

# TERMS OF SALES & DELIVERY

## **Nemco terms of sales and delivery | General conditions**

for the supply and installation of machinery and other mechanical, electrical and electronic equipment within and between Denmark, Sweden, Finland and Estonia.

### **Preamble**

1. These General Conditions shall apply when the parties agree in writing or otherwise thereto. When the General Conditions apply to a specific contract, modifications of or deviations from them must be agreed in writing.  
The contractor Nemco reserves the right to update and change future terms and conditions at any time.  
The terms and conditions in force on the date the contract is signed shall apply throughout the contract and until the end of the warranty period.

### **Definitions**

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

#### **Contract**

The written contract between the parties concerning the supply and erection of the works, with all appendices, including agreed amendments and additions to the said documents.

#### **Plant**

All machinery, apparatus, materials and articles to be supplied by the contractor under the contract

#### **Works**

The Plant to be supplied and the result of the work to be done 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 conditions shall apply to each section separately. The term "Works" shall then refer to the section in question.

#### **Site**

The place at which installation of the works is to be carried out, including so much of the immediately surrounding area as is necessary for transport, unloading and storage of the plant and installation equipment.

#### **Contract price**

The payment to be made for the works, excluding value added tax.  
When erection is carried out on a time basis and is not yet complete, the contract price for the purposes of clauses 20, 24, 47 and 48 shall be the price for the plant with the addition of 10 per cent or such percentage as may have been agreed by the parties.

#### **Acceptance**

The taking-over of the works by the purchaser from the contractor upon successful completion of the acceptance testing as specified in the contract.

#### **Written notice**

Any document signed by one of the parties and received by the other party and any message from one party to the other conveyed by telegram, telefax or telex and identifying the sender, but not messages conveyed by other electronic means.

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## **Product Information**

3. Data contained 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**

4. All drawings and other technical documents regarding the works submitted by one party to the other before or after the signing of the contract shall remain the property of the submitting party. Drawings, technical documents and other technical information received by one party may 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 or reproduced.
5. The contractor shall, not later than by the acceptance of the works, free of charge provide the purchaser with one copy or such larger number of copies as may have been agreed, of drawings and other technical documents, which are sufficiently detailed to permit the purchaser to carry out commissioning, operation and maintenance, including running repairs, of the works. The contractor shall not, however, be obliged to supply manufacturing drawings of the plant or spare parts.

## **Confidentiality**

6. Neither party shall, without the consent of the other, be entitled to provide any third party with technical or commercial information which any of the parties has stated to be confidential at the formation of the contract or later. This does not apply to the extent that the provision of such information is necessary to enable the parties to fulfil their obligations under the contract or for operation and maintenance of the works.  
Each party is obliged to prevent such confidential information from being disclosed to or used by its employees, consultants, subcontractors and other contractors or others who through that party have or may obtain access to such information, to a greater extent than permitted by the first paragraph of this clause.

## **Scope of the works. Laws and regulations**

7. The scope of the works shall be as set out in the contract.  
The works shall be in accordance with the laws, regulations and provisions which applied at the date of the tender in the country where the site is situated. If so required by the contractor, the purchaser shall provide information on pertinent laws and other rules applicable to the works.
8. The contractor shall carry out any variations resulting from amendments to laws, regulations or provisions applicable to the works, or in the generally accepted interpretation thereof, taking effect between the date of the tender and acceptance. The provisions of clauses 35 and 36 shall apply to such variations.

## **Working conditions**

9. The purchaser shall be responsible to the contractor for ensuring that installation can be carried out under conditions which comply with applicable laws and regulations for working conditions at the site. The purchaser shall inform the contractor by written notice of the safety regulations in force on the site.  
Further, the purchaser shall, at his own expense on or near the site, provide satisfactory facilities for the installation personnel for changing, washing and eating. The purchaser shall also ensure that the contractor's personnel are provided with board and lodging in the vicinity of the site in accordance with the applicable collective labour agreements, regulations or as specified in the contract. Unless otherwise agreed the contractor shall bear all expenses for board and lodging.

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## Preparatory work

10. 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 11, 12 and 13, which are necessary for having the installation carried out.
11. The contractor shall within the time specified in the contract, or if not so specified then in good time, submit to the purchaser drawings or descriptions indicating how the plant is to be installed. At the same time the contractor shall provide all information required for preparing proper foundations and other beddings. He shall also provide all information necessary for providing suitable access for the plant and necessary equipment to and on the site and for preparing all necessary connections to the plant.  
Any expenses incurred by reason of errors or omissions which appear before acceptance in the drawings, descriptions or information mentioned in the preceding paragraph shall be borne by the contractor. If such errors or omissions appear after acceptance, the provisions of clauses 52-66 shall apply.
12. The purchaser shall carry out the necessary preparatory work in accordance with the drawings, descriptions and information referred to in clause 11. If the time for completion of such work is not specified in the contract, it shall be completed at least one week before installation is due to commence, and so that foundations and beddings are ready to receive the plant at the agreed time. The purchaser shall inform the contractor by written notice of the completion of the preparatory work.
13. Before installation is due to commence, the purchaser shall ensure that water and power facilities, including compressed air and electric current, are 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 he be obliged to pay for the use of such water and power.  
The purchaser shall also on or near the site provide the contractor, free of charge, with lockable or otherwise secured premises or storage areas which are suited for protection against theft and deterioration of the plant and of the contractor's tools and equipment.

## Testing of the plant during manufacturing. Inspection

14. Where the contract provides for the plant to be tested in connection with its manufacture, such test shall, unless otherwise agreed, be carried out where the plant is being manufactured. If technical requirements for the test have not been agreed upon, the test shall be carried out in accordance with general practice in the industry concerned in the country where the plant is being manufactured,
15. The contractor shall by written notice inform the purchaser of such test as referred to in clause 14 by written notice in sufficient time to permit the purchaser to be present at the test. The test may be carried out in the purchaser's absence provided that the purchaser has received such notice.  
The contractor shall keep a record of the test. The report containing the record shall be sent to the purchaser. The report shall, unless otherwise shown by the purchaser, be deemed to correctly record the test and its results.
16. If, at a test referred to in clause 14, the plant turns out not to be in compliance with the contract, the contractor shall, without delay, ensure that the plant complies with the contract. A new test shall then be carried out if so required by the purchaser. The purchaser may not, however, require a new test if the defect was insignificant.

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17. The purchaser shall further to a reasonable extent, or as specified in the contract, be entitled to inspect the manufacture of the plant during normal working hours giving three days' notice of such inspection.
18. If no other division of the costs has been agreed, the contractor shall bear all costs for tests carried out at the place where the plant is being manufactured. The purchaser shall, however, bear all costs for his representatives, including travelling and living expenses at such tests and at inspections under clause 17.

### **Purchaser's delay, etc.**

19. If the purchaser finds that he will not within the agreed time be able to carry out his obligations necessary for completion of the works, including preparatory work under clauses 9, 12 and 13, or if such delay on his part seems likely, he shall without undue delay by written notice inform the contractor thereof. The notice shall state the reason for the delay and, if possible, how long the delay will last.  
If the purchaser is delayed in carrying out his obligations as referred to in the preceding paragraph, he shall nevertheless pay any sum, dependent on the contractor's progress, as if the delay had not occurred.
20. If the purchaser is in delay or otherwise fails to comply with his obligations, including those under clauses 9, 12 and 13, he shall reimburse any additional cost thereby incurred by the contractor in addition to any claims under clause 23, second paragraph. The contractor shall be entitled to a reasonable extension of the time for completion by reason of the purchaser's default. Any demand for such extension shall be made by the contractor, without undue delay, by written notice to the purchaser.  
If the default must be considered substantial, the contractor may refuse to continue delivery and installation until the default has been remedied. The contractor may terminate the contract by written notice to the purchaser if the purchaser has not remedied the default within one month after having received a written notice from the contractor stating the contractor's intention to terminate the contract. If the contract is terminated, the contractor may claim compensation from the purchaser for any loss suffered due to the purchaser's default. The compensation shall not exceed the contract price.

### **Payment**

21. Unless otherwise agreed, payment shall be made as follows:

#### **21.1. Installation carried out on a time basis.**

40 % when ordering  
50 % before shipment from the factory \*  
10 % after installation and approval, but not later than 30 days after delivery to site.

#### **21.2. Installation carried out for a lump sum included in the contract price plus VAT.**

40 % when ordering  
50 % before shipment from factory \*  
10 % after installation and approval, but no later than 30 days after delivery to site.

\* If payment is not deposited in Nemco's bank account before shipment from the factory is due, the equipment will not be shipped.

Payment deadline is 8 days from the date of each invoice.

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22. When installation is carried out on a time basis the following items shall be charged separately:
- 22.1. All travelling expenses for the contractor's personnel (including local travel) and all transport expenses for their tools and personal belongings.
  - 22.2. 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 to public employees in the contractor's country when travelling to the country where erection is carried out.
  - 22.3. Payment for work during normal working hours based on the number of hours certified by the purchaser.
  - 22.4. Payment for overtime work based on the number of hours certified by the purchaser.
  - 22.5. 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 to which the personnel are entitled in accordance with the applicable law, regulation or collective agreement in the contractor's country;
    - c) daily travel between lodgings and the site if it exceeds 30 minutes or the time limit that may be set out in the applicable collective agreement in the contractor's country.
  - 22.6. Costs incurred by the contractor for supplying equipment in accordance with the contract, including payment for use of the contractor's own erection equipment.
  - 22.7. Payment for waiting time according to the rates for normal working time when work is held up by circumstances for which the contractor is not responsible according to these General Conditions or otherwise under the contract.
  - 22.8. Taxes and dues levied on the invoiced amount and to be paid by the contractor.
23. When installation is carried out for a lump sum all items under sub-clauses 22.1 through 22.6 shall be included in the price for erection. Value-added tax and similar dues, charges etc. shall be added.  
If installation work is altered, delayed or from time to time must be suspended due to any circumstance for which the purchaser or any of his other contractors is responsible, the contractor shall, in addition to the agreed price for erection, be entitled to payment for:
- 23.1. Waiting time and time spent on extra journeys.
  - 23.2. Extra work including removal, securing and setting up of erection equipment.
  - 23.3. Expenses incurred by the contractor in having to keep his equipment on the site longer than anticipated.
  - 23.4. Additional expenses for journeys and board and lodging for the contractor's personnel.

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- 23.5. Any other costs and expenses that can be documented by the contractor to have been incurred as a result of alterations in the erection programme.
24. If the purchaser fails to pay by the agreed date, the contractor shall be entitled to interest of 2 % per month. If the purchaser has not paid the amount due within three months the contractor shall be entitled to terminate the contract by written notice to the purchaser and to claim compensation for the loss he has suffered. The compensation shall not exceed the contract price.

### **Retention of title**

25. The Plant shall remain the property of the contractor until payment, including VAT, for the works has been made in full, to the extent that such retention of title is valid under the applicable law.

### **Erection**

26. At the latest by the contractor's notification that the plant is ready for dispatch from the place of manufacture, the parties shall by written notice each 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, they shall be authorized to act on behalf of their respective parties in all matters concerning the erection work. Wherever these General Conditions stipulate that written notice shall be given, the representative shall be authorized to receive such notice on behalf of the party he represents.
27. Unless otherwise agreed, the purchaser shall free of charge provide the contractor with necessary unskilled labour on the site. The contractor shall give the purchaser one week's notice of his current requirements for unskilled labour.
28. 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 that such equipment is necessary for carrying out installation on the site. The contractor shall specify his requirements regarding such equipment by written notice not later than one month before the start of installation.
29. The contractor shall ensure that the safety regulations in force on the site are observed by his personnel. This does not in any way reduce the purchaser's obligations under clause 9. The purchaser is entitled to request that any of the contractor's personnel not complying with the safety regulations be denied access to the site.
30. The contractor shall inform the purchaser by written notice of any special dangers for the immediate environment which installation of the works may entail.
31. The purchaser shall not be entitled to order the contractor's employees to carry out any work without the contractor's previous consent by written notice.

### **Contractor's right to inspect**

32. The contractor shall have the right at any time during working hours on the site to inspect the works at his own expense. This right applies until the works are taken over and during any work resulting from the provisions of clauses 52-66.

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## Variations

33. The purchaser may, until the works have been acceptance and subject to the limitations in clause 36, require variations in the originally agreed scope, design and construction of the works.  
A request for a variation shall be made to the contractor by written notice containing an exact description of the variation required.
34. The contractor may, until acceptance, by written notice propose such variations as referred to in clause 33, first paragraph.
35. As soon as possible after receipt of a request for a variation or after having himself proposed a variation, the contractor shall by written notice inform the purchaser whether and how the variation can be carried out, stating the resulting alteration to the contract price, the time for completion and other terms of the contract.  
The contractor shall also give such notice when variations are required by reason of changes in such laws, regulations and provisions as mentioned in clause 8, second paragraph.
36. Save as provided in clause 8, the contractor shall not be obliged to carry out variations before the parties have agreed on how the variation in question will affect the contract price, the time for completion and other terms of the contract.  
If the parties are unable to agree on how the terms of the contract shall be affected by a variation referred to in clause 8, the contractor shall carry out the variation on a time basis until agreement can be reached or the dispute is settled in accordance with the provisions of clause 71.

## Acceptance tests

37. When installation has been completed acceptance tests shall, unless otherwise agreed, be carried out to determine whether the works are in accordance with the contract.  
The technical requirements for carrying out the acceptance tests shall be as specified in the contract. If the technical requirements have not been agreed they shall be in accordance with the general practice and the standards generally applied in the country where the site is situated.  
The contractor shall by written notice inform the purchaser when the works are ready for acceptance. He shall in his notice state a reasonable time limit within which acceptance tests shall be carried out the parties shall then jointly appoint a time for acceptance tests. Unless otherwise agreed, such tests shall be carried out during the purchaser's normal working hours.  
The acceptance tests shall be conducted by the contractor in the presence of representatives of both parties. If the purchaser is prevented from attending on the agreed date for the acceptance tests, the contractor shall set a new date for such tests by written notice to the purchaser. The purchaser shall be entitled to reasonable notice before such tests are carried out.  
If the purchaser does not attend the acceptance tests on the new date set by the contractor, the tests may be carried out in his absence. The contractor may then at the purchaser's expense engage an independent, competent person to witness the tests.  
The contractor shall keep a record of the acceptance tests. The report containing the record shall be sent to the purchaser. The report shall, unless otherwise shown by the purchaser, be deemed to accurately record how the tests were carried out and their results.
38. If the works by the acceptance tests turn out not to be in compliance with the contract, the contractor shall ensure as soon as possible that the works comply with the contract. New acceptance tests shall then be carried out unless otherwise agreed by the parties or if the deviations do not affect the operation of the works. The provisions of clause 37 shall apply to such new tests.

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39. The purchaser shall free of charge provide any power, fuel, lubricants, water, raw materials and other materials required for the acceptance tests in accordance with clauses 37 and 38 and for final adjustments in connection with such tests. He shall also free of charge install any apparatus and provide any labour required for carrying out the acceptance tests.
40. If the purchaser, after having been notified by the contractor in accordance with clause 37, third paragraph, fails to fulfil his obligations under clause 39 or otherwise fails to provide assistance for the acceptance tests, thereby preventing the tests from being carried out, the acceptance tests shall be deemed to have been satisfactorily completed at the expiry of the time limit stated by the contractor in his notice.

### **Acceptance**

41. The purchaser shall be deemed to have taken over the works,
  - a) when the acceptance tests have been carried out or shall be deemed to have been carried out in accordance with the provisions of clauses 37-40, or
  - b) if it is agreed that acceptance tests shall not be carried out, when the purchaser receives written notice from the contractor according to clause 37, third paragraph, first sentence, and the works are in the condition required for acceptance according to the contract.

Remaining minor adjustments and additions to the works which do not affect the operation of the works shall not, however, prevent acceptance.

The purchaser shall without undue delay by written notice confirm to the contractor that the works have been accepted and the time for acceptance. Failure by the purchaser to give such confirmation shall not affect the judgment of whether the works have been accepted. Until acceptance the purchaser shall not be entitled to take the works or any part of them into operation. If the purchaser takes the works or any part of them into operation without the contractor's consent by written notice the purchaser shall be deemed to have accepted the works. The contractor shall then be relieved of his obligation to carry out acceptance tests.

42. Unless otherwise agreed, the risk of loss of or damage to the works shall pass to the purchaser when the works are accepted.  
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 damage during transportation.
43. Capacities: The purchaser must be aware that there will
  - a) always be discrepancies in performance capabilities. These are caused by the fact that the raw materials, which are processed in the system, vary of course in their composition and quality.
  - b) if a product matrix, where each product is described in terms of type, texture, temperature and other parameters describing the product, has been developed in connection with quotations and order confirmations, you may experience that some products have 10 % less capacity/throughput and others maybe 15 % more capacity/throughput.

The purchaser and Nemco as the contractor agree therefore upon the above. It also means that every day, from a production point of view, therefore, cannot be the same in terms of capacity of the machines as well as the individual settings on the equipment.

The purchaser's staff must be in possession of this understanding and knowledge.

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### Time for delivery. Delay

44. The works shall be regarded as having been delivered on the day on which they are taken over in accordance with the provisions of clause 41.
45. If, instead of a fixed date for acceptance, the parties have agreed on a period of time within which the works shall be taken over, such period shall start at the signing of the contract.
46. 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 by written notice without delay inform the purchaser thereof. The contractor shall in his notice state the reason for the delay and if possible the time when the works will be ready for acceptance. If the contractor fails to give such notice, he shall, notwithstanding the provisions of clauses 47 and 48, reimburse the purchaser any extra expenses incurred by him as a result of the contractor's failure to notify.
47. If acceptance is delayed by a circumstance which under clause 68 shall be considered a case of relief, by an act or omission on the part of the purchaser or his other contractors, or as a result of a variation under clause 8 and clauses 33-36, 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 date for acceptance.  
The liquidated damages shall be payable at a rate of 0.5 per cent of the contract price for each complete week of delay. The liquidated damages shall not exceed 7.5 per cent of the contract price.  
The liquidated damages become due at the purchaser's demand by written notice but not before the entire works have been accepted or the contract is terminated under clause 48. The purchaser loses his right to claim liquidated damages if he has not lodged such a claim by written notice within six months after the time when the works should have been taken over.
48. If the works have not been taken over according to clause 41 by the correct date, the purchaser is entitled to liquidated damages from the date on which acceptance should have taken place.  
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 of his other contractors are responsible, then the purchaser may by written notice to the contractor terminate the contract.  
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 47. This compensation shall not exceed 7.5 per cent 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 47 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.
49. If the purchaser has become entitled to maximum liquidated damages under clause 47 and if the works are still not taken over, the purchaser may by written notice demand that the works be made ready for acceptance tests 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 of his other contractors are responsible, then the purchaser may by written notice to the contractor terminate the contract.  
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 47. This compensation shall not exceed 7.5 per cent 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 47 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.

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50. Liquidated damages under clause 47 and termination of the contract with limited compensation under clause 48 are the only remedies available to the purchaser in case of delay on the part of the contractor. All other claims against the contractor based on such delay shall be excluded. However, this limitation of the contractor's liability shall not apply where the contractor has been guilty of gross negligence.

### **Liability for damage to property before acceptance**

51. The contractor shall be liable for any damage to the works which occurs before acceptance by the purchaser. This applies irrespective of the cause of the damage, unless the damage has been caused by the purchaser or anyone for whom he is responsible. Even if the contractor is not liable for damage to the works in accordance with this clause, the purchaser may require the contractor to remedy the damage at the purchaser's cost.
52. The contractor shall be liable for damage to the purchaser's property occurring before acceptance of the works only if it can be proved that such damage was caused by negligence on the part of the contractor or anyone for whom he is responsible in connection with the performance of the contract. The contractor shall however under no circumstances be liable for loss of production, loss of profit or any other consequential economic loss.

### **Liability for defects**

53. The contractor shall, pursuant to the provisions of clauses 53-65 below, by repair or replacement remedy any defect in the works resulting from faulty design, materials or workmanship.
54. The contractor's liability is limited to defects which appear within a period of one year from the date of acceptance of the works under clause 41. If the works are used more intensely than agreed or could be foreseen at the formation of the contract, this period shall be reduced proportionally.
55. The contractor shall be liable for defects in parts of the works which have been repaired or replaced under clause 52 for a period of one year under the terms and conditions which apply to the original works. The liability period defined in clause 53 shall be extended for other parts of the works only by a period equal to the period during which the works could not be used because of a defect referred to in clause 52.
56. The purchaser shall inform the contractor of a defect by written notice without undue delay after the defect has appeared, and in no case later than two weeks after the expiry of the period defined in clause 53 as supplemented by clauses 54 and 65. 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 purchaser fails to inform the contractor of a defect by written notice within the time limits set forth in this clause, he shall forfeit his right to make any claim in respect of the defect.
57. On receipt of written notice according to clause 55 the contractor shall remedy the defect without undue delay and at his own cost as stipulated in clauses 52-64.  
The defect shall be remedied on the site unless the contractor deems it appropriate to have the defective part or the plant returned to him for repair or replacement at his own premises.  
If special knowledge is required to carry out dismantling and reinstallation of the part, the contractor shall perform such dismantling and reinstallation. If such special knowledge is not required, the contractor has fulfilled his obligations in respect of the defect when he delivers a duly repaired or replaced part to the purchaser.

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58. Where remedial work according to clause 56 is carried out on the site, clauses 9, 13 and 51 shall apply correspondingly.
59. If the purchaser has given such notice as referred to in clause 55, and no defect is found for which the contractor is liable, the contractor shall be entitled to compensation for the work performed and reimbursement of the costs incurred as a result of the notice.
60. If dismantling or reinstallation makes it necessary to establish access through or otherwise take measures affecting installations or equipment other than the works, the labour and costs resulting therefrom shall be the purchaser's responsibility.
61. All transportation in connection with repair or replacement shall be at the contractor's risk and expense. The purchaser shall follow the contractor's instructions regarding the method of transport.  
If the contractor incurs extra costs when remedying defects as a result of the works not being on the site all such costs shall be borne by the purchaser.
62. Defective parts which are replaced in accordance with clause 52 shall be placed at the contractor's disposal and shall become his property.
63. If the contractor fails to fulfil his obligations under clause 56 within a reasonable time, the purchaser may by written notice require him to do so within a final time limit. If the contractor fails to fulfil his obligations within that time limit, the purchaser may choose to:
  - a) have the necessary remedial work carried out and/or have new parts manufactured at the contractor's risk and expense, provided that the purchaser acts in a reasonable manner, or
  - b) demand a reduction of the contract price not exceeding 15 per cent thereof.  
If the defect must be considered substantial, the purchaser may instead choose to terminate the contract by written notice to the contractor. The purchaser shall also be entitled to such termination where the defect remains substantial after such measures have been taken as referred to in a). In case of termination, the purchaser shall be entitled to be compensated for the loss he has suffered. The compensation shall, however, not exceed 15 per cent of the contract price.
64. The contractor is not liable for defects arising out of materials provided by, or a design stipulated or specified by the purchaser, or resulting from defective preparatory work carried out by the purchaser, cf. clause 12.
65. The contractor is only liable for defects which appear under the conditions of operation foreseen in the contract and under proper use of the works.  
The contractor's liability does not cover defects resulting from causes occurring after acceptance under clause 41. The liability does not for example cover defects which are caused by faulty maintenance on the part of the purchaser, by variations of the works undertaken by the purchaser without the contractor's consent by written notice, or by faulty repairs by the purchaser. Finally the contractor's liability does not cover normal wear and tear or deterioration.
66. Notwithstanding the provisions of clauses 52-64 the contractor shall have no liability for defects in any part of the works for more than two years from acceptance in accordance with clause 41.

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67. The contractor shall have no liability for defects save as stipulated in clauses 52-65. 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 contractor's liability shall, however, not apply if he has been guilty of gross negligence.

### **Liability for damage to property caused by the works after acceptance**

68. The purchaser shall indemnify and hold the contractor harmless to the extent that the contractor incurs liability towards any third party in respect of any damage for which the contractor according to the second and third paragraphs of this clause is not liable towards the purchaser.

The contractor shall not be liable for loss or damage caused by the works after acceptance

- a) to any (movable or immovable) property where the damage occurs while the works are in the purchaser's possession, or
- b) to products manufactured by the purchaser, or to products of which the purchaser's products form a part, or for loss or damage to any property, where the damage is caused by these products because of the works.

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

The above limitations in the contractor's liability shall not apply where the contractor 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 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, where the claim is based on damage or loss alleged to have been caused by the works. The liability as between the contractor and the purchaser shall, however, always be settled by arbitration in accordance with clause 71.

### **Grounds for relief (force majeure)**

69. 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 formation of the contract.

70. The party intending to claim relief under clause 68 shall inform the other party by written notice without delay on the occurrence and on the cessation of such circumstance.

If grounds for relief prevent the purchaser from fulfilling his obligations, he shall reimburse the contractor for costs incurred in securing and protecting the works. The purchaser shall also reimburse the contractor for costs incurred for personnel, sub-contractors and equipment which, with the consent of the purchaser, is held in readiness to resume work.

71. Notwithstanding other provisions of these General Conditions, each party shall be entitled to terminate the contract by written notice 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 68.

## **TERMS OF SALES & DELIVERY**

### **Disputes. Applicable law**

72. 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 contractor's country.
73. All disputes arising out of the contract shall be judged according to the law of the contractor's country.