

# GENERAL TERMS AND CONDITIONS OF SALE FOR THE COMPANIES IN THE SMITH GROUP

## 1. Applicability

- 1.1 These general terms and conditions of delivery are applicable upon the parties' written or implicit acceptance. If these delivery terms apply for a delivery, any deviation from these terms must be specifically agreed in writing.
- 1.2 If the buyer is a consumer as set forth in the Sale of Goods to Consumers Act (as of 21st of June 2002 no. 34), the mandatory provisions in the act shall be supplementary to the provisions in these general terms and conditions. By using these general terms and condition, the parties agree to derogate from the non-mandatory provisions in the same act.
- 1.2.1 If the parties have entered into a separate agreement, the interpretation of the documents (with their appendices) shall in case of discrepancy be in accordance with the following sequence:
  - 1) *the agreement*
  - 2) *the seller's confirmation of order*
  - 3) *these general terms and conditions*
  - 4) *the buyer's purchase order*If no such separate agreement has been entered into, the documents (with appendices) shall take priority in the same sequence as set forth above, save for no. 1 (the agreement) which shall be disregarded.

## 2. Offer and product information

- 2.1 Unless otherwise stated, a written offer shall be binding for 14 days following the date of the offer.
- 2.2 All illustrations, depictions, drawings, listings of prices and technical information included in catalogues, brochures, pamphlets, booklets, folders or in any other marketing material shall be for information purposes only, and shall not, under any circumstance, be binding for the seller.
- 2.3 The agreement shall be deemed to be entered into by the seller's written confirmation of order, or by commencement of delivery.
- 2.4 The exchange rate of the calculation date shall apply, any changes in the exchange rates after this will alter the price accordingly. The settlement of accounts will take place on the due date of the customer's invoice.
- 2.5 The agreement shall contain all descriptions, certificates and documents that are necessary for authorisation or maintenance of the goods.
- 2.6 Subject to prior sale. (Meaning there is a chance the items may already have been sold in the time between an offer was made, or an order was received, till the order is in fact processed and confirmed.

## 3. Quality

- 3.1 Unless otherwise agreed, the buyer shall carry the risk for the technical data and the goods in their entirety are suited to his needs. However, if a requirement of the buyer is known to the seller, the seller is under an obligation to notify the buyer if he is aware, or should have been aware, that the goods are unsuitable to his needs.
- 3.2 Unless otherwise agreed, the latest applicable and generally accepted standard should be valid.

## 4. Quantity

- 4.1 Unless otherwise stated in the order, the purchase order specifies whether the delivery shall be based on weight, on the number of units or on length.
- 4.2 Unless otherwise specifically agreed, the delivered quantity on manufacturer/plant deliveries may vary as customary in the business, however not by more than +/- 25% from the ordered quantity.

## 5. Terms of trade

- 5.1 The terms of the trade shall be interpreted in accordance with the rules drawn up by the International Chamber of Commerce (Incoterms), and that were in force on the time that the agreement was entered into. Unless otherwise agreed, delivery shall be FCA (Free Carrier).
- 5.2 Any insurance must be taken out in accordance with these rules unless another arrangement is agreed between the parties.

## 6. Payment

- 6.1 If required by the seller, the buyer must provide a payment guarantee satisfactory to the seller when the agreement is entered into, as a security for correct payment. The payment guarantee shall be provided as soon as possible, and always at the latest before delivery takes place. The payment guarantee shall, unless otherwise agreed, be a surety (i.e. the guarantor's liability attaches as soon as the principal debtor defaults), be provided by a bank, insurance company or other financial institution. The guarantee shall be provided directly to the seller, and shall not be limited by any proviso or reservations, such as requiring a claim under the guarantee to be undisputed or making payment under the guarantee conditional upon the payment of the necessary premium by the buyer etc. The guarantee shall be accepted by the seller.
- 6.2 A complaint, claim or notice of default or defect by the buyer does not exempt the buyer of his duty of payment.
- 6.3 The buyer shall not have the right to set off a contested claim against other contractual obligations.
- 6.4 If the buyer exceeds the prescribed due date for timely payment, the buyer shall pay interests on overdue payment according to the Norwegian Act on Interest on Overdue Payments (as of 17th of December 1976 no. 100).

## 7. Invoicing

The invoice shall be dated on the day the goods are delivered from the seller's warehouse. On direct deliveries, the invoice shall be dated at the earliest on the day it is delivered from the manufacturer/ plant.

## 8. Manufacturer/plant delivery

If the buyer, in a manufacturer/ plant delivery, does not provide the specifications or information necessary to implement the delivery within the agreed deadline, the seller shall have the right, following notice to the buyer, to terminate the agreement and/or to claim damages for documented cost/loss of profit, unless the order can be upheld at the same manufacturer/plant.

## 9. Mortgage/security

The buyer does not have the right to mortgage the goods before payment for the goods has been made in its entirety. The seller shall have a non-possessory security interest in the goods until the purchase amount, including interests and costs, has been paid in its entirety.

## 10. Time of delivery and passage of risk

- 10.1 The agreed trade terms shall be interpreted in accordance with the Incoterms that were in force when the agreement was entered into. If no such delivery clause has been agreed specifically, delivery shall be deemed to have happened "Free Carrier" (FCA).
- 10.2 If the time of delivery is specified in days, weeks or months, the time of delivery shall be calculated based on the day that the agreement was entered into.
- 10.3 The seller chooses the path of transport as common in the business, or as the seller considers best suited for the delivery.
- 10.4 Alterations or additional works that have been ordered by the buyer may prolong the time of delivery to the extent that it is necessary due to preparations for and execution of such alterations or additional works.

## 11. Buyer's cooperation

- 11.1 Buyer is under a duty to cooperate in good faith to ensure the timely delivery of the goods in the right quality and quantity. If the buyer cannot receive the goods at the agreed time, the buyer shall give immediate notice to the seller. The buyer shall cover storage costs and/or interim storage costs.
- 11.2 If the cooperation from others than the buyer, e.g. a builder and others, is a prerequisite for delivery the buyer warrants the timely and correct fulfilment of the obligations under the agreement by such third parties. If the seller is responsible for the transportation of the goods, the carrier may return without discharging the goods if unable to deliver the goods at the right time and place - and at the buyer's cost.

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## 12. Delay

- 12.1 If the seller or the buyer finds that he cannot comply with the agreed time for delivery of the goods, or – respectively – receipt of the goods, or if a delay is probable, he shall provide the other party with immediate notice of such delay, and also inform the other party of a new time of delivery. If the delay in the delivery (or part delivery) is substantial, a result of the seller's breach, and results in a substantial inconvenience for the buyer, the buyer may, by written notice, terminate the delayed part of the delivery. If the seller has given the buyer notice of the delay, the buyer must execute its right to terminate immediately following such notice, or else shall the new time of delivery as set forth in the notice be deemed to be agreed between the parties as a new agreed time of delivery.
- 12.2 The buyer cannot revoke the purchase if the seller does not also have a right to revoke the purchase or delivery from the supplier to whom he has placed an order.
- 12.3 In situations where the time of delivery, in the buyer's opinion, is of such importance that a delay may cause the buyer a loss, damages or liquidated damages shall be explicitly agreed between the parties. If no such damages or liquidated damages are agreed between the parties, the buyer's choice of sanctions upon a delay in delivery shall be limited to termination for substantial breach of contract.

## 13. Force Majeure

- 13.1 The following situations shall be deemed to be situations of exemption, if they impede the performance of the agreement or make the performance of the agreement unreasonably burdensome: work conflict and any other cause as long as it is beyond the control of the parties, such as (but not limited to) fire, war, mobilization or unforeseen military drafts or summons or a similar size, requisitions, confiscations, seizures, currency restrictions and/or extraordinary currency fluctuations, riots and disturbance, shortage of means of transport, general shortage of goods, shortage of commodities and raw materials, extraordinary rise in prices on commodities, raw materials or other goods or services necessary for the performance of the agreement, limitations in supply of power or driving power, as well as defects in supply from subcontractors or delay of such deliveries resulting from such events as stated above (in this clause). Events, as above mentioned, that had already occurred when the agreement was entered into, may only be invoked as reasons for exemptions if it was impossible to foresee their impact on the performance of the agreement at the time the agreement was entered into.
- 13.2 The party that wishes to invoke exemption based on such events as set forth under clause 13.1, shall without delay notify the other party in writing, both about the nature of the event, and when it is expected to cease. If the buyer invokes a force majeure exemption, he shall cover the costs the seller incur to secure and protect the goods, as well as storage costs (including any insurance that may be subscribed).
- 13.3 Notwithstanding anything to the contrary in these general terms and conditions, each of the parties may, by providing the other party with a written notice, terminate the agreement if the performance of the agreement is impeded for more than 6 months by an event as set forth under clause 13.1.

## 14. Cancellation

- 14.1 The buyer shall have a right to cancel a purchase if the seller may cancel the purchase/delivery from his supplier. If the buyer cancels the delivery of the goods and/or services, he shall be obliged to cover all costs related to the cancellation, to pay damages for the seller's loss of profit, as well as damages for other direct and documented losses that the seller may suffer.
- 14.2 Delivery of stock goods may only be cancelled if this can happen without inconvenience or extra cost for the seller.

## 15. Duty to inspect and filing of claims

- 15.1 The buyer has a general duty to inspect the goods according to what is customary in the business.
- 15.2 Any defects must be reported in writing as soon as possible after the goods has been received, or when the defect are discovered later, or should have been discovered, at the latest

within 1 year for building materials, and 6 months for steel and other metals, after the goods have been received. Any damage to the goods in transport shall however also immediately be reported to the transporter by the buyer, and in accordance with the procedure as specified in relation to the transport.

- 15.3 If the buyer does not file his claim in accordance with the above mentioned procedures, he shall lose his right to any remedies for defects or damage (i.e. no damages, termination, rectification or other specific performance).
- 15.4 Claims related to certificates must be filed immediately after the receipt of the certificate.

## 16. Inadequate delivery

- 16.1 If the goods or services are suffering from a defect, the seller shall have a right to rectify the defect, or perform a redelivery.
- 16.2 The right for the buyer to claim for any remedies shall lapse if the buyer hires someone else to perform the rectification without the seller's prior written acceptance, unless a delay of the rectification will lead to a damage that is in an obvious disproportion to await the seller's rectification or redelivery. The seller shall, under any circumstance, be provided written notice before another contractor is hired to perform the rectification. If no notice is provided, the buyer cannot claim the seller for the costs of the rectification.
- 16.3 If the seller rectifies the defect within a reasonable time, the buyer shall have no right to terminate the purchase. A notice of termination must be provided immediately as soon as it has been determined that the defect cannot, or will not, be rectified.
- 16.4 The seller is under no obligation to pay any kind of damages or price reduction if a contractual defect is rectified.
- 16.5 The seller shall not, under any circumstance, be under a duty to pay damages exceeding the value of the invoice. Furthermore shall the seller have no responsibility whatsoever for any loss or damage the buyer may incur as a result of the use of the goods, or for any other consequential loss whatsoever.

## 17. Return of goods

- 17.1 Goods may only be returned when specifically agreed between the buyer and the seller. If the need for return is not due to errors by the seller, the costs of return shall be deducted from the credit memo, or invoiced to the buyer.
- 17.2 It is a precondition for the return of goods that they are in an undamaged condition, and for factory-packaged goods is it a precondition that the goods is in its original packaging, and that the packaging has not been broken. If the goods has an use-by date, this must not have expired.

## 18. Manufacturer/plant's terms and conditions for sale

If terms and conditions in addition to, or instead of, these terms and condition shall apply in manufacturer/plant deliveries, this must be specifically agreed in writing, for example in the offer.

## 19. Dispute resolution

The parties shall seek to solve any dispute, controversy or claim related to this agreement amicably. If the parties fail to solve such dispute, the seller's legal venue shall be the legal venue of all legal proceedings that may arise under the contractual relationship between the parties. The Agreement shall be governed by and construed in all respects by the laws of Norway.