

General Conditions

NLG 95 E

for the Supply of Castings

Issued in 1995 by the organisations for the engineering industries and the foundries in Denmark, Finland, Norway and Sweden.

(Hovedorganisationen Dansk Industri and Danske Støberiers Bransche forening, Denmark; Suomen Metalliteollisuuden Keskusliitto – Finlands Metallindustris Centralförbund r.y., Finland; Teknologibedriftenes Landsforening, Norway; Sveriges Verkstadsindustrier and Svenska Gjuteriföreningen, Sweden.)

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.

Product Information

2. 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

3. All drawings and other technical documents regarding the goods or its manufacture submitted by one party to the other, prior or subsequent to the formation of the contract, shall remain the property of the submitting party. Drawings, technical documents or other technical information received by one party shall 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, reproduced, transmitted or otherwise communicated to a third party.

Patterns, Tools and Equipment

4. Patterns, tools and equipment to be used in fulfilment of the contract, which are provided by the Purchaser, shall remain the Purchaser's property. The Purchaser shall pay the Supplier for any work necessary to check, adjust or complete such patterns, tools and equipment.

5. Patterns, tools and equipment to be used in fulfilment of the contract, which are provided by the Supplier shall be paid by the Purchaser and shall become his property. The Purchaser shall, however, not become the owner of the Supplier's gating and feeding system. The Supplier shall clearly mark patterns, tools and equipment belonging to the Purchaser.

The Supplier shall, however, be entitled to refuse, completely or partially, to hand over patterns, tools or equipment that he has manufactured or have had manufactured, provided that it can reasonably be concluded that his technical know-how will thereby be made known, and that the Supplier as a result thereof will suffer a noticeable loss. The Supplier shall in such case reimburse the Purchaser the value of that which he retains.

Where, according to the contract, the Supplier shall provide patterns, tools or equipment, the Purchaser shall reimburse the Supplier's cost of replacement or repair due to normal wear and tear. The same shall apply for replacement or repair due to other causes for which the Supplier is not responsible.

6. The Supplier may not, without the Purchaser's consent, use the Purchaser's patterns, tools or equipment for any other

purpose than fulfilment of the contract. Nor may such patterns, tools or equipment be handed over to or otherwise be brought to the knowledge of a third party.

7. The Supplier shall store patterns, tools and equipment for as long as deliveries under the contract are made. If patterns, tools and equipment belonging to the Purchaser remain in the Supplier's care after deliveries under the contract have ceased, the Supplier shall store such patterns, tools and equipment at the Purchaser's risk and expense.

All the Supplier's obligations regarding patterns, tools and equipment shall finally cease three years after deliveries have been completed. The Supplier shall, however, where practicable, inform the Purchaser before scrapping or otherwise disposing of patterns, tools and equipment.

8. The Purchaser decides to what extent patterns, tools and equipment in the care of the Supplier and belonging to the Purchaser shall be insured. The Purchaser shall bear the cost of such insurance.

9. The Purchaser shall bear the risk and expense of all transport of patterns, tools and equipment to and from the Supplier.

10. The Purchaser shall indemnify and hold the Supplier harmless against all consequences of claims based on infringement of patents, design patents, trade marks or other property rights, where such claims result from the manufacture of the products in accordance with a specification, drawing, sample, pattern, tool or other equipment provided by the Purchaser.

Weights

11. Weights calculated by the Purchaser and the Supplier before casting are only estimates and the price shall be adjusted according to the actual weight in case of deviations.

Production Samples

12. Goods manufactured in series shall be in conformity with the production samples approved by the Purchaser, and production shall not start before the Supplier has received the Purchaser's written approval.

Tests

13. Where the parties have agreed that the goods shall be tested before delivery in order to decide whether they meet specific requirements, such test shall be carried out at the Supplier's premises or where he finds it appropriate. If technical requirements for the test have not been agreed upon, the test shall be carried out in accordance with general practice in the foundry industry in the Supplier's country.

14. If the Purchaser has requested to be informed, the Supplier shall notify the Purchaser of a delivery test in suffi-

cient time to permit the Purchaser to be present at the test. The test may be carried out in the Purchaser's absence provided that he has received such notice.

The Supplier 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 considered to correctly record the test and its results.

15. If the goods at such a test are found not to be in compliance with the contract, the Supplier shall, unless the Purchaser accepts the deviation, without delay ensure that the goods comply 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.

16. If no other division of the costs has been agreed, the Supplier shall bear all cost of such tests carried out at his premises. The Purchaser shall, however, at such tests bear all costs relating to his representatives, including travelling and living expenses.

Delivery

17. Where a trade term has been agreed, it shall be interpreted in accordance with the INCOTERMS in force at the formation of the contract. The Supplier shall not, unless otherwise expressly agreed, be obliged to provide packaging for the goods.

If no trade term is specifically agreed the delivery shall be considered to be Ex Works exclusive of packaging.

Time for Delivery. Delay

18. If, instead of a fixed date for delivery, the parties have agreed on a period of time within which delivery shall take place, such period shall start to run at the formation of the contract.

19. If the Supplier finds that he will not be able to deliver the goods at the agreed time for delivery or if delay on his part seems likely, he shall without undue delay notify the Purchaser thereof in writing, stating the reason for the delay and if possible the time when delivery can be expected. If the Supplier fails to give such notice, he shall, notwithstanding the Clauses 21 and 22, reimburse the Purchaser any extra expenses incurred by him as a result of the Supplier's failure to notify.

20. If delay in delivery is caused by a circumstance which under Clause 46 shall be considered a case of relief or by an act or omission on the part of the Purchaser, 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 time for delivery.

21. If the Supplier fails to deliver the goods on time and the parties after notice according to Clause 19 have not agreed on an extended time for delivery, the Purchaser is entitled to liquidated damages from the date on which delivery should have taken place.

The liquidated damages shall be payable at a rate of 0.5 per cent for each complete week of delay of that part of the agreed price which is properly attributable to that part of the goods which, due to the delay, cannot be put to its intended use.

The liquidated damages shall not exceed 7.5 per cent of such part of the agreed price.

The liquidated damages become due at the Purchaser's written demand but not before all of the goods have been delivered or the contract is terminated under Clause 22.

The Purchaser loses his right to claim liquidated damages if

he has not lodged such a claim in writing within six months after the time when delivery should have taken place.

22. If the Purchaser is entitled to maximum liquidated damages under Clause 21 and if the goods are still not delivered, the Purchaser may by written notice demand delivery within a final reasonable period which shall not be less than one week.

If the Supplier does not deliver within such final period and this is not due to any circumstance for which the Purchaser is responsible, then the Purchaser may, by written notice to the Supplier, terminate the contract in respect of that part of the goods which cannot be put to its intended use.

In case of such termination the Purchaser shall also be entitled to compensation for the loss he suffers because of the Supplier's delay to the extent that the loss exceeds the maximum of liquidated damages to which the Purchaser has become entitled under Clause 21. The compensation shall not exceed 7.5 per cent of that part of the price which is attributable to the part of the goods in respect of which the contract is terminated.

The Purchaser shall also have the right to terminate the contract by written notice to the Supplier if it is clear that there will occur a delay which under Clause 21 would entitle the Purchaser to maximum liquidated damages. In case of termination on this ground the Purchaser shall be entitled to both maximum liquidated damages and compensation under the third paragraph of this Clause.

Liquidated damages under Clause 21 and termination of the contract with limited compensation under this Clause 22 are the only remedies available to the Purchaser in case of delay on the part of the Supplier. All other claims against the Supplier based on such delay shall be excluded. This limitation of the Supplier's liability shall, however, not apply where the Supplier has been guilty of gross negligence.

23. If the Purchaser finds that he will be unable to accept delivery of the goods on the agreed date or if delay on his part seems likely, he shall without undue delay notify the Supplier thereof in writing stating the reason for the delay and if possible the time when he will be able to accept delivery.

If the Purchaser fails to accept delivery on the agreed date he shall nevertheless make any payment which is dependent on delivery as if the goods in question had been delivered. The Supplier shall arrange storage of the goods at the Purchaser's risk and expense. The Supplier shall also, if the Purchaser so requests, insure the goods at the Purchaser's expense.

24. Unless the Purchaser's failure to accept delivery is due to any such circumstance as mentioned in Clause 46, the Supplier may by written notice require the Purchaser to accept delivery within a reasonable period.

If, for any reason for which the Supplier is not responsible, the Purchaser fails to accept delivery within such period, the Supplier may by notice in writing terminate the contract in respect of that part of the goods which is ready for delivery but has not been delivered due to the Purchaser's default. The Supplier shall then be entitled to compensation for the loss he has suffered by reason of the Purchaser's default. The compensation shall not exceed that part of the price which is attributable to the part of the goods in respect of which the contract is terminated.

Payment

25. Unless otherwise agreed, the agreed price shall be paid with one third at the formation of the contract and one third when the Supplier notifies in writing that the bulk of the goods are ready for delivery. Final payment shall be made at delivery of the goods.

26. If the Purchaser fails to pay by the agreed date, the Supplier shall be entitled to interest from the day on which payment became due at the rate of interest determined by the law on late payments in the Supplier's country. If the Supplier's country is Denmark, the rate of interest shall be nine percentage points above the official Danish discount rate.

27. If the Purchaser has not paid the amount due within three months, the Supplier shall be entitled to terminate the contract by written notice to the Purchaser and, in addition to interest, to claim compensation for the loss he has suffered. The compensation shall not exceed the agreed price.

28. Notwithstanding the provisions of Clauses 4 and 5, the Supplier shall be entitled to retain patterns, tools and equipment belonging to the Purchaser until the goods have been paid for in full. This right shall also apply in respect of payment to the Supplier for his manufacture, checking, adjustment and supplementing of patterns, tools and equipment.

Retention of Title

29. The goods and patterns, tools and equipment which the Supplier shall provide under Clause 5 shall remain the property of the Supplier until paid for in full to the extent that such retention of title is valid under the applicable law.

Liability for Defects

30. The Supplier shall, pursuant to the provisions of Clauses 31- 43 below, by repair or replacement remedy any defect in the goods resulting from faulty design, materials or workmanship.

The Supplier's liability under the first paragraph of this Clause shall not cover defects resulting from design, patterns, tools or equipment which the Supplier has not produced or is otherwise responsible for.

31. The Supplier's liability is limited to defects which appear within a period of one year from the date of delivery of the goods. If the goods are used more intensely than agreed or could be foreseen at the formation of the contract, this period shall be reduced proportionally.

32. The Supplier shall be liable for defects in parts of the goods which have been repaired or replaced under Clause 30 for a period of one year under the terms and conditions which apply to the original goods. The liability period defined in Clause 31 shall be extended for other parts of the goods only by a period equal to the period during which the goods could not be used as a result of a defect referred to in Clause 30.

33. The Purchaser shall notify the Supplier in writing of a defect without delay after the defect has appeared, and in no case later than two weeks after the expiry of the period defined in Clause 31 as supplemented by Clauses 32 and 43. 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 notify the Supplier in writing of a defect within the time limits set forth in this Clause, he shall forfeit his right to make any claim in respect of the defect.

34. On receipt of the written notice according to Clause 24 the Supplier shall remedy the defect without undue delay and at his own cost as stipulated in Clauses 30-42.

Repair of the defect shall take place at the Supplier's premises unless the Supplier finds it appropriate to have the repair carried out at the Purchaser's premises. The Purchaser shall return the goods to the Supplier when repair shall take place at the Supplier's premises.

The Supplier shall carry out dismantling and re-installation of the part if this requires special knowledge. If such special knowledge is not required, the Supplier has fulfilled his obligations in respect of the defect when he delivers a duly repaired or replaced part to the Purchaser.

35. If the Purchaser has given such notice as referred to in Clause 33, and no defect is found for which the Supplier is liable, the Supplier shall be entitled to compensation for the work performed and reimbursement of the costs incurred as a result of the notice.

36. If dismantling or reinstallation of parts makes it necessary to take measures affecting other equipment than the goods, the labour and costs resulting therefrom shall be the Purchaser's responsibility.

37. All transportation in connection with repair or replacement shall be at the Supplier's risk and expense.

The Purchaser shall follow the Supplier's instructions regarding the method of transport.

38. The Purchaser shall bear the increase in costs for remedying a defect which the Supplier incurs when the goods are situated elsewhere than at the destination stated in the contract or – if no destination has been stated – the place of delivery.

39. Defective parts which are replaced in accordance with Clause 30 shall be placed at the Supplier's disposal and shall become his property.

40. If the Supplier fails to fulfil his obligations under Clause 34 within a reasonable time, the Purchaser may by written notice require him to do so within a final time limit. If the Supplier fails to fulfil his obligations within that time limit, the Purchaser may choose to:

- a) have the necessary remedial work carried out at the Supplier's risk and expense, provided that the Purchaser proceeds in a reasonable manner, or
- b) demand a reduction of the agreed 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 Supplier. 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 be compensated for the loss he has suffered. The compensation shall, however, not exceed 15 per cent of the agreed price.

41. The Supplier is not liable for defects arising out of materials provided by the Purchaser.

42. The Supplier is only liable for defects which appear under the conditions of operation foreseen in the contract and under proper use of the goods.

The Supplier's liability does not cover defects resulting from causes occurring after the risk in the goods has passed to the Purchaser. The liability does not e.g. cover defects which are caused by faulty maintenance or incorrect assembly from the Purchaser's side, by alterations undertaken without the Supplier's written consent, or by faulty repairs by the Purchaser. Finally the Supplier's liability does not cover normal wear and tear or deterioration.

43. Notwithstanding the provisions of Clauses 30-42 the Supplier shall have no liability for defects in any part of the goods for more than two years from the start of the liability period defined in Clause 31.

44. The Supplier shall have no liability for defects save as stipulated in Clauses 30-43. This applies to any loss the defect

may cause, including but not limited to machining made in vain, loss of production, loss of profit and any other consequential economic loss. This limitation of the Supplier's liability shall, however, not apply if he has been guilty of gross negligence.

Liability for Damage to Property Caused by the Goods

45. The Purchaser shall indemnify and hold the Supplier harmless to the extent that the Supplier incurs liability towards any third party in respect of any damage for which the Supplier according to the second and third paragraphs of this Clause is not liable towards the Purchaser.

The Supplier shall not be liable for loss or damage caused by the goods

- a) to any (movable or immovable) property where the damage occurs while the goods 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 goods.

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

The above limitations in the Supplier's liability shall not apply where the Supplier 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 Supplier 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 alleged to have been caused by the goods. The liability as between the Supplier and the Purchaser shall, however, always be settled by arbitration in accordance with Clause 49.

Grounds for Relief (force majeure)

46. 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 time of formation of the contract.

47. The party intending to claim relief under Clause 46 shall notify the other party in writing without delay 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 Supplier for costs incurred in securing and protecting the goods.

48. 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 46.

Disputes. Applicable Law

49. 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 Supplier's country.

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