# General Conditions

# NL 92 E

## for the Supply of Machinery and other Mechanical, Electrical and Electronic Equipment.

*Issued in 1992 by the organisations for the engineering industries in Denmark, Finland, Norway and Sweden.*
*(Hovedorganisationen Dansk Industri, Denmark; Soumen Metalliteollisuuden Keskusliitto – Finlands Metallindustris Centralförbund r.y., Finland; Teknologibedriftenes Landsforening, Norway; Sveriges Verkstadsindustrier, Sweden)*

### Preamble

1. These General Conditions shall apply when the parties agree in writing or otherwise thereto. Deviations from the Conditions shall not apply unless agreed in writing.

### Product Information

2. Data in product information and price lists are binding only to the extent that they are by reference expressly included in the contract.

### Drawings and other Documents

3. All drawings and other technical documents regarding the goods or its manufacture submitted by one party to the other, prior or subsequent to the formation of the contract, shall remain the property of the submitting party. Drawings, technical documents or other technical information received by one party shall not, without the consent of the other party, be used for any other purpose than that for which they were submitted. They may not without the consent of the submitting party be copied, reproduced, transmitted or otherwise communicated to a third party.

4. The Seller shall, not later than by delivery of the goods, free of charge provide the Buyer with one copy, or the larger number of copies that may have been agreed, of drawings and other technical documents, which are sufficiently detailed to permit the Buyer to carry out installation, commissioning, operation and maintenance (including running repairs) of all parts of the goods. The Seller shall not, however, be obliged to supply manufacturing drawings of the goods or spare parts.

### Delivery Test

5. Where a delivery test has been agreed, it shall, unless otherwise agreed, be carried out where the goods are manufactured. If technical requirements for the test has not been agreed upon, the test shall be carried out in accordance with general practice in the industry concerned in the country of manufacture.

6. The Seller shall notify the Buyer of a delivery test in sufficient time to permit the purchaser to be present at the test. The test may be carried out in the Buyer's absence provided that the Buyer has received such notice.

The Seller shall record the test. The test report shall be sent to the Buyer. The report shall, unless otherwise shown by the Buyer, be considered to correctly record the test and its results.

7. If, at the delivery test the goods are found not to be in accordance with the contract, the Seller shall without delay ensure that the goods comply with the contract. A new test shall be carried out if so required by the Buyer. A new test shall, however, not be carried out if the defect was insignificant.

8. If no other division of the costs have been agreed, the Seller shall bear all costs for delivery tests carried out where the goods are manufactured. The Buyer shall, however, at such delivery tests bear all costs for his representatives, including costs for travel and subsistence.

### Delivery

9. Where a trade term has been agreed, it shall be interpreted in accordance with the INCOTERMS in force at the formation of the contract.

If no trade term is specifically agreed the delivery shall be considered to be Ex Works.

### Time for Delivery. Delay

10. If, instead of a fixed date for delivery, the parties have agreed on a period of time within which delivery shall take place, such period shall start to run at the formation of the contract.

11. If the Seller finds that he will not be able to deliver the goods at the agreed time for delivery or if delay on his part seems likely, he shall forthwith notify the Buyer thereof in writing, stating the reason for the delay and if possible the time when delivery can be expected. If the Seller fails to give such notice, he shall, notwithstanding the Clauses 13 and 14, reimburse the Buyer for any increase in expenses resulting from the failure to notify.

12. If delay in delivery is caused by a circumstance which under Clause 37 shall be considered a case of relief or by an act or omission on the part of the Buyer, the time for delivery shall be extended by a period which is reasonable having regard to the circumstances in the case. The time for delivery shall be extended even if the reason for delay occurs after the originally agreed time for delivery.

13. If the Seller does not deliver the goods on time, the Buyer is entitled to liquidated damages from the date on which delivery should have taken place.

The liquidated damages shall be payable at a rate of 0.5 per cent for each complete week of delay of that part of the agreed price which is properly attributable to that part of the goods which, due to the delay, cannot be put to its intended use.

The liquidated damages shall not exceed 7.5 per cent of such part of the agreed price.

The liquidated damages become due at the Buyer's written demand but not before all of the goods have been delivered or the contract is terminated under Clause 14.

The Buyer loses his right to liquidated damages if he has not lodged a claim in writing for such damages within six months after the time when delivery should have taken place.

14. If the Buyer is entitled to maximum liquidated damages under Clause 13 and if the goods are still not delivered, the Buyer may in writing demand delivery within a final reasonable period which shall not be less than one week.

If the Seller does not deliver within such final period and this is not due to any circumstance for which the Buyer is responsible, then the Buyer may, by notice in writing to the Seller, terminate the contract in respect of that part of the goods which cannot be put to its intended use.

In case of such termination the Buyer shall also be entitled to compensation for the loss he suffers because of the Seller's delay to the extent that the loss exceeds the maximum of liquidated damages to which the Buyer has become entitled under Clause 13. The compensation shall not exceed 7.5 per cent of that part of the price which is attributable to the part of the goods in respect of which the contract is terminated.

The Buyer shall also have the right to terminate the contract by written notice to the Seller if it is clear that there will occur a delay which under Clause 13 would entitle the Buyer to maximum liquidated damages. In case of termination on this ground the Buyer shall be entitled to both maximum liquidated damages and compensation under the third paragraph of this Clause.

Liquidated damages under Clause 13 and termination of the contract and limited compensation under this Clause 14 are the only remedies available to the Buyer in case of delay on the part of the Seller. All other claims against the Seller based on such delay shall be excluded. This limitation of the Seller's liability shall, however, not apply where the Seller has been guilty of gross negligence.

15. If the Buyer finds that he will be unable to accept delivery of the goods on the agreed date or if delay on his part seems likely, he shall forthwith notify the Seller thereof in writing stating the reason for the delay and if possible the time when he will be able to accept delivery.

If the Buyer fails to accept delivery on the agreed date he shall nevertheless make any payment which is dependent on delivery as if the goods in question had been delivered. The Seller shall arrange storage of the goods at the Buyer's risk and expense. The Seller shall also, if the Buyer so requires, insure the goods at the Buyer's expense.

16. Unless the Buyer's failure to accept delivery is due to any such circumstance as mentioned in Clause 37, the Seller may by notice in writing require the Buyer to accept delivery within a reasonable period.

If, for any reason for which the Seller is not responsible, the Buyer fails to accept delivery within such period, the Seller may by notice in writing terminate the contract in respect of that part of the goods which is ready for delivery but has not been delivered due to the Buyer's default. The Seller shall then be entitled to compensation for the loss he has suffered by reason of the Buyer's default. The compensation shall not exceed that part of the price which is attributable to the part of the goods in respect of which the contract is terminated

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## Payment

17. Unless otherwise agreed, the purchase price shall be paid with one third at the formation of the contract and one third when the bulk of the goods are notified as ready for delivery. Final payment shall be made at delivery of the goods.

18. If the Buyer fails to pay by the agreed date, the Seller shall be entitled to interest from the day on which payment became due at the rate of interest determined by the law on late payments in the Seller's country. If the Seller's country is Denmark, the rate of interest shall be nine percentage points above the official Danish discount rate.

19. If the Buyer has not paid the amount due within three months the Seller shall be entitled to terminate the contract by written notice to the Buyer and to claim compensation for the loss he has suffered. The compensation shall not exceed the agreed price.

## Reservation of Title

20. The goods shall remain the property of the Seller until paid for in full to the extent that such retention of property is permitted by the applicable law.

## Liability for Defects

21. The Seller shall, pursuant to the provisions of Clauses 22-34 below, by repair or replacement remedy any defect in the goods resulting from faulty design, materials or workmanship.

22. The Seller's liability is limited to defects which appear within a period of one year from the date of delivery of the goods. If the goods are used more intensely than agreed or could be foreseen at the formation of the contract, this period shall be reduced proportionally.

23. The Seller shall be liable for defects in parts of the goods which have been repaired or replaced under Clause 21 for a period of one year under the terms and conditions which apply to the original goods. The liability period defined in Clause 22 shall be extended for other parts of the goods only by a period equal to the period during which the goods could not be used because of the defect.

24. The Buyer shall notify the Seller in writing of a defect without delay after the defect has become apparent, and in no case later than two weeks after the expiry of the period defined in Clause 22 as supplemented by Clauses 23 and 34. The notice shall contain a description of how the defect manifests itself.

Notice of a defect shall be given immediately if there is reason to believe that the defect may cause damage.

If the Buyer fails to notify the Seller of a defect in writing within the time limits set forth in this Clause, he shall forfeit his right to make any claim in respect of the defect.

25. On receipt of the written notice according to Clause 24 the Seller shall remedy the defect without undue delay and at his own cost as stipulated in Clauses 21-33.

Remedy of the defect shall take place at the Buyer's premises unless the Seller finds it appropriate to have the defective part or the goods returned to him for repair or replacement at his own premises.

The Seller shall carry out dismantling and re-installation of the part if this requires special knowledge. If such special knowledge is not required, the Seller has fulfilled his obligations in respect of the defect when he delivers a duly repaired or replaced part to the Buyer.

26. If the Buyer gives such notice as described in Clause 24, and no defect is found for which the Seller is liable, the Seller shall be entitled to compensation for the work and costs which he has incurred as a result of the notice.

27. If dismantling or re-installation of parts necessitates intervention in other equipment than the goods, the labour and costs resulting therefrom shall be the Buyer's responsibility.

28. All transports in connection with repair or replacement shall be at the Seller's risk and expense.

The Buyer shall follow the Seller's instructions as to how the transport shall be carried out.

29. The buyer shall bear the increase in costs for remedying a defect which the seller incurs when the goods are situated elsewhere than at the destination stated in the contract or - if no destination has been stated - the place of delivery.

30. Defective parts which are replaced in accordance with Clause 21 shall be placed at the Seller's disposal and shall become his property.

31. If the Seller fails to fulfil his obligations under Clause 25 within a reasonable time, the Buyer may by written notice require him to do so within a final time. If the Seller fails to fulfil his obligations within that time limit, the Buyer may choose to:

a) have the necessary remedial work carried out and/or have new parts manufactured at the Seller's risk and expense, provided that the Buyer proceeds in a reasonable manner, or

b) demand a reduction of the agreed price not exceeding 15 per cent thereof.

If the defect must be considered substantial, the Buyer may instead choose to terminate the contract by written notice to the Seller. The Buyer shall equally be entitled to such termination where the defect remains substantial after measures referred to in a). In case of termination, the Buyer shall be entitled to compensation for the loss he has suffered. The compensation shall, however, not exceed 15 per cent of the agreed price.

32. The Seller is not liable for defects arising out of materials provided by, or a design stipulated or specified by the Buyer.

33. The Seller is only liable for defects which appear under the conditions of operation provided for in the contract and under proper use of the goods.

The Seller's liability does not cover defects caused by occurrences after the risk in the goods has passed to the Buyer. The liability does not e.g. cover defects which are caused by faulty maintenance or incorrect installation from the Buyer's side, by alterations undertaken without the Seller's consent in writing, or by faulty repairs by the Buyer. Finally the Seller's liability does not cover normal wear and tear or deterioration.

34. Notwithstanding the provisions of Clauses 21-33 the Seller shall have no liability for defects in any part of the goods for more than two years from the start of the liability period defined in Clause 22.

35. Save as stipulated in Clauses 21-34 the Seller shall have no liability for defects. This applies to any loss the defect may cause, including but not limited to loss of production, loss of profit and any other consequential economic loss. This limitation of the Seller's liability shall, however, not apply if he has been guilty of gross negligence.

## Liability for Damage to Property Caused by the Goods

36. The Buyer shall indemnify and hold the Seller harmless to the extent that the Seller incurs liability towards any third party in respect of any damage for which the Seller is not liable towards the Buyer according to the second and third paragraphs of this Clause.

The Seller shall not be liable for loss or damage caused by the goods

a) to any (movable or immovable) property where the damage occurs while the goods are in the Buyer's possession, or

b) to products manufactured by the Buyer or to products of which the Buyer's products form a part or for loss or damage to any property, where the damage is caused by these products because of properties in the goods.

The Seller shall under no circumstances be liable for loss of production, loss of profit or any other consequential economic loss.

The above limitations in the Seller's liability shall not apply where the Seller has been guilty of gross negligence.

If a claim for loss or damage as described in this Clause is raised by a third party against either party to the contract, the latter shall forthwith notify the other party thereof.

The Seller and the Buyer shall be mutually obliged to let themselves be summoned to the court or arbitral tribunal which examines claims against either of them, where the claim is based on damage alleged to have been caused by the goods. The liability as between the Seller and the Buyer shall, however, always be settled by arbitration in accordance with Clause 40.

## Grounds for Relief (Force Majeure)

37. The following circumstances shall be considered as grounds for relief if they impede the performance of the contract or makes performance unreasonably onerous: industrial disputes and any other circumstance beyond the control of the parties such as fire, war, mobilization or military call up of a comparable scope, requisition, seizure, currency restrictions, insurrection and civil commotion, shortage of transport, general shortage of materials, restrictions in the use of power and defects or delays in deliveries by sub-contractors caused by any such circumstance as referred to in this Clause.

The above described circumstances shall constitute grounds for relief only if their effect on the performance of the contract could not be foreseen at the time of formation of the contract.

38. The party wishing to claim relief shall notify the other party in writing without delay on the intervention and on the cessation of such circumstance.

If grounds for relief prevent the Buyer from fulfilling his obligations, he shall compensate the Seller for expenses incurred in securing and protecting the goods.

39. Notwithstanding other provisions of these General Conditions, either party shall be entitled to terminate the contract by notice in writing to the other party if performance of the contract is delayed more than six months by reason of any grounds for relief as described in Clause 37.

## Disputes. Applicable Law

40. Disputes arising out of or in connection with the contract shall not be brought before the court, but shall be finally settled by arbitration in accordance with the law on arbitration applicable in the Seller's country.

41. All disputes arising out of the contract shall be judged according to the law of the Seller's country.