

## **BAGGES AS – GENERAL TERMS AND CONDITIONS FOR PURCHASE OF GOODS AND/OR SERVICES**

### **Applicability. Definitions**

1. These General Conditions shall apply when the parties agree in writing or otherwise thereto. Deviations from the Conditions shall not apply unless agreed in writing.

The object or objects which the Seller shall deliver according to the contract of the parties is (are) in these conditions referred to as “the Product”. The term includes software and documentation.

### **Technical Documents and Technical Information**

2. All technical documentation regarding the Product 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.

Technical documentation received by one party shall not, without the consent of the other party, be used for any other purpose than that for which it was submitted. Except for documentation referred to in Clause 3, it may not without the consent of the other party be copied, reproduced, transmitted or otherwise communicated to a third party.

3. The Seller shall, no later than by delivery of the Product, free of charge provide the Buyer with one set, or the larger number that may have been agreed, of technical documentation, which is sufficiently detailed to permit the Buyer to carry out installation, commissioning, operation and maintenance (including running repairs) of all parts of the Product. The Seller may, with the Buyer’s consent, fulfil these obligations by giving access to the documentation over the Internet.

### **Test Before Delivery (delivery test)**

4. Where a delivery test has been agreed, it shall, unless otherwise agreed, be carried out where the Product is manufactured. If technical requirements for the test have not been agreed, the test shall be carried out in accordance with general practice in the industry concerned in the country where the Product is manufactured.

5. The Seller shall notify the Buyer in writing of the delivery test in sufficient time to permit the Buyer to be present at the test. The Seller shall record the test and the test report shall be sent to the Buyer. The report shall, unless otherwise shown by the Buyer, be considered to correctly describe the execution of the test and its results.

6. If at the delivery test the Product is found not to be in accordance with the contract, the Seller shall without undue delay ensure that the Product complies with the contract. If so required by the Buyer a new test shall thereafter be carried out.

7. If no other division of the costs has been agreed, the Seller shall bear all costs for delivery tests carried out where the Product is manufactured. The Buyer shall, however, at such delivery tests bear all costs for his representatives, including costs for travel, board and lodging.

### **Quality assurance**

8. The Seller shall have an implemented and sufficiently documented quality system in accordance with the requirements in ISO 9001 or similar.

### **Trade Terms**

9. Trade terms shall be in accordance with the INCOTERMS in force at the formation of the contract. If no trade term has been agreed, the delivery shall be DAP (Delivered at Place) according to the INCOTERMS in force at the formation of the contract, and the point in time and place at which delivery occurs shall be determined accordingly.

### **Payment**

10. Unless otherwise agreed, payment shall be made within 60 days after receipt of a correct invoice.

11. The Buyer is entitled to deduct any prepayments and accrued liquidated damages against the Seller’s invoices. Furthermore, any disputed or insufficiently documented amounts, as well as any amounts owed by the Seller to the Buyer may be set-off against the Seller’s invoices.

### **Variations and cancellation**

12. The Buyer has the right to order such variations to the Product as in Buyer’s opinion is desirable. Variations to the Product may include an increase or decrease in the quantity, or a change in character, quality, kind or execution of the Product or any part thereof, as well as changes to the contract schedule.

Nevertheless, the Buyer has no right to order variations to the Product, which cumulatively exceeds that which the parties could reasonably have expected when the contract was entered into.

## **BAGGES AS – GENERAL TERMS AND CONDITIONS FOR PURCHASE OF GOODS AND/OR SERVICES**

**13.** The Buyer may cancel the Product or parts thereof with immediate effect, by written notification to Seller. Following cancellation the Buyer shall only be liable to pay the unpaid balance due to the Seller for that part of the Product already performed, and cover documented and necessary expenses incurred as a direct result of the cancellation.

### **Time for Delivery. Delay**

**14.** 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.

**15.** If the Seller finds that he will not be able to deliver the Product at the agreed time, or if delay on his part seems likely, he shall without undue delay notify the Buyer thereof in writing, stating the reason for the delay and if possible the time when delivery can be expected. If the Seller fails to give such notice, he shall, regardless of the provisions of Clauses 17 and 18, reimburse the Buyer for any additional expenses, which the latter incurs and which he would have avoided, had he received notice in time.

**16.** If delay in delivery is caused by a circumstance which under Clause 30 constitutes ground for relief or by an act or omission on the part of the Buyer, 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.

**17.** If the Seller fails to deliver the Product on time, the Buyer 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 0,3% of the total contract price per day of delay. Liquidated damages shall, however, not exceed 15% of the total contract price. The liquidated damages become due at the Buyer's written demand, but not before the complete Product has been delivered, or the contract is terminated under Clause 18.

**18.** If the delay is such that the Buyer has become entitled to maximum liquidated damages under Clause 17, and the Product is still not delivered the Buyer may, by written notice to the Seller, terminate the contract.

In case of such termination the Buyer shall also be entitled to compensation for the loss he suffers due to the Seller's delay to the extent that the loss exceeds the maximum of liquidated damages, which the Buyer may claim under Clause 17.

**19.** The Buyer shall also have the right to terminate the contract by written notice to the Seller if it is clear that there will be a delay, which under Clause 17 would entitle the Buyer to maximum liquidated damages. In case of termination on this ground the Buyer shall be entitled to the same compensation as stated under Clause 18.

### **Retention of Title**

**20.** The Product shall remain the property of the Seller until paid for in full, to the extent that such retention of title is valid.

### **Liability for Defects**

**21.** The Seller shall, in accordance with the provisions of Clauses 22-28 below, remedy any defect in the Product resulting from faulty design, materials or workmanship. Where the Seller is liable for a defect he shall also be liable for damage to the Product that is caused by the defect.

**22.** The Seller's liability does not cover defects caused by circumstances, which arise after the risk has passed to the Buyer. The liability does not, for example, cover defects due to conditions of operation deviating from those anticipated in the contract or to improper use of the Product. Nor does it cover defects due to faulty maintenance or incorrect installation on the part of the Buyer, alterations undertaken without the Seller's written consent or faulty repairs by the Buyer. Finally, the liability does not cover normal wear and tear or deterioration.

**23.** The Seller's liability is limited to defects which appear within a period of 24 months from the date of delivery of the Product.

**24.** For parts, which have been repaired or replaced under Clause 21, the Seller shall have the same liability for defects as for the original Product for a period of 24 months.

**25.** The Buyer shall notify the Seller in writing of a defect without undue delay after the defect has appeared and in no case later than two weeks after the expiry of the liability period stated in Clause 23 and 24.

## **BAGGES AS – GENERAL TERMS AND CONDITIONS FOR PURCHASE OF GOODS AND/OR SERVICES**

**26.** After receipt of a written notice under Clause 25, the Seller shall remedy the defect without undue delay. Rectification work shall be performed for Seller's account. If Seller fails to remedy the defect within reasonable time, the Buyer is entitled to remedy the defect himself or employ a third party to do so for Seller's risk and account, or to reduce the contract price accordingly. The same shall apply if awaiting Seller's remedy will cause substantial inconvenience to the Buyer. In such event, the Seller shall be notified in writing prior to initiating of the rectification work. The Buyer is entitled to claim compensation for losses suffered due to defects. The Buyer may terminate the contract if a defect constitutes a substantial breach of contract. In such event, the Buyer is entitled to reject the Seller's offer to remedy the defect.

**27.** All transports in connection with remedial work shall be at the Seller's risk and expense.

**28.** Regardless of the provisions of Clauses 21-27, the Seller shall have no liability for defects in any part of the Product for more than 24 months from the start of the liability period referred to in Clause 23.

**29.** The Seller shall have no liability for defects save as stipulated in Clauses 21-28. This applies to any loss the defect may cause, such as loss of production, loss of profit and other consequential economic loss. This limitation of the Seller's liability shall not apply, however, if he has been guilty of gross negligence.

### **Grounds for Relief (Force Majeure)**

**30.** The following circumstances shall constitute 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, natural disasters and extreme natural events, war, mobilization or military call up of a comparable scope, requisition, seizure, trade and currency restrictions, insurrection and civil commotion, shortage of transport, general shortage of materials, restrictions in the supply of power and defects or delays in deliveries by sub-contractors caused by any such 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.

**31.** The party wishing to claim relief under Clause 30 shall without delay notify the other party in writing on the intervention and on the cessation of such circumstance. The other party may claim compensation for its direct and documented losses caused by failure of a timely notification.

**32.** Notwithstanding other provisions of these General Conditions, either party shall be entitled to terminate the contract by notice in writing 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 30.

### **Disputes. Applicable Law**

**33.** The contract shall be governed and interpreted in accordance with Norwegian law.

**34.** Disputes arising in connection with or as a result of the contract, and which are not resolved by mutual agreement, shall be settled by court proceedings unless the parties agree otherwise. Any court proceedings shall be brought before Oslo District Court.