



# TERMS AND CONDITIONS OF SALE FOR THE ASSOCIATION OF NORWEGIAN MACHINERY DEALERS

Revised March 2009

(Unofficial translation from Norwegian)

## 1. Introduction

These terms of sale apply in so far as the parties have not entered into another written contract.

## 2. Offers

All offers are non-binding. No contract is entered into until the selling firm issues an order confirmation. For goods in stock, a proviso is stated regarding intervening sales.

## 3. Technical information

Illustrations, drawings and statements of prices and technical data, such as weight, dimension, volume, capacity, power requirements, etc., in catalogues, brochures and other advertising materials are only intended as a guide and must not be perceived as being final or binding. Corresponding information that is included in the order confirmation or other contract document or that has been made part of the contract through a reference is binding on the seller unless the seller has expressly stated that the information is only intended as a guide.

Technical data that has been bindingly agreed on must be understood to be subject to the normal amount of leeway, among other things because the buyer's circumstances may deviate from the circumstances assumed in the calculations. Technical data that is expressly guaranteed in the contract must be interpreted as having the tolerance margins which are normal according to standards or customs for the type of goods in question.

The designation approximately means a leeway of 10% up or down. The buyer bears the risk of the technical data, and the sales object in all respects, being suitable for the buyer's needs. As regards technical advice provided in connection with the purchase of machinery and technical equipment, the seller only has the liability for negligence that technical advisers (consultants) have.

## 4. Drawings

Drawings which one party gives to the other party must not be used in contravention of their owner's interests and must not be copied or made available to third parties without the owner's written consent. All drawings are to be returned to the owner.

## 5. The starting point for calculating the delivery time

Unless otherwise agreed in writing, the latest of the following dates applies as the starting point for calculating the delivery time.

- The date when the contract is entered into.
- The date when the seller has received all the technical data that the buyer is to provide.
- The date when the seller receives the payment which, according to the contract, is to be paid in advance.
- The date when a domestic or foreign public licence has been issued if a licence from a public authority is necessary for manufacture or delivery.

If the delivery time is stated as a date and not as a period, this date is to be correspondingly postponed if the starting point for the calculations is postponed.

The stated delivery time is either guaranteed or serves as a guide. The delivery time is only guaranteed if this is expressly stated in the contract's written wording, otherwise it always serves as a guide. If the seller becomes aware that delivery will not take place within the framework of the delivery time that serves as a guide – or within the guaranteed delivery time – the seller should give the buyer notice of this, stating the reason for the delay and, if possible, a new delivery date.

## 6. Cancellation of the purchase in the case of a delay in delivery.

Should a force majeure situation occur, cf clause 8, the delivery time is to be extended by the period for which the force majeure situation lasts. If the agreed delivery time – serving as a guide or guaranteed – is exceeded by six months, the buyer is entitled to cancel the purchase.

If delivery is to take place ex works – or if the sales object is to be delivered in whole or in part by a subcontractor – the buyer is nonetheless only entitled to cancel the purchase if the seller is entitled to cancel in relation to its supplier.

It is a prerequisite that the terms and conditions of sale of the works or subcontractor that delivered the machine have been notified to the buyer, cf clause 19. These provisions replace sections 22-27 and 29 of the Norwegian Sale of Goods Act.

## 7. Damages and delayed delivery

No form of damages are payable for exceeding a delivery time which is stated as a guide.

If a guaranteed delivery time is exceeded – unless otherwise agreed on – normal damages (liquidated damages) are payable if a loss can be documented. The liquidated damages are calculated as being 0.5% per week of that part of the agreed purchase price that relates to that part of the object which, due to the delay, cannot start to be used as presumed. The maximum amount of liquidated damages is 7.5% of the agreed purchase price.

The buyer cannot claim any other form of damages and the normal damages are no longer payable if it can reasonably be assumed that the buyer has not suffered any loss, for example because it was not ready to receive the delivery.

If the sales object is to be delivered ex works or entirely or partially by a subcontractor, the buyer is only entitled to damages if the seller can enforce a corresponding claim for damages against its supplier.

It is a prerequisite that the terms and conditions of sale of the works - or subcontractor - that delivered the sales object have been notified to the buyer - cf clause 19. The sales object is to be regarded as having been delivered when it has come into the buyer's possession in the manner that has been agreed on, cf clause 6, even if the seller later has to carry out rectification work, cf clause 16, or make later

deliveries of parts that are of insignificant financial importance compared to the delivery in its entirety.

## 8. Force majeure

Force majeure is counted as any impediment which is covered by section 23 of the Sale of Goods Act, both when such impediments are general and when they affect the seller itself or the works chosen to manufacture the sales object or the works' subcontractors. Traffic difficulties which affect the means of transport or transport route assumed by the seller when the contract was entered into are also counted as force majeure, as are the rejection of major pieces of work, reduction in the supply of working power, labour conflicts, military mobilisation, requisitioning, seizures and currency, export or import restrictions.

## 9. Delivery and the transfer of risk

Normal sales clauses are to be interpreted in accordance with the international Rules for the Interpretation of Commercial Expressions (Incoterms), although the rules stated in these terms and conditions of sale are to take precedence in the case of a collision.

If the written contract states nothing about the delivery method and transfer of risk, the "ex warehouse" clause applies to deliveries from the seller's warehouse and the "ex works" clause applies to deliveries from works.

## 10. Vendor's fixed charge

The seller reserves a vendor's fixed charge on the sales object equal to the purchase price including any costs, hire-purchase supplements and outlays for the buyer in connection with the sale. The seller is entitled to repossess the sales object if the buyer defaults on its payment obligation.

The vendor's fixed charge is maintained unaltered if the payment terms are amended, for example by a normal cash/credit purchase being changed to a hire purchase.

The buyer is not entitled to manage the sales object – legally or actually – in a way that diminishes the sales object's value or the seller's opportunity to obtain payment. If, when the contract is entered into, the seller used the term retention of ownership or sale on a lease – this has the same effect as if a vendor's fixed charge had been agreed on (cf section 3-22 of the Norwegian Mortgage Act). An acceptance, cheque or other instruction to make payment is not regarded as payment until it has been redeemed in its entirety.

## 11. Calculating the price

The prices apply to the sales object delivered in accordance with clause 9, compared to the contract that has been entered into.

Demands may be made to regulate prices that are stipulated in NOK if changes in exchange rates that are important when calculating the sales object's price take place between the date when the contract is entered into and up to two working days after payment has been received by the seller. Any claim for regulation must be submitted within eight days.

## 12. The buyer's obligation to take delivery of the sales object

Should the buyer fail to take delivery of a sales object that is ready for delivery on the delivery date, it is nonetheless obliged to pay any amount that has been made dependent on delivery as if the sales object had been delivered.

The buyer is obliged to take delivery of the sales object. Should the buyer fail to take delivery of the sales object within a reasonable period after being asked to do so, the seller may cancel the purchase and claim damages. Otherwise, the provisions stated in sections 72, 73 (1) and 74-78 of the Norwegian Sale of Goods Act apply.

## 13. Terms and conditions of sale

Unless otherwise agreed, the buyer shall in the case of a delay in payment pay interest on overdue payments in accordance with Norwegian Act no. 100 of 17 December 1976 relating to interest on overdue payments.

## 14. Safety rules

The delivery of a new machine is to be in accordance with the requirements stipulated by the Norwegian Working Environment Act (Act no. 4 of 4 February 1977) and regulations issued pursuant to this Act on the date when the contract is entered into. The costs of mandatory safety equipment that is not included in the delivering works' standard system are always to be borne by the buyer. The same applies if, after the contract has been entered into but prior to delivery, new requirements as to such equipment come into force. The seller is not liable for compliance with separate orders that are not stated in the general safety rules.

When used objects are taken over (machinery, etc), the buyer/recipient bears the risk of the object being in compliance with the abovementioned Act and regulations issued pursuant to it.

## 15. Obligation to examine and complaints

Complaints due to defects in the sales object which, pursuant to section 32 of the Norwegian Sale of Goods Act, are to be made within a reasonable time must have been received by the seller at the latest 14 days after delivery.

The buyer is obliged to examine the sales object immediately (cf section 31 of the Sale of Goods Act).

Complaints on the grounds of defects that cannot be discovered until the sales object has been installed and test driven are to be regarded as having been made on time when the complaint is made immediately after the defect has been ascertained.

A complaint can in no circumstances be made after the expiry of the period allowed for complaints stated in clause 16, since section 32, nos. 2 and 3, of the Sale of Goods Act does not apply to sales covered by these terms and conditions. After the expiry of the periods stated there, the buyer cannot plead a defect unless the seller has agreed in writing to be responsible for the sales object for a longer period or has acted fraudulently.

Any complaint must be in writing and, in accordance with the Sale of Goods Act's requirements, must state that the buyer wishes to invoke the defect.

## 16. Extended period allowed for complaints and the right to remedy defects

The buyer may complain about defects in the sales object compared to the contract within 12 months counted from the delivery date, or within six months in the case of operation in more than one shift. These periods are not extended if the buyer fails to start using the sales object immediately, irrespective of the reason for this. The seller is entitled to remedy a defect compared to the contract within a reasonable time of receiving the buyer's notification of this.

The buyer bears the burden of proving that a defect compared to the contract exists.

The extended period allowed for complaints only applies to faults that arise under the working conditions presumed when the contract was entered into and during correct usage. It thus does not, for example, apply to defects that are due to random events, normal wear and tear or defective maintenance, including incorrect lubrication or the buyer's incorrect installation or wrong use of the sales object. The right to invoke defects lapses if the sales object is, after delivery, changed or repaired by a party other than the seller without the seller's written consent.

A normal request for a service or the rectification of defects is not a complaint in the sense of the law. Such a request only applies as a complaint if it complies with the requirements stipulated in the last paragraph of clause 15. During the extended period allowed for complaints, the necessary replacement of parts and any repairs will be carried out by the seller at the seller's expense, although such that travel, food and accommodation expenses are to be paid for by the buyer.

Any overtime pay is similarly to be paid by the buyer. However, the buyer bears the full consequences of any voltage variations or other faults in its electricity supply. The costs of tracing faults are to be paid for by the buyer unless a separate service agreement has been entered into.

Clause 16 applies instead of sections 34-40 of the Sale of Goods Act.

## 17. The buyer's right to cancel in the case of a defective delivery

Provided the seller remedies an invoked defect or fault within a reasonable time, the buyer may not cancel the purchase. When judging whether or not the time that has elapsed is reasonable, consideration is to be paid to the fact that the seller is to have an opportunity to obtain the manufacturer in question's views on whether a defect or fault exists, and that the seller is entitled to leave it up to the manufacturer to carry out the rectification work.

If a fundamental defect or fault is not remedied within a reasonable time after the buyer has invoked the defect or fault, the buyer is entitled to cancel the purchase provided the defect is fundamental.

A demand to cancel the purchase must be submitted as soon as it has been ascertained that the defect will not be or cannot be remedied.

The right to cancel the purchase only exists provided the buyer has invoked the defect in the manner stipulated for complaints prior to the expiry of the extended period allowed for complaints and as soon as the defect was ascertained, or within the period allowed for complaints stipulated in clause 15 in those cases where this clause is applicable. If the sales objects have been delivered in whole or in part by a subcontractor, the buyer is, however, only entitled to cancel the purchase to the extent that the seller can exercise a right of cancellation against its supplier.

The seller is under no circumstances obliged to repay the buyer's advance payment that has been paid to a subcontractor and which will not be repaid to the seller.

If the sales object was manufactured by the seller according to the buyer's specifications or wishes and the sales object is of value to the buyer despite the defect, the seller is entitled to demand that the purchase be maintained with regard to this share in return for a proportionate reduction in the purchase price.

Clause 17 applies instead of section 39 of the Sale of Goods Act.

## 18. Limitation on the liability to pay damages

The seller is not obliged to pay any form of damages or allow any price reduction if a defect compared to the contract is remedied (cf clauses 15-17) or if the buyer has lost its right to cancel the purchase. If the buyer rightfully cancels the purchase, it may claim the repayment of the purchase price without the addition of interest in return for making the sales object available to the seller in the buyer's premises. If the sales object has been used, the seller is to be credited with the normal rent.

If the sales object is dismantled, this is to be at the seller's expense but the seller is not obliged to pay for construction work or other expenses that the buyer has incurred in connection with the installation of the sales object – or its removal.

The seller is in no case obliged to pay damages for direct or indirect production losses, or for any damage that the sales object or the use of it has caused to persons or other assets, including, for example, raw materials or semi-finished goods that are processed by the sales object. Nor does the seller assume liability for any defect in title, for example in the form

of patent rights that prevent or limit the buyer's use of the sales object.

These disclaimers of liability do not apply if the seller is guilty of gross negligence.

The seller does not assume any liability for subcontractors' negligence.

The buyer must prove the losses it has suffered and that the seller is liable. When used objects are taken over (machinery, etc), the buyer may not claim damages due to the machinery not complying with prevailing laws and regulations, cf clause 14. Any claim for damages that arises in connection with this contract is under all circumstances limited to 5% of the sales object's price up to NOK 100,000 and 2.5% of the excess amount, provided no other written agreement exists. The provisions in clause 18 replace sections 40 and 67-69 of the Sale of Goods Act.

#### **19. Deliveries from works**

When delivery from one specific works is assumed in the contract, the sale takes place on the delivering works' terms and conditions in addition to the Association of Norwegian Machinery Dealers' terms and conditions. In the case of any conflict, the works' terms and conditions take precedence. The provision concerning the seller's retention of ownership always applies as an independent provision irrespective of the works' provisions regarding this.

#### **20. Used machinery, etc.**

Used objects (machinery, etc) are taken over in their "as is" technical condition and condition in relation to regulations, cf section 19 of the Sale of Goods Act.

In the case of a trade-in, the trade-in object is to be delivered in the same condition as it was in when the contract was entered into. Normal wear and tear is to be tolerated. The user is responsible for the prescribed maintenance during the period between the entry into of the contract and delivery. The user is also responsible for faults and damage incurred by the trade-in object during this period.

#### **21. Installation**

If the seller is to carry out the installation work, this must be agreed on separately.

#### **22. Legal venue**

Any dispute that arises is to be determined by the District Court in Oslo....., which the parties agree on as the legal venue by confirming the order or entering into the contract.

**N.B.:**

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OF THE TERMS AND CONDITIONS OF  
SALE FOR THE ASSOCIATION OF  
NORWEGIAN MACHINERY DEALERS  
MAY NOT IN ANY WAY OR CONTEXT  
BE RELIED UPON IN SUPPORT OF THE  
UNDERSTANDING OF THE  
NORWEGIAN ORIGINAL VERSION.**

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