

Purchase Contract clauses: Tips for inspiration.

NOT FOR GENERAL USE! THINK BEFORE YOU DRAFT!

1. Heading: Parties description

Buyer:

MND Servisní a.s.

Seat: Velkomoravská 900/405, 696 18 Lužice, Czech Republic
Registered in Commercial Register at District court Brno, file B,
insertion 2843

Represented by Mr. Zbyněk Parma, Director of the Company, and
Mr. Petr Kopečný, Head of drilling and Workover
department

ID No.: 25547631

VAT No.: CZ25547631

Further persons authorized to communicate

in commercial matters: Mrs. Jiřina Zámečnicková, Purchasing Expert
email: zamecnikova@mnd.cz, tel.: +420 602532219

hereinafter called as “the Buyer”,

The Seller and The Buyer are individually referred to herein as “Party” and collectively as the “the Parties”.

The Parties have agreed on this Contract as follows:

2. Standard terms (prevent the battle of forms):

The Company declares that contract can only be concluded on the basis of these conditions. Any changes, amendments or exceptions are basis for counter-offer and require written acceptance by the Company.

3. Include an appendix:

The quotation No. 08-24175rev.1 dtd. 07. October, 2009 creates an integral part of this contract as appendix No. 1.

4. Exclusion of other quotation's or purchase order's terms:

This quotation is used only for the reference and with the aim of specifying the goods precisely.

5. Entire agreement clause:

After signing the Contract all preliminary negotiations and correspondence shall be considered null and void. All changes and amendments of this Contract are valid only if they are presented in writing and signed by both Parties.

6. Payment terms (bank deposit, total amount at once):

1. The Buyer will pay against Seller's invoices with bank transfer on account of the Seller within 30 days from the date of receipt of commercial invoice. Invoices will be issued upon shipment of the goods.
2. Banking information for the wire deposit are:

Bank:
Bank code:
Swift Code:
IBAN :

3. The invoice shall contain the following the appurtenancies:
 - a. Name, seat or place of business, including a country code, and a fiscal and tax identification number of the Seller and the Buyer
 - b. Registration number of the tax invoice
 - c. The object of the taxable fulfillment
 - d. Date of the invoice
 - e. Unit price without the VAT, discount (if applicable and if it is not included in the unit price)
 - f. The tax base
 - g. Note, that the tax payer, who purchase the goods in accordance with the Contract, is obliged to return and pay the tax, in accordance with the relevant paragraph of the tax directive
4. Invoices will be issued on(name and address). VAT number of both the Seller and the Buyer will be stated in each Invoice and country of origin will be stated in Invoice and in Packing List. Invoice shall include above-mentioned specifications and data that are necessary for registration of this Invoice into the account and tax evidence in the country of the Buyer.

7. Payment terms (in advance the whole price):

1. The Buyer shall pay against a proforma invoice within 30 days after the date of the Seller's invoice. The Seller shall issue the proforma invoice within 15 days after the signing of this Contract by both Parties. The Buyer is obliged to confirm the overtaking of the goods in the packing list related to the shipment and send one signed copy to the Seller. On the basis of the packing list, confirming the overtaking of the goods in EU, the Seller is obliged to issue a tax invoice within 15 days from the date of overtaking of the goods by the Buyer.
2. Banking information for the wire deposit are:

Bank:
Bank code:
Swift Code:
IBAN :

8. Delivery terms:

Shipment by the Seller shall be on a delivery term FCA Celle, Germany, INCOTERMS 2000. Title to the Goods shall transfer from the Seller to the Buyer at time of the delivery of the Goods in accordance with this delivery term.

9. Delivery date:

The delivery date shall be not later than November 27th, 2008 at Buyer's Stock Lužice

Or:

The shipping documents to be issued on the name and address of the Buyer are as follows:

- Commercial invoice
- Packing List
- CMR.

Or:

The delivery date shall be 30. 3. 2009 ex-mill Kindberg/Austria. One week grace period shall apply.

Or:

The delivery date shall be 30. 3. 2009 Fixx.

10. Shipping documents:

The delivery will be accompanied with a delivery note (packing list) stating description and part number of the parts, price and currency, country of origin of the part. For each items – sales and rented goods separately.

11. Quality requirements:

1. Contracting partner is obligated to provide work or goods in compliance with conditions specified in contract. Contracting partner is obligated to perform all duties with maximum due care and professionalism. Work or goods must be eligible for purposes stated within contract or otherwise known to contracting partner. If additional specifications are not included in contract, work or goods must meet general requirements and standards of quality, as required for work or goods of the same or similar specification.
2. Contracting partner is obligated to guarantee that the subject-matter of contract will be in accordance with applicable statutes and regulations as well as valid technical standards concerning subject-matter of contract all of which are valid or applicable in the country of MNDS headquarters. At the same time contracting partner is obligated to supply MNDS with declaration of conformity.

12. Packing:

Every precaution shall be taken by the Seller to have the goods properly packed to provide secure storage, transportation and loading/unloading by cranes and/or by other devices.

13. Handover certificate:

1. Certificate of completion will either be drawn in written during handover and takeover of work or delivery of goods or at the very minimum a delivery note or other related document will be verified (further only 'certificate of completion'). Certificate of completion must include minimally this data:
 - a) signatures of persons performing handover together with their legibly printed names in full, including position and subject on whose behalf they are acting
 - b) specification of work or goods to be handed over in such a way to ensure that no mistake in identification may occur.
 - c) date of completion for handover and takeover of work or delivery of goods.

2. Any defects or deficiencies must be listed as part of certificate of completion along with term of their rectification.

14. Inspection at takeover:

Persons authorized for handover and takeover of work or goods, or other persons specified in the contract are obligated to perform inspection of work or goods in connection with the handover. The purpose of such inspection is to determine that work or goods are in conformity with the contract (regarding quality, quantity, following agreed procedures etc.), and to uncover potential defects or arrears.

15. Transfer of ownership rights and risks concerning goods

1. Risk of damage and destruction of the subject-matter of contract is transferred to MNDS upon signing of certificate of completion.
2. Transfer of the title to goods or work shall pass to MNDS under conditions determined by applicable law.

16. Warranty:

1. The Seller warrants to the Buyer that the goods shall be free from defects in material and workmanship (“Defects”) under normal uses and service for a warranty period, which is 20 months from the date of shipment or 18 months from the handover, whichever occurs first.
2. Warranty Claims by the Buyer must be submitted to the Seller in writing, within 5 days of the discovery of the defect. In such a notice, the Buyer is obliged to specify the detected defect, to state what claim out of the defect the Buyer enforces and in what time period they require to remove the defect. The time period shall be set by the Buyer adequately with the respect to the character and extend of the defect. The Seller is obliged to ensure, without unnecessary delay (at the latest within 7 days after the defect notice, the presence of their authorized representative on the place of detected defect occurrence in order to discuss the way and date of defect removal. Should the Seller fail to fulfil this obligation, the Seller is responsible for the caused loss.
3. Contracting Parties undertake to write down the record about every defect. The record shall contain data on how the defect occurred, its extent, consequences and results, way and date of its removal.
4. The Seller is obliged to remove defects that occurred during the warranty period without any unnecessary delay and at their own expenses. Expressly excluded are the costs of installing and removing the defective product. Should the Seller fail to fulfil this obligation, the Buyer is – after the futile expiration of a reasonable grace period – entitled to remove the defaults themselves at the Seller expenses.
5. This limited warranty does not apply to defects in performance caused by hostile environments such as, but not limited to, abrasive materials, corrosion due to aggressive fluids, lightning, mishandling or misapplication. Seller’s obligations to perform Warranty Service under this warranty shall not apply to repairs or replacements necessitated by normal wear and tear or necessitated in whole or in part by natural catastrophe or for product operating in conditions for which it was not designed or manufactured. In these cases the Buyer’s claims shall be excluded.
6. The liability of the Seller shall be limited to the provisions of the Contract, excluding all statutory remedies. The Seller, including its officers, employees and vicarious

agents, will only be liable for the violation of contractual and non-contractual obligations if attributable to intent, wilful misconduct or gross negligence. In any other cases the liability shall be limited to the typical loss or damage reasonably foreseeable at the contracting date, but under no circumstances above 150 % of the goods' value. The Seller shall not be liable for the loss of production, business interruption, and loss of capital or any other special, indirect, consequential or punitive damages of any nature whatsoever. The limitation shall not apply in case of intentional behaviour, bodily injury to persons or health, statutory liability or if the Seller has kept malicious silence about the existence of any defects or warranted their absence.

17. Liquidated damages (Vertragsstrafe):

1. Should the Seller be in delay with the delivery of the goods the Buyer is – after the futile expiration of a grace period of two weeks – entitled to demand penalty at the rate of not more than 0,8 % of the value of the delayed part of the Contract per each full week of delay, but not more than 3 % of its value. No penalty shall be assessed for the Buyer caused delays, including drawing or other data approvals, or late release for manufacture or inspection, or for any reason which may be classified as Force Majeure. The Buyer agrees that payment of penalty by the Seller shall constitute the Seller's sole liability and the Buyer's sole remedy for late delivery.
2. Should the Buyer be in delay with the payments the Seller is entitled to demand default interest of the unpaid amount calculated according to the base rate of the European Central Bank + 8 %, as provided in § 288 of the German Civil Code.
3. Contractual penalties or interest payments incurred from delay are due within 30 days of notification being sent.

Or:

1. The Seller is well aware of the necessity to keep up with the delivery deadline. Therefore, should the Seller be in delay with the delivery of the goods, the Buyer is entitled to demand liquidated damages (Boetebending) at the amount of 300 EUR per each commenced day of delay. No penalty shall be assessed for the Buyer caused delays or for any reason which may be classified as Force Majeure.
2. Should the Buyer be in delay with the payments, the Seller is entitled to demand default interest of the unpaid amount calculated according to the base rate of 0, 2 % for each commenced day of delay with the payment. The right to claim damages is neither excluded nor limited.
3. Contractual penalties or interest payments incurred from delay are due within 30 days of notification being sent.

18. Force majeure

1. Except for the obligation to pay monies due, the Parties are free from the liability for complete or partial non-fulfillment of the obligations under this Contract if circumstances are beyond their control namely: fire, flood, earthquake and other acts of God, strike, war or military actions, export or import embargo, epidemic and if these circumstances have an influence on the execution of the Contract.

2. Certificates issued by the Chamber of Commerce of the Seller's country and of the Buyer's country respectively shall be sufficient proof of such circumstances and their durability.
3. In case the Force Majeure event lasts more than 90 days, the Parties shall meet to decide on an appropriate and equitable review or amendment of the respective purchase order.
4. Notwithstanding the obligation under previous subsection, each Party is entitled to terminate individual purchase order, if Force Majeure exceeds 90 days. However, the contracting parties agree to be responsible even after the termination for all their mutual claims. In such a case, the Buyer shall pay the Seller for all goods executed by the Seller up to the date of such termination.

19. Confidentiality:

Information obtained during the negotiations of this Contract or any information contained or arising of it shall be held confidential and protected as a trade secret, except to the extent that it is in the public domain. Parties have agreed to use their best efforts to ensure that their personnel shall maintain secrecy to the same extent.

20. Ineffective provision:

In the event that any provision hereof should be or become ineffective or inoperable or that any provision should have been omitted, this shall not affect the validity of the reminder hereof. Any ineffective, inoperable or omitted provision shall be superseded by an effective one with the content which approximates to the best extent possible the provision the parties desired or would have desired.

21. Jurisdiction agreement:

All disputes arising from the present contract and/or in connection with it, provided general courts had otherwise heard such disputes and which are capable of being subject matter of valid arbitration agreement, shall be finally decided in arbitration with the Arbitration Court attached to the Economic Chamber of the Czech Republic and Agricultural Chamber of the Czech Republic by three arbitrators in accordance with the Rules of that Arbitration Court.

22. Choice of law agreement:

Contract, its interpretation, issues of validity or invalidity as well as consequences of its breach are to be governed by Czech law.

23. Changes of agreement:

1. Contracting parties agree that it is possible to diverge from these conditions only by written agreement by both contracting parties and which must be contained in text of contract. In the case of a conflict between provisions of contract and Conditions, provision of contract shall take priority.
2. Changes and amendments of contract text must be submitted in written form as a numbered amendment and signed by persons authorized to act on behalf of contracting parties.

24. Predictability of damages:

1. The Seller is well aware of the necessity to keep up with the delivery deadline. Should the Seller be in delay with the delivery of the goods, equipment or commencement of Services as requested, Seller shall be liable to pay as a liquidated damages (Vertragsstrafe) of 500 EUR per each commenced day of delay, maximum up to the amount of 20 000 EUR. No penalty or damages shall be assessed for Buyer caused delays, including drawing or other data approvals, or late release for manufacture, or for any reason which may be classified as Force Majeure.
2. In case the Seller is in the sub-contractors position and was informed about this fact during the negotiation of the partial contract, any breach of the duty to perform in accordance with the partial contract and in timely manner shall be considered to be a breach of material contractual obligation. Moreover, in such situation, the damage arising out of the delay or any other failure to perform shall be considered as foreseeable.