

General Conditions NL 17E

for the Supply of Machinery and other Mechanical, Electrical and Electronic Equipment in Denmark, Finland, Norway and Sweden.

Issued in 2017 by DI, Denmark, Teknologiateollisuus – Teknologiteollisuus, Finland, Norsk Industri, Norway and Teknikföretagen, Sweden.

Applicability. Definitions

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.

The object or objects which the Seller shall deliver according to the contract of the parties is (are) in these Conditions referred to as “the Product”. The term includes software and documentation under Clauses 4-7.

When used in these Conditions, the terms “written” or “in writing” refer to a document signed by both parties or a letter, fax, electronic mail or other means of communication agreed by the parties.

Product Information

2. Data in marketing material, price lists and other product information are binding only to the extent that they are expressly referred to in the contract.

Documentation and Information

3. All documentation regarding the Product 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.

Documentation received by one party shall not, without the consent of the other party, be used for any other purpose than that for which it was submitted. Except for documentation referred to in Clause 4, it may not without the consent of the other party be copied, reproduced, transmitted or otherwise communicated to a third party.

4. The Seller shall, no later than by delivery of the Product, free of charge provide the Buyer with one set, or the number agreed upon, of documentation, which is sufficiently detailed to permit the Buyer to carry out installation, commissioning, operation and maintenance – including running repairs – of all parts of the Product. The Seller shall not, however, be obliged to supply manufacturing drawings of the Product or spare parts.

To the extent it is valid under the relevant law, the Seller may, with the Buyer’s consent, fulfil these obligations by giving access to the documentation in electronic form.

Computer Software

5. In these General Conditions, computer software is referred to as the computer software which is included in the Product and which consists of the Seller’s software and/or sublicensed software.

The Seller’s software is computer software to which the Seller holds the intellectual property rights. Sublicensed software is computer software to which a third party holds the intellectual property rights and to which the Seller, with the rights holder’s permission, grants the right of use.

6. Unless otherwise agreed, the Buyer acquires a non-exclusive, perpetual right to use the Seller’s software in the use of the Product. The Buyer may transfer this right of use to subsequent owners of the Product. Unless otherwise agreed, the Seller retains the rights to the Seller’s software even when such software has been produced specially for the Buyer. The Buyer may at his own responsibility make such changes in the Seller’s software that are consistent with the general purpose for which the Product is intended.

Subject to the limitations that may be agreed between the intellectual property rights holder and the Seller, the Buyer acquires a non-exclusive, perpetual right to use sublicensed software in the use of the Product and to transfer this right to subsequent owners of the Product. The Seller shall, no later than when the contract is entered into, inform the Buyer in writing of any such limitations. The Buyer may make changes in sublicensed programs only if specially agreed.

7. Unless otherwise agreed, the Seller is not obliged to provide the Buyer with the source code to the computer software. Nor shall the Seller, unless otherwise agreed, be obliged to provide the Buyer with updated versions of the computer software.

Test Before Delivery (delivery test)

8. Where a delivery test has been agreed, it shall, unless otherwise agreed, be carried out where the Product is manufactured. If technical requirements for the test have not been agreed, the test shall be carried out in accordance with general practice in the industry concerned in the country where the Product is manufactured.

9. The Seller shall notify the Buyer in writing of the delivery test in sufficient time to permit the Buyer to be present at the test. If the Buyer has received such notice, the test may be carried out even if the Buyer is not represented at the test.

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 describe the execution of the test and its results.

10. If at the delivery test the Product is found not to be in accordance with the contract, the Seller shall as soon as possible ensure that the Product complies with the contract. If so required by the Buyer, a new test shall thereafter be carried out. The Buyer may not, however, require a new test if the noncompliance was insignificant.

11. If no other division of the costs has been agreed, the Seller shall bear all costs for delivery tests carried out where the Product is manufactured. The Buyer shall, however, at such delivery tests bear all costs for his representatives, including costs for travel, board and lodging.

Trade Term

12. 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 has been specifically agreed, delivery shall be Free Carrier (FCA) at the place decided by the Seller.

Time for Delivery. Delay

13. 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.

14. If the Seller finds that he will not be able to deliver the Product at the agreed time or if delay on his part seems likely, he shall without undue delay 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, regardless of the provisions of Clauses 16 and 17, reimburse the Buyer for any additional expenses, which the latter incurs and which he otherwise could have avoided.

15. The time for delivery shall be extended by a period which having regard to the circumstances is reasonable if the delay in delivery is caused by one of the following reasons:

- an act or omission on the part of the Buyer, or
- suspension by the Seller under Clause 21, second paragraph, or
- any other circumstance for which the Buyer is responsible, or
- a circumstance which under Clause 45 constitutes ground for relief.

The time for delivery shall be extended even if the reason for delay occurs after the originally agreed time for delivery.

16. If the Seller fails to deliver the Product 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 one per cent of the agreed price for each commenced week of delay. If the delay concerns only a part of the Product, the liquidated damages shall be calculated on the part of the price which is properly attributable to the part of the Product which cannot be taken in use due to the delay.

The liquidated damages shall not exceed ten per cent of that part of the price on which it is calculated.

The liquidated damages become due at the Buyer's written demand but not before the complete Product has been delivered or the contract is terminated under Clause 17.

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

17. If the delay is such that the Buyer has become entitled to maximum liquidated damages under Clause 16, and the Product is 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 fails to deliver within such final period and this is not due to any circumstance for which the Buyer is responsible, the Buyer may, by written notice to the Seller, terminate the contract in respect of that part of the Product which cannot be taken in use due to the delay.

In case of such termination the Buyer shall also be entitled to compensation for the loss he suffers due to the Seller's delay to the extent that the loss exceeds the maximum of liquidated damages which the Buyer may claim under Clause 16. This compensation shall not exceed ten per cent of that part of the price which is properly attributable to the part of the Product 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 be a delay, which under Clause 16 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.

Except for liquidated damages under Clause 16 and termination of the contract with limited compensation under this Clause 17, all claims in respect of the Seller's delay shall be excluded.

18. If the Buyer finds that he will be unable to accept delivery of the Product on the agreed date, or if delay on his part seems likely, he shall without undue delay 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 Product had been delivered. The Seller shall arrange storage of the Product at the Buyer's risk and expense. If the Buyer so requires, the Seller shall insure the Product at the Buyer's expense.

19. Unless the Buyer's failure to accept delivery as referred to in Clause 18 is due to any such circumstance as described in Clause 45, the Seller may by written notice 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 written notice to the Buyer, terminate the contract in respect of that part of the Product 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 due to the Buyer's default. The compensation shall not exceed that part of the price which is attributable to the part of the Product in respect of which the contract is terminated.

Payment

20. Unless otherwise agreed, payment shall be made within 30 days from the date of the invoice.

Unless otherwise agreed, the agreed purchase price, together with value added tax, if any, shall be invoiced with 40 per cent at the formation of the contract and the remaining part at delivery of the Product.

21. If the Buyer fails to pay on time, the Seller shall be entitled to interest from the due date at the rate of interest determined by the law on late payments in the Seller's country. The Seller shall also be entitled to compensation for actual recovery costs.

If the Buyer fails to pay by the due date or fails to give agreed securities by the stipulated date, the Seller may also, after having notified the Buyer in writing, suspend performance of his contractual obligations until payment is made or agreed securities are given.

22. If the Buyer has failed to pay the amount due within

three months after the due date, the Seller may terminate the contract by written notice to the Buyer and, in addition to his rights according to Clause 21, first paragraph, claim compensation for the loss he has suffered. The compensation shall not exceed the agreed purchase price.

Retention of Title

23. The Product shall remain the property of the Seller until paid for in full, to the extent that such retention of title is valid under the relevant law.

Liability for Defects

24. The Seller shall in accordance with the provisions of Clauses 25-36, by repair or replacement, remedy any defect in the Product resulting from faulty design, materials or workmanship.

Where the Seller is liable for a defect, he shall also be equally liable for damage to the Product that is caused by the defect.

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

25. The Seller's liability does not cover defects caused by circumstances that arise after the risk has passed to the Buyer. The liability does not, for example, cover defects due to conditions of operation deviating from those anticipated in the contract or to improper use of the Product. Nor does it cover defects due to faulty maintenance or incorrect installation on the part of the Buyer, alterations undertaken without the Seller's written consent or faulty repairs by the Buyer. Finally, the liability does not cover normal wear and tear or deterioration.

26. The Seller's liability is limited to defects that appear within a period of one year from the date of delivery of the Product. If the Product is used more intensely than agreed, this period shall be reduced proportionately.

27. When a defect has been remedied by repair or replacement under Clause 24, the Seller shall have the same liability for defects in repaired parts or in replacement parts as for the original Product for a period of one year. For other parts of the Product, the liability period defined in Clause 26 shall be extended only by the period during which the Product could not be used due to a defect for which the Seller is liable.

28. The Buyer shall notify the Seller in writing of a defect without undue delay after the defect has appeared and in no case later than two weeks after the expiry of the liability period specified in Clauses 26 and 27. The notice shall contain a description of how the defect manifests itself. If the Buyer fails to notify the Seller in writing within the above time limits, he loses his right to make any claim in respect of the defect.

If there is reason to believe that the defect may cause damage, notice shall be given forthwith. If notice is not given forthwith, the Buyer loses the right to make any claim based on damage which occurs and which could have been avoided if such notice had been given.

29. After receipt of a written notice under Clause 28, the Seller shall remedy the defect without undue delay. Within this limit the time for remedial work shall be chosen in order not to interfere unnecessarily with the Buyer's activities. The Seller shall bear the costs as specified in Clauses 24-36.

Remedial work shall be carried out where the Product is unless the Seller, with regard to the interests of both parties, finds it more appropriate to have the Product sent to him or to a place instructed by him.

If the defect can be remedied by replacing or repairing the defective part, and if removal and re-installation of the part does not require special knowledge, the Seller may demand that the Buyer sends the defective part to him, or to a place assigned by him, for repair or replacement. In such case the Seller has fulfilled his obligations in respect of the defect when he delivers a duly repaired part or a replacement part to the Buyer.

30. The Buyer shall at his own expense provide the Seller access to the Product and arrange for any intervention in equipment other than the Product, to the extent that this is necessary to remedy the defect.

31. All transports in connection with remedial work shall be at the Seller's risk and expense.

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

32. The Buyer shall bear any additional costs for remedying a defect which the Seller incurs when the Product is located elsewhere than at the destination for the Seller's delivery to the Buyer stated at the formation of the contract, or – if no destination has been stated – the place of delivery.

33. Defective parts that are replaced under Clause 24, shall be placed at the Seller's disposal and shall become his property.

34. If the Buyer gives such notice as referred to in Clause 28, 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.

35. If the Seller fails to fulfil his obligations under Clause 29 in time, the Buyer may by written notice require him to do so within a final reasonable period which shall not be less than one week. If the Seller fails to fulfil his obligations within that period, the Buyer may at his option:

- a) carry out or have the necessary remedial work carried out at the Seller's risk and expense, provided that the Buyer proceeds in a reasonable manner, or
- b) demand a reduction of the agreed purchase price not exceeding 20 per cent thereof, or
- c) if the defect is substantial, terminate the contract by written notice to the Seller. The Buyer shall also 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 not, however, exceed 20 per cent of the agreed purchase price.

36. Regardless of the provisions of Clauses 24-35, the Seller shall have no liability for defects in any part of the Product for more than two years from the end of the liability period referred to in Clause 26, first sentence, or from the end of any other liability period agreed upon by the parties.

37. The Seller shall have no liability for defects save as stipulated in Clauses 24-36.

Liability for Infringement of Intellectual Property Rights

38. Unless otherwise agreed, the Seller shall, in accordance with Clauses 39-42, indemnify the Buyer against claims from a third party based on infringement of patents, copyrights or any other intellectual property rights protected in Denmark, Finland, Norway, Sweden or in any other country specially agreed by the parties.

39. The Seller shall have no liability for infringement of intellectual property rights arising out of:

- the Product being used elsewhere than in a country referred to in Clause 38,
- the Product being used in a manner deviating from that agreed or in a way the Seller should not have foreseen, or
- the Product being used together with equipment or software not supplied by the Seller, or
- alterations in the Product undertaken by the Buyer.

Nor is the Seller liable for infringement of intellectual property rights arising out of a design or construction stipulated or specified by the Buyer.

40. Defence against claims referred to in Clause 38 shall be for the Seller's account. The Seller shall compensate the Buyer for such amounts as the latter is obliged to pay under a final award or a settlement approved by the Seller.

The Seller shall only be liable if the Buyer without delay informs the Seller in writing of any claim which the Buyer receives and allows the Seller to decide how the claim shall be dealt with.

41. In case of an infringement of patent, copyright or other intellectual property rights for which the Seller is liable according to Clauses 38-39, the Seller shall without undue delay, after receipt of written notice under Clause 40, second paragraph, at his option:

- provide for the Buyer the right to continue to use the Product, or
- adjust the Product so that the infringement ceases, or
- replace the Product with another non-infringing product with an equivalent function.

The Seller has the equivalent responsibility if the Buyer informs the Seller in writing of an infringement of patent, copyright or other intellectual property rights, without any claims made against the Buyer from a third party.

42. If the Seller fails to fulfil his obligations under Clause 41 in time, the Buyer may by written notice require him to do so within a final reasonable period, which shall not be less than one week. If the Seller fails to fulfil his obligations within that period, the Buyer may at his option:

- a) carry out or have necessary measures carried out at the Seller's risk and expense, corresponding to those referred to under Clause 41, first paragraph, provided that the Buyer proceeds in a reasonable manner, or
- b) if the infringement causes him substantial inconvenience, terminate the contract by written notice to the Seller. The Buyer shall also be entitled to such termination where the inconvenience remains substantial after measures referred to in a).

Liability for Damage to Property Caused by the Product

43. The Seller shall have no liability for damage caused by the Product to any immovable or movable property, or for the consequences of such damage, if the damage occurs while the Product is in the Buyer's possession. Nor shall the Seller be liable for any damage to products manufactured by the Buyer or to products of which the Buyer's products form a part.

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

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

If a third party lodges a claim for compensation against the Seller or the Buyer for loss or damage referred to in this Clause, the other party shall forthwith be notified thereof in writing.

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 based on damage or loss alleged to have been caused by the Product. The liability as between the Seller and the Buyer shall, however, always be settled in accordance with Clause 48.

General Limitation of Liability

44. Save as otherwise stated in these General Conditions there shall be no liability for either party towards the other party. This applies to any loss the other party may suffer such as loss of production, loss of profit and any other consequential or indirect loss whatsoever.

The limitation of the liability referred to in the first paragraph shall, however, not apply if a party has been guilty of gross negligence. Nor shall the limitation of liability apply to breach of the obligations referred to in Clause 3, second paragraph or liability for infringement of intellectual property rights under Clauses 38-42.

Grounds for Relief (Force Majeure)

45. The following circumstances shall constitute grounds for relief if they impede the performance of the contract or make performance unreasonably onerous: industrial disputes and any other circumstance beyond the control of the parties, such as fire, natural disasters and extreme natural events, war, mobilisation or military call-up of a comparable scope, requisition, seizure, trade and currency restrictions, insurrection and civil commotion, shortage of transport, general shortage of materials, restrictions in the supply of power and defects or delays in deliveries by subcontractors caused by any such ground for relief.

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 formation of the contract.

46. The party wishing to claim relief under Clause 45 shall without delay notify the other party in writing on the intervention and on the cessation of such circumstance.

If force majeure prevents the Buyer from fulfilling his obligations, he shall reimburse the costs incurred by the Seller in securing and protecting the Product.

47. 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 prevented for more than six months by reason of any grounds for relief as described in Clause 45.

Disputes. Applicable Law

48. Disputes arising out of or in connection with the contract shall be settled by arbitration in accordance with the law on arbitration applicable in the Seller's country. However, if the amount in dispute does not exceed EUR 50,000, VAT excluded, or the equivalent amount in the currency of the contract, the dispute shall be settled by a general court in the Seller's country.

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