

## GENERAL TERMS AND CONDITIONS OF SALE AND DELIVERY FOR NEMCO MACHINERY OY ("NEMCO")

### Application

The common Nordic General Terms and Conditions (NLM 19), which constitute an integral part of these Terms and Conditions of Sale and Delivery, apply to any delivery from Nemco with the below deviations and amendments. In case of difficulty of interpretation, the below deviations and amendments take precedence over the provisions in NLM 19.

### Deviations from and additions to NLM 19:

#### Quotations

All quotations submitted are non-binding unless otherwise expressly stated. Reservations are made for calculation and typing errors.

#### Order

Any order is to be considered a quotation from the Buyer and requires an order confirmation from Nemco. A deadline applies to the order confirmation allowing final approval of the order to be obtained from the supplier abroad.

#### Set-off

The Buyer is not entitled to set off against the purchase price any cross demand with Nemco that has not been acknowledged by Nemco and is not entitled to withhold any part of the purchase price because of any kind of counterclaim.

#### Payment

Clauses 23.1-23.2 of NLM 19 are deleted and replaced by the following:

23. Unless otherwise agreed, payment of the contract sum including VAT must be made according to the following:
  - 23.1. In case of installation at fixed prices: 40% on the placing of the order, 50% before dispatch from the factory\* and 10% after installation and approval (in any case, however, the last 10% not later than 30 days after the Equipment has arrived at the Installation Site.

- 23.2. In case of installation on a current account, the price agreed for the Equipment is invoiced with 40 per cent on the conclusion of the Agreement and with 60 per cent before dispatch from the factory\*. Payment for installation must be made against a monthly invoice.

\*) If payment has not been received on Nemco's bank account before dispatch from the factory, the equipment will not be dispatched. Terms of payment are 8 days from the date of invoice.

#### Default interest

Clauses 26-27 of NLM 19 are deleted and replaced by the following:

26. If the Buyer does not pay at the time agreed upon, the supplier is entitled to a default interest of 2% for every month or part of a month from the due date. If the Buyer has not paid the amount due within 3 months, the supplier is entitled to terminate the Agreement by giving written notification to the Buyer and to demand compensation from the Buyer in addition to the default interest for the loss suffered. The compensation may not exceed the contract sum.

#### Capacity ratings

Capacity ratings for machinery, including in product matrices prepared by Nemco, are only indicative as the actual capacity will always vary from the theoretical capacity, including due to natural deviations in the raw material processed on the machines delivered. Thus, the actual capacity achievable depends on, i.a., the correct setting and operation of the machinery considering that a number of parameters in the Buyer's production environment will vary over time, including for example the type of meat, consistency, and temperature etc.

#### Prices

All prices on clips and spare parts are market prices. The prices stated by Nemco are based on current market prices, exchange rates, VAT and duty rates and any other public fees as they were at the time of the submission of the quotation/order confirmation. Any change thereof entitles Nemco to adjust conditions applicable at the time of delivery or on the date of payment.

**Delivery clause**

Unless otherwise agreed, delivery of clips and spare parts is ex works.

**Clauses 29-42 of NLM 19 on installation, the supplier's right to inspection, changes, and acceptance trials**

Unless otherwise agreed, clauses 29-42 of NLM 19 are deleted in relation to the sale of clips and spare parts as they will generally not be relevant in those regards.

**Time of delivery and late delivery**

The times of delivery of clips and spare parts stated by Nemco are based on times of delivery stated by Nemco's suppliers and run from the time when the order confirmation is sent to the Buyer from Nemco and all information necessary for the completion of the delivery has been communicated to Nemco.

**Complaints**

On delivery, the Buyer must inspect the supply immediately.

If the supply is not conforming to the Agreement, a complaint must be filed with Nemco in writing within 7 days after delivery took place. In case of defects that cannot be found by carefully inspecting the goods, the complaint must be in writing within 7 days after the defect could have been found by demonstrating normal attention.

The time allowed for complaints applies to all kinds of defects and is unconditional as Nemco excludes any liability for defects against which complaints are filed after the expiry of the deadline and in those cases where the conditions stated below under "Remedying of defects" have not been observed.

**Remedying of defects**

In case Nemco accepts the Buyer's complaint, Nemco is entitled and obliged to replace the supply within Finland's borders. The Buyer defrays the costs and the risk in relation to transport to Nemco. In case of replacement delivery to the Buyer, transport is at Nemco's option and for the Buyer's own account and risk.

Nemco excludes any liability for delay or stoppage of work at the Buyer's due to the performance of the above replacement delivery, and Nemco is not liable for any for loss of operations, loss of earnings or any other indirect loss suffered by the Buyer.

# General Conditions



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

Issued in 2019 by DI, Denmark, Teknologiateollisuus - Teknologiindustrin, Finland, Norsk Industri, Norway and Teknikföretagen, Sweden.

### Preamble

1. These General Conditions shall apply when the parties agree in writing or otherwise thereto. Any modifications of or deviations from the conditions shall not apply unless agreed in writing.

### Definitions

2. In these General Conditions the following terms shall have the meaning herein assigned to them:

**Contract:** The written agreement between the parties concerning performance of the Works, and all appendices, including amendments and additions to the said documents agreed in writing.

**Plant:** All machinery, apparatus, Software, materials, documentation and other articles to be supplied by the Contractor under the Contract.

**Works:** The Plant and the result of the work to be performed by the Contractor under the Contract.

If the Works according to the Contract shall be taken over by separate sections intended to be used independently from each other, these General Conditions shall apply to each section separately. The term "Works" shall then refer to the section in question.

**Site:** The place where the Plant are to be erected, including adjacent areas necessary for transport, unloading and storage of the Plant and necessary erection equipment.

**Contract Price:** The sum, excluding value added tax, to be paid for the Works.

If erection is paid for on a time basis and is not yet completed, the Contract Price for the purposes of Clauses 23, 27, 49 and 50 shall be the price of the Plant with the addition of 10 % or such other percentage as the parties have agreed.

**Written Notice:** All documents signed by one of the parties and received by the other party, and notices received by the other party by letter, fax, electronic mail or other means of communication agreed by the parties. The contents of minutes from a meeting signed or approved by both parties shall also constitute a Written Notice.

**Software:** The computer software which is included in the Works and which consists of

- contractor Software, computer software to which the Contractor holds the rights, and
- sublicensed Software, computer software to which a third party holds the rights and for which the Contractor transfers the right of use with the permission of the right holder.

### Product Information

3. Data contained in marketing material, price lists and other product information are binding only to the extent that they are by reference expressly included in the Contract.

### Documentation and Information

4. All documentation regarding the Works 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 or information received by one party may not, without the consent of the other party, be copied or used for any other purpose than that for which it was submitted.

5. The Contractor shall, not later than at taking over of the Works, free of charge provide the Purchaser with one set, or the larger number that has been agreed, of such documentation, which is sufficiently detailed to enable the Purchaser to carry out commissioning, operation and maintenance, including running repairs, of the Works. The Contractor shall not, however, be obliged to supply documentation for manufacturing of the Plant or spare parts.

### Confidentiality

6. Neither party shall, without the consent of the other, be entitled to disclose to any third party technical or commercial information which either party, at the formation of the Contract or later, has stated to be confidential. This does not apply to the extent that the disclosure is necessary to enable a party to fulfil its obligations under the Contract or for operation and maintenance of the Works.

Each party is obliged to prevent that such confidential information is disclosed to or used to a greater extent than permitted by the first paragraph of this Clause by its employees, consultants, subcontractors and other contractors or others who through that party have or may obtain access to such information.

### Software

7. Unless otherwise agreed, the Purchaser acquires a non-exclusive, perpetual right to use the Contractor's softwa-

re in the use of the Works. The Purchaser may transfer this right of use to subsequent owners of the Works. Unless otherwise agreed, the Contractor retains the rights to the Contractor's software even when such software has been produced specially for the Purchaser. The Purchaser may at his own responsibility make such changes in the Contractor's software that are consistent with the general purpose for which the Works is intended.

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

8. Unless otherwise agreed, the Contractor is not obliged to provide the Purchaser with the source code to the computer software. Nor shall the Contractor, unless otherwise agreed, be obliged to provide the Purchaser with updated versions of the computer software.

### Scope of the Works. Laws and Regulations

9. The scope of the Works shall be as set out in the Contract.

The Works shall be in accordance with the laws and other official regulations which were in force at the date of the tender in the country where the Site is located. The Purchaser shall, at the Contractor's request, provide information on such laws and regulations which apply to the Works.

10. The Contractor shall perform such variations as are required due to amendments in laws and other official regulations which apply to the Works, or in their generally accepted interpretation, where such change occurs after the date of the tender and before taking over of the Works. The provisions of Clauses 37 and 38 shall apply to such variations.

### Working Conditions

11. The Purchaser shall be responsible to the Contractor for ensuring that erection is carried out under conditions which comply with the applicable laws and regulations for working conditions at the Site. The Purchaser shall inform the Contractor by Written Notice of the safety regulations to be observed by personnel on the Site.

The Purchaser shall further at his own expense, on or near the Site, provide satisfactory facilities for the erection personnel for changing of clothes, washing and eating. The Purchaser shall also ensure that the Contractor's personnel have access to board and lodging in the vicinity of the Site in accordance with the applicable collective labour agreements, regulations or as specified in the Contract. The expenses for board and lodging are regulated pursuant to Clauses 24.2 and 25.

### Preparatory Work

12. The Contractor shall at the time agreed or, if no time has been agreed, in good time before erection starts, provide to the Purchaser drawings and descriptions showing how the Plant is to be erected. The Contractor shall at the same time provide all information necessary for preparing proper foundations and beddings required for the Works, for enabling unhindered transport of the Plant and necessary erection equipment to and on the Site and for preparing all necessary connections to the Plant.

The Contractor shall bear any expense incurred by reason of errors or omissions, which appear before taking over, in

the drawings, descriptions or information mentioned in the preceding paragraph. If such errors or omissions appear after taking over, the provision of Clauses 54 – 67 shall apply.

13. The Contractor shall inform the Purchaser by Written Notice when the Plant will be ready for erection in sufficient time to enable the Purchaser to carry out in time his obligations under Clauses 14 and 15, which are necessary for carrying out the erection.

14. The Purchaser shall carry out the necessary preparatory work in accordance with the drawings, descriptions and information referred to in Clause 12. If the parties have failed to agree on a specified date when the Purchaser's work shall be completed, it shall be completed so that foundations and beddings are ready to bear the Plant at the agreed time, however no later than one week before erection is due to commence. The Purchaser shall inform the Contractor by Written Notice when the preparatory work has been completed.

15. The Purchaser shall before erection is due to commence ensure that water and power, including compressed air and electric power, is available to the Contractor on the Site to the extent necessary or as specified in the Contract. These facilities shall be provided without cost to the Contractor. Nor shall the Contractor be obliged to pay for the use of such water and power.

The Purchaser shall also on or near the Site place at the Contractor's disposal lockable or otherwise secured premises or storage facilities, which are suitable for protecting the Plant and the Contractor's tools and equipment against theft and damage.

### Testing of the Plant in Connection with Manufacture. Inspection

16. If the Contract provides for Plant to be tested in connection with its manufacture, such test shall, unless otherwise agreed, be carried out where the Plant is manufactured. If the technical requirements for the test have not been agreed, it shall be carried out in accordance with general practice in the industry concerned in the country of manufacture.

17. The Contractor shall inform the Purchaser by Written Notice of such test as referred to in Clause 16 in sufficient time to permit the Purchaser to be present at the test. If the Purchaser has received such notice, the test may be carried out in the Purchaser's absence.

The Contractor shall record the test. The test report shall be sent to the Purchaser. Unless the Purchaser proves otherwise, the test report shall be considered to correctly describe how the test was carried out and its result.

18. If, at a test referred to in Clause 16, the Plant is found not to comply with the Contract, the Contractor shall as soon as possible ensure that the Plant complies with the Contract. At the Purchaser's request a new test shall then be carried out unless the defect was insignificant.

19. Additionally, the Purchaser may, to a reasonable extent or as specified in the Contract, at three days' notice inspect the manufacture of the Plant during the Contractor's normal working hours.

20. Unless otherwise agreed, the Contractor shall bear all costs for tests carried out where the Plant is manufactured. The Purchaser shall, however, at such tests and at inspections referred to in Clause 19 bear all costs for his representatives, including travel- and subsistence costs.



## Purchaser's Delay, etc.

**21.** If the Purchaser finds that he will not be able to carry out his obligations required for performance of the Works, hereunder his obligations according to Clauses 11, 14 and 15, within the agreed time, or if such delay on his part seems likely, he shall without delay give Written Notice thereof to the Contractor. The notice shall state the reason for the delay and, if possible, how long the delay will last.

If the Purchaser is in delay to perform his obligations, as referred to in the first paragraph, he shall nevertheless pay any part of the Contract price which, but for the delay, would have become due.

**22.** If the Purchaser is in delay or otherwise fails to perform his obligations as referred to in Clause 21, first paragraph, he shall reimburse any additional costs for the performance of the Works which may be incurred by the Contractor in addition to any claims under Clause 25, second paragraph. The Contractor shall be entitled to a reasonable postponement of the time for taking over due to the Purchaser's default. If the Contractor wishes to claim postponement, he shall without undue delay inform the Purchaser thereof by Written Notice.

If the Purchaser fails to perform his obligations correctly or in time and the default is of substantial importance, the Contractor may suspend his performance of the Contract until the default has been remedied. The Contractor may further terminate the Contract by Written Notice to the Purchaser provided that the Contractor has informed the Purchaser by Written Notice of his intention to terminate and the Purchaser has failed to remedy the default within one month after receipt of that notice. At such termination the Contractor shall be entitled to compensation for the loss he has suffered due to the Purchaser's default. The compensation shall not exceed the Contract Price.

## Payment

**23.** Unless otherwise agreed payment shall be made against invoice 30 days after the date of the invoice. Invoicing shall be as follows:

**23.1.** Where erection is carried out for a lump sum included in the Contract Price, the Contract Price shall be invoiced with 40 % at the formation of the Contract, 50 % when the Plant has arrived at the Site and the remaining part at taking over of the Works.

**23.2.** When erection is carried out on a time basis, the agreed price for the Plant shall be invoiced with 40 % at the formation of the Contract and 60 % when the Plant has arrived at the Site. Payment for the erection shall be made against monthly invoices.

**24.** When erection is carried out on a time basis the following items shall be indicated separately:

**24.1.** Travel expenses for the Contractor's personnel (including local transports), and expenses for transport of their equipment and personal effects.

**24.2.** The cost of board and lodging and other living expenses for the Contractor's personnel for each day's absence from home, including non-working days and holidays. Unless otherwise agreed, such costs shall be reimbursed at the highest rates payable for similar expenses to public employees in the Contractor's country when travelling to the country where erection is carried out.

**24.3.** Payment for work during normal working hours based on the number of hours certified by the Purchaser.

**24.4.** Payment for overtime work based on the number of hours certified by the Purchaser.

**24.5.** Unless otherwise agreed working hours and overtime are classified according to the regulations in the Contractor's country.

**24.6.** Payment according to the rate for normal working hours for time spent on:

- a) necessary preparations for outward and homeward journeys,
- b) outward and homeward journeys and other journeys, if any, to which the personnel are entitled according to law, regulation or collective agreement in the Contractor's country, and
- c) daily travel between the lodgings and the Site if the time exceeds 30 minutes per day or the time limit that may be specified in the applicable collective agreement in the Contractor's country.

**24.7.** Costs incurred by the Contractor for supplying equipment in accordance with the Contract and, if agreed, payment for use of the Contractor's own erection equipment.

**24.8.** Payment for waiting time according to the rates for normal working hours when work is held up by circumstances for which the Contractor is not responsible.

**24.9.** Taxes and dues, if any, levied on the amount of the invoice and to be paid by the Contractor.

**25.** When the parties have agreed that erection shall be carried out for a lump sum, all items under sub-clauses 24.1. through 24.7. are included in the Contract Price.

If the erection work is altered, delayed or temporarily must be suspended due to any circumstances for which the Purchaser or his other contractors are responsible, the Contractor shall, in addition to the Contract Price, be entitled to payment for:

**25.1.** Waiting time and time spent on extra journeys.

**25.2.** Extra work, including removing, securing and reinstating erection equipment.

**25.3.** Additional costs incurred by the Contractor in having to keep his equipment on the Site for a longer period than anticipated.

**25.4.** Additional costs for journeys and for board, lodging and living expenses for the Contractor's personnel.

**25.5.** Any other costs and expenses documented by the Contractor to have been incurred by him as a result of the alteration of the erection programme.

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

If the Purchaser fails to pay by the due date or fails to give agreed securities by the stipulated date, the Contractor may also, after having given the Purchaser Written Notice thereof, suspend his performance of the Contract until payment is made or agreed securities are given.

**27.** If the Purchaser has failed to pay the amount due within three months after the due date, the Contractor may terminate the Contract by Written Notice to the Purchaser. The Contractor shall then, in addition to his rights according to Clause 26, first paragraph, be entitled to compensation for the loss he has suffered. The compensation shall not exceed the Contract Price.

## Retention of Title

**28.** The Plant shall remain the property of the Contractor until the Works have been paid for in full, to the extent that such retention of title is valid under the relevant law.

## Erection

**29.** The parties shall, no later than when the Contractor gives notice that the Plant is ready for dispatch from the place of manufacture, each by Written Notice appoint a representative to act on their behalf during the work on Site.

The representatives shall be present on or near the Site during working hours. Unless otherwise specified in the



Contract, the representatives shall be authorized to act on behalf of their respective party in all matters concerning the erection work. Wherever these General Conditions stipulate that Written Notice shall be given, the representative shall always be authorized to receive such notice on behalf of the party he represents.

**30.** Unless otherwise agreed, the Purchaser shall free of charge provide the Contractor with cranes, lifting equipment, scaffolding and equipment for transport on the Site to the extent necessary for carrying out erection. The Contractor shall specify his requirements in this respect by Written Notice no later than one month before the start of the erection work.

**31.** The Contractor shall ensure that his personnel observe the safety regulations in force on the Site. This does not reduce the Purchaser's obligations under Clause 11.

The Purchaser may demand that any of the Contractor's personnel who fails to comply with these safety regulations is denied access to the Site.

**32.** The Contractor shall inform the Purchaser by Written Notice of any special dangers for the immediate environment which erection of the Works may entail.

**33.** The Purchaser may not, without the Contractor's previous consent by Written Notice, order the Contractor's personnel to carry out any work.

### Contractor's Right to Inspect

**34.** The Contractor shall have the right to inspect the Works at the Site at his own expense. Inspections shall be carried out during the Purchaser's normal working hours. This right applies until the Works are taken over and during any work pursuant to the provisions of Clauses 54 – 65.

### Variations

**35.** The Purchaser may until the Works have been taken over, subject to the limitations in Clause 38, require variations in the originally agreed scope, design and construction of the Works.

A request for a variation shall be made by Written Notice to the Contractor with a precise description of the variation required.

**36.** Until taking over, the Contractor may by Written Notice propose such variations as referred to in Clause 35, first paragraph.

**37.** The Contractor shall, as soon as possible after receipt of a request for a variation or after having himself proposed a variation, by Written Notice inform the Purchaser whether and how the variation can be carried out, stating the effects of the variation on the Contract Price, the time for taking over and other terms of the Contract.

The Contractor shall also give such notice when a variation is required by reason of changes in laws and regulations as referred to in Clause 10.

**38.** Save as provided in Clause 10, the Contractor shall not be obliged to carry out a variation before the parties have agreed in writing on how the variation will affect the Contract Price, the time for taking over and other terms of the Contract.

If the parties are unable to agree on the effects of a variation as referred to in Clause 10, the Contractor shall carry out the variation on a time basis pending agreement or solution of the dispute in accordance with Clause 78.

### Taking-over Test

**39.** When erection is completed the Works shall, unless otherwise agreed, undergo a taking-over test in order to determine whether the Works are in accordance with the Contract.

The Contractor shall inform the Purchaser by Written Notice that the Works are ready for taking over. He shall thereby specify a date giving the Purchaser sufficient time to prepare for and be represented at the test. The test shall be carried out at the Purchaser's normal working hours.

The technical requirements for the taking-over test shall be as specified in the Contract. If the technical requirements have not been agreed, the test shall be carried out in accordance with normal practice and generally applied standards in the country where the Site is located.

The taking-over test shall be conducted by the Contractor in the presence of representatives of both parties. The Contractor shall record the taking-over test. The test report shall be sent to the Purchaser. Unless the Purchaser proves otherwise, the report shall be considered to correctly describe how the test was carried out and its result.

**40.** The Purchaser shall, free of charge, provide any power, fuel, lubricants, water, raw materials and other materials required for the taking-over test in accordance with Clauses 39 and 42, and for final adjustments in connection with such tests. He shall further, free of charge, install the apparatus and provide the labour required for the taking-over test.

**41.** If, after having been notified in accordance with Clause 39, second paragraph, the Purchaser fails to fulfil his obligations under Clause 40 or otherwise prevents the taking-over test from being carried out, the test shall be regarded as having been satisfactorily completed at the starting date for the taking-over test stated in the Contractor's notice according to Clause 39, second paragraph.

**42.** If the taking-over test shows that the Works are not in accordance with the Contract, the Contractor shall as soon as possible remedy such deficiencies. Thereafter a new test shall be carried out unless the parties agree otherwise, or the deficiency does not affect the operation of the Works. Clause 39 and 40 shall apply to such new test.

### Taking Over

**43.** When the Works are as specified for taking over in the Contract the Purchaser shall be deemed to have taken over the Works,

- a) when the taking-over test has been completed or is deemed to have been completed under Clauses 39 – 42, or
- b) if the parties have agreed that a taking over test shall not be carried out, when the Purchaser receives the Contractor's notice under Clause 39, second paragraph, first sentence.

Taking over shall however not be prevented by any remaining minor adjustments or additions which do not affect the operation of the Works.

The Purchaser shall without undue delay by Written Notice confirm to the Contractor that the Works are taken over and the time for taking over. Failure by the Purchaser to give such confirmation shall not affect the judgment whether the Works have been taken over.

The Purchaser is not entitled to take the Works or any part of them into operation before taking over. If the Purchaser takes any part of the Works into operation without the Contractor's consent by Written Notice, the Purchaser shall then be deemed thereby to have taken over the Works. The



Contractor shall then be relieved of his obligation to carry out the taking-over test.

**44.** Unless otherwise agreed, the risk of loss of or damage to the Works shall pass to the Purchaser on taking over.

If it is agreed that the Purchaser shall receive the Plant at the Site, he shall inspect the Plant on arrival and immediately inform the Contractor by Written Notice of any transport damage.

#### Time for Delivery. Delay

**45.** Delivery of the Works shall be regarded as having been completed at the point of time when the Works are taken over according to Clause 43.

**46.** If, instead of a fixed time for taking over, the parties have agreed on a period of time within which the Works shall be taken over, such period shall start to run at the formation of the Contract.

**47.** If the Contractor finds that he will not be able to complete the Works in time or if delay on his part seems likely, he shall without undue delay inform the Purchaser thereof by Written Notice stating the reason for the delay and, if possible, the time when the Works are expected to be ready for taking over. If the Contractor fails to give such notice, he shall, regardless of the provisions of Clauses 49 and 50, reimburse the Purchaser for any additional expenses which the latter incurs and which he otherwise could have avoided.

**48.** The time for taking over shall be extended by a period which, having regard to the circumstances, is reasonable if the delay in taking-over is caused by one of the following reasons:

- an act or omission on the part of the Purchaser, or
- suspension by the Contractor under Clause 22 and 26, or
- variations under Clauses 10 and 35 – 38, or
- any other circumstance for which the Purchaser is responsible, or
- a circumstance which under Clause 75 constitutes ground for relief.

The time for taking over shall be postponed even if the reason for delay occurs after the originally agreed time for taking over.

**49.** Should the Works not have been taken over in time in accordance with Clause 43, the Purchaser shall be entitled to liquidated damages from the date taking over should have occurred.

The liquidated damages shall be payable at a rate of one per cent of the Contract Price for each commenced week of delay. The liquidated damages shall not exceed ten per cent of the Contract Price.

The liquidated damages become due at the Purchaser's demand by Written Notice, but not before the Works are taken over or the Contract is terminated by the Purchaser under Clause 50.

The Purchaser shall forfeit his right to liquidated damages if he fails to lodge a claim for liquidated damages by Written Notice within six months after the date when taking over of the Works should have taken place.

**50.** If the delay is such that the Purchaser has become entitled to maximum liquidated damages under Clause 49 and the Works are still not taken over, the Purchaser may by Written Notice to the Contractor demand that the Works be made ready for the taking-over test within a final reasonable

period which shall not be less than one week.

If the Contractor fails to complete the Works within such final period and this is not due to any circumstance for which the Purchaser or any other contractor engaged by him is responsible, then the Purchaser may terminate the Contract by Written Notice to the Contractor.

In case of such termination the Purchaser shall also be entitled to compensation for the loss he suffers because of the Contractor's delay to the extent that the loss exceeds the maximum of liquidated damages to which the Purchaser has become entitled under Clause 49. This compensation shall not exceed 10 % of the Contract Price.

The Purchaser shall also have the right to terminate the Contract by Written Notice to the Contractor if it is clear from the circumstances that a delay will occur which under Clause 49 would entitle the Purchaser to maximum liquidated damages. In case of such termination, the Purchaser shall be entitled to both maximum liquidated damages and compensation under the third paragraph of this Clause.

**51.** Except for liquidated damages under Clause 49 and termination with limited compensation under Clause 50 all claims in respect of the Contractor's delay shall be excluded.

#### Liability for Damage to Property Before Taking Over

**52.** The Contractor shall be liable for any damage to the Works which occurs before the risk has passed to the Purchaser. This applies irrespective of the cause of the damage, unless the damage has been caused by the Purchaser or someone or something he is responsible for. Even if the Contractor is not liable for damage to the Works under this Clause, the Purchaser may require the Contractor to remedy the damage at the Purchaser's cost.

**53.** The Contractor shall be liable for damage to the Purchaser's property occurring before taking over of the Works only if it can be shown that the damage was caused by negligence on the part of the Contractor or someone or something he is responsible for in connection with the performance of the Contract. The Contractor shall under no circumstances be liable for loss of production, loss of profit or any other consequential economic loss.

#### Liability for Defects

**54.** The Contractor shall, in accordance with the provisions of Clauses 56 – 67 below, by repair or replacement remedy any defect in the Works resulting from faulty design, materials, workmanship or erection.

Where the Contractor is liable for a defect, he shall also be correspondingly liable for damage to the Works that is caused by the defect.

The Contractor shall not be liable for defects resulting from materials provided by the Purchaser, from a design stipulated or specified by the Purchaser, or from incorrect preparatory work carried out by the Purchaser as referred to in Clause 14.

**55.** The Contractor's liability does not cover defects caused by circumstances arising after taking over of the Works by the Purchaser according to Clause 43. The liability does not, for example, cover defects due to the conditions of operation deviating from those foreseen in the Contract or to incorrect use of the Works. Nor does it cover defects due to faulty maintenance or incorrect erection by the Purchaser, variations in the Works carried out without the Contractor's consent by Written Notice, or faulty repairs by the Purchaser. Finally, the liability does not cover normal wear and tear or deterioration.



**56.** The Contractor's liability is limited to defects which appear within one year after taking over of the Works according to Clause 43. If the Works are used more intensively than agreed, the liability period shall be reduced proportionately.

**57.** When a defect has been remedied by repair or replacement under Clause 54, the Contractor shall have the same liability for defects in repaired parts or in replacement parts as for the original Works for a period of one year. For other parts of the Works the liability period specified in Clause 56 shall only be extended by the period during which the Works could not be used due to a defect for which the Contractor is liable.

**58.** The Purchaser shall give the Contractor Written Notice 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 defined in Clauses 56 and 57. The notice shall contain a description of how the defect manifests itself. If the Purchaser fails to give notice to the Contractor 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 Purchaser loses the right to make any claim based on damage to the Works which occurs and which could have been avoided if such notice had been given.

**59.** After receipt of a Written Notice under Clause 58, the Contractor shall remedy the defect without undue delay. The time for remedial work shall be chosen in order not to interfere unnecessarily with the Purchaser's activities. The Contractor shall bear the costs as specified in Clauses 54 – 66.

Remedial work shall be carried out where the Works are located, even if this is not at the Site, unless the Contractor, with regard to the interests of both parties, finds it more suitable to have the Plant sent to him or to a place as instructed by him.

If the defect can be remedied by repair or replacement of a defective part and dismantling and reinstallation of the part does not require special knowledge, the Contractor may demand that the defective part be sent to him or to a place as instructed by him for repair or replacement. In such case the Contractor has fulfilled his obligations in respect of the defect when he delivers a duly repaired part or replacement part to the Purchaser.

**60.** When remedial work in accordance with Clause 59 shall be carried out where the Works are located, Clauses 11, 15 and 53 shall apply correspondingly.

**61.** The Purchaser shall at his own expense provide the Contractor access to the Works and arrange for any intervention in equipment other than the Works, to the extent that this is necessary to remedy the defect.

**62.** All transports in connection with remedying of defects shall be at the Contractor's risk and expense. The Purchaser shall follow the Contractor's instructions regarding how the transport shall be carried out.

If the Works are located elsewhere than on the Site, the Purchaser shall bear the additional costs for remedying a defect which the Contractor thereby incurs.

**63.** Defective parts, which are replaced under Clause 54, shall be placed at the Contractor's disposal and shall become his property.

**64.** If the Purchaser gives such notice as referred to in Clause 58, and no defect is found for which the Contractor is liable, the Contractor shall be entitled to compensation for the work and costs which he has incurred as a result of the notice.

**65.** If the Contractor fails to fulfil his obligations under Clause 59 in time, the Purchaser may by Written Notice require him to do so within a final reasonable period, which shall not be less than one week. If the Contractor fails to fulfil his obligations within that period, the Purchaser may at his option:

- a) at the Contractor's risk and expense undertake or have undertaken necessary measures to remedy the defect, provided that the Purchaser proceeds in a reasonable manner, or
- b) demand a reduction of the Contract Price not exceeding 20 % thereof, or
- c) if the defect is substantial, terminate the Contract by Written Notice to the Contractor. The Purchaser shall also be entitled to such termination where the defect remains substantial after measures referred to in a). In case of termination the Purchaser shall be entitled to compensation for the loss he has suffered, however not more than 20 % of the Contract Price.

**66.** Regardless of the provisions of Clauses 54 – 65, the Contractor shall have no liability for defects in any part of the Works for more than one year from the end of the liability period referred to in Clause 56, first sentence, or from the end of any other liability period agreed upon by the parties.

**67.** The Contractor shall have no liability for defects save as stipulated in Clauses 54 – 66.

### Liability for Infringement of Intellectual Property Rights

**68.** Unless otherwise agreed, the Contractor shall, in accordance with Clauses 69 – 72, indemnify the Purchaser 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.

- 69.** The Contractor shall have no liability for infringement of intellectual property rights arising out of:
- the Works being used elsewhere than in a country referred to in Clause 68, or
  - the Works being used in a manner deviating from that agreed or in a way the Contractor should not have foreseen, or
  - the Works being used together with equipment or software not supplied by the Contractor, or
  - alterations in the Works undertaken by the Purchaser.

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

**70.** Defence against claims referred to in Clause 68 shall be for the Contractor's account. The Contractor shall compensate the Purchaser for such amounts as the latter is obliged to pay under a final award or a settlement approved by the Contractor.

The Contractor shall only be liable if the Purchaser without delay informs the Contractor by Written Notice of any claim which the Purchaser receives and allows the Contractor to decide how the claim shall be dealt with.

**71.** In case of an infringement of patent, copyright or other intellectual property rights for which the Contractor is liable according to Clauses 68 – 69, the Contractor shall without undue delay, after receipt of written notice under Clause 70,





second paragraph, at his option:

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

The Contractor has the equivalent responsibility if the Purchaser informs the Contractor by Written Notice of an infringement of patent, copyright or other intellectual property rights, without any claims made against the Purchaser from a third party.

**72.** If the Contractor fails to fulfil his obligations under Clause 71 in time, the Purchaser may by Written Notice require him to do so within a final reasonable period, which shall not be less than one week. If the Contractor fails to fulfil his obligations within that period, the Purchaser may at his option:

- a) carry out or have necessary measures carried out at the Contractor's risk and expense, corresponding to those referred to under Clause 71, first paragraph, provided that the Purchaser proceeds in a reasonable manner, or
- b) if the infringement causes him substantial inconvenience, terminate the contract by Written Notice to the Contractor. The Purchaser 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 Works After Taking Over

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

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

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

If a third party lodges a claim for compensation against the Contractor or the Purchaser for loss or damage referred to in this Clause, the other party shall forthwith be notified thereof by Written Notice.

The Contractor and the Purchaser 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 Works. The relationship between the Contractor and the Purchaser shall, however, always be settled in accordance with Clause 78.

### General Limitation of Liability

**74.** 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 6, or liability for infringement of intellectual property rights under Clauses 68 – 72.

### Grounds for Relief (Force Majeure)

**75.** 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 other extreme natural events, war, mobilization 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 sub-contractors caused by any such grounds 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 time of formation of the Contract.

**76.** The party wishing to claim relief under Clause 75 shall without delay give the other party Written Notice on the intervention and on the cessation of such circumstance.

If grounds for relief prevent the Purchaser from fulfilling his obligations, he shall reimburse the expenses incurred by the Contractor in securing and protecting the Works. The Purchaser shall further reimburse any costs incurred by the Contractor for personnel, subcontractors or equipment which, with the Purchaser's consent, are held in readiness to resume performance of the Works.

**77.** Notwithstanding other provisions of these General Conditions, either party shall be entitled to terminate the Contract by Written Notice to the other party, if performance of the Contract is prevented for more than six months by reason of a ground for relief as described in Clause 75.

### Disputes. Applicable Law

**78.** 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 Contractor'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 Contractor's country.

**79.** All disputes arising out of the Contract shall be judged according to the law of the Contractor's country.

