it subsequently becomes clear that the buyer was not entitled to withdraw its offer on such grounds.

Infringement of intellectual property rights

20 The buyer shall, unless otherwise agreed in writing, indemnify, defend and hold SNGD harmless against any third party damages incurred by the sale of, and the subsequent use of, the Product in infringement with intellectual property rights, including relating to software and licences.

SNGD shall promptly notify the buyer of any third party claims received with respect to such infringement.

21 Provided that an infringement of intellectual property rights that the buyer is liable for has occurred, and that SNGD has notified the buyer in accordance with clause 20, the buyer shall within a reasonable period:

- (a) rectify the infringement and ensure its right to continue its use of the Product; or
- (b) alter the Product to ensure that the infringement no longer exists; or
- (c) replace the Product with another product with the same functions but where the use will no longer involve any such infringement.

The buyer's obligations under this clause are also applicable if SNGD has given written notice that an infringement of intellectual property rights has occurred even though no third party claim has been presented to SNGD.

22 If the buyer does not within a reasonable period complete a rectification, alternation or replacement in accordance with clause 21, SNGD may in writing demand such performance within a final reasonable period which shall not be less than one (1) week. If the buyer does not ensure such performance within such final period, SNGD may:

- (a) for the buyer's account and risk, perform or procure performance of such required measures in accordance with clause 21 by reasonable and sensible methods; or
- (b) if the infringement causes substantial inconvenience for SNGD, terminate the agreement by notification in writing to the buyer. SNGD is further allowed to terminate the agreement if the inconvenience following the measures set out under (a) continues to be substantial.

Allocation of liability for damages caused by the Product

23 SNGD shall not be liable for any damages caused by the Product after title and risk has been transferred to the buyer. Nor shall SNGD be liable for any damage to products manufactured by the Product or to products of which the Product form a part.

The limitation of SNGD's liability shall not apply where SNGD has acted with gross negligence or wilful misconduct.

The buyer shall indemnify, defend and hold SNGD harmless against any damage as described in the first paragraph above, incurred by SNGD.

If a claim for damages as described in this clause is lodged by a third party against one of the parties, the latter party shall forthwith inform the other party thereof in writing.

General limitation of liability

24 Save as otherwise stated in these general terms and conditions, there shall be no liability for either party towards the other party. This includes any losses that may incur, such as loss of production, loss of profit and any other consequential or indirect loss whatsoever.

The general limitation of liability set out in the first paragraph above, shall not apply in the event a party has acted with gross negligence or wilful misconduct. This general limitation of liability shall not apply for liability for infringement of intellectual property rights in accordance with clauses 20 - 22.

Compliance of laws and regulations

25 The buyer is aware that SNGD is owned by the Norwegian State and that it consequently has a particular responsibility to ensure that the Product is not used or employed in breach of applicable laws, regulations and legal principles.

The buyer hereby warrants that it will use and employ the Product in compliance with applicable laws, regulations, human rights and similar legal principles.

The buyer shall, in connection with any subsequent sale or similar disposal of the Product, comply with all sanctions, trade restrictions and similar trade requirements which may apply towards the buyer, SNGD and/or the Product. The buyer may not sell or in similar way dispose of the Product to a party who has or may have breached human rights or similar legal principles.

26 The buyer shall notify SNGD in writing before selling or in similar way disposing of the Product to a third party. The notification shall, amongst other things, include the name of the buyer/counterparty. SNGD has a right to request additional information regarding the sale or disposal if considered required to ensure that the sale is not made in breach of clause 25.

The buyer shall not complete the sale or disposal before SNGD has had adequate time to consider whether the sale or disposal may be in breach of clause 25.

In the event SNGD is of the opinion that a sale or similar disposal will be in breach of clause 25, SNGD may, by notification in writing, demand that the buyer terminates or reverse the sale or disposal.

Miscellaneous

27 Subject to clause 28, the Product is sold free from any security or encumbrances.

28 Provided valid under applicable law, the Product remains SNGD's property until the purchase price has been irrevocably paid in full.

29 The buyer is liable for its own taxes and costs incurred in connection with the Product.

- 30 The buyer shall, promptly following transfer of the title to, and risk for, the Product, procure that all required insurances for the Product are taken out, including in connection with any transportation of the Product. Unless SNGD decides otherwise, SNGD will immediately following the transfer of the title and risk, terminate all its insurances relating to the Product.
- 31 The buyer is responsible for obtaining and paying for all authorisations and registrations that are required in connection with the transfer of the title to, and risk for, the Product. The buyer is additionally responsible for all costs, charges and third party fees which are required in connection with the transfer of the title and risk.
- 32 The term "**writing**" shall, unless otherwise agreed, mean communication by letter or e-mail or a document signed by both parties.

Disputes and applicable law

- 33 All agreements between SNGD and the buyer shall be governed by Norwegian law with Oslo District Court (Nw: *Oslo tingrett*) as legal venue.