



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

Revised [\*] 2016  
(Unofficial translation  
from Norwegian)

## 1. Introduction

These terms and conditions of sale apply in so far as the parties have not agreed to other terms in writing. The terms and conditions may be amended by the seller without notice with effect for sales entered into after such amendment.

## 2. Offers

All offers are non-binding. No contract is entered into until the seller issues an order confirmation. [For goods in stock, a reservation is made regarding intervening sales, i.e. the seller is entitled to sell stocked goods until the offer has been accepted.]

## 3. Technical information

Illustrations, drawings and statements of prices and technical data, such as weight, dimensions, volume, capacity, power requirements, etc., in catalogues, brochures and other advertising materials are only intended to serve as a guide and must not be perceived as being final or binding. Should corresponding information be included in the order confirmation or other contract document or be made part of the contract through a reference, this is binding unless the seller has expressly pointed out that the information is only to serve as a guide. Technical data that has been bindingly agreed on must, however, 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 applicable to the type of goods in question. The designation approximately means a leeway of 10% up or down. The buyer bears the risk relating to the technical data, and that the sales object in all respects is suitable for the buyer's needs. Technical advice provided in connection with the purchase of machinery and technical equipment is only guiding. The seller is not liable for erroneous advice unless the seller's conduct has been grossly negligent.

## 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. Delivery time

Unless the delivery time is agreed on 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.

Should the delivery time be 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 it is expressly stated in the contract's written wording. Otherwise the delivery time 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 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. The seller is not liable for any delay in delivery apart from that stated in clauses 8 and 9 below.

## 6. Delivery and the transfer of risk

The sales object is to be regarded as having been delivered once it has come into the buyer's possession in the manner agreed. Delivery is to be regarded as having taken place even if the seller must later carry out rectification work, see clause 15, or redeliver parts that are of insignificant financial importance compared to the delivery as a whole.

Loading and shipment take place at the buyer's expense and risk unless otherwise agreed.

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

## 7. Price calculations and payment terms

The delivery date's prices apply unless otherwise agreed. If a fixed price is offered, imported goods are subject to reservations of a surcharge if the exchange rate on the day of delivery exceeds the rate on offer day by more than 2%. The charge corresponds to the change in the exchange rate. By exchange rate is meant Norges Bank's middle rate at day's end. The prices relate to the sales object delivered in accordance with clause 6, seen in relation to the contract entered into.

Payment is to take place 20 days after delivery unless otherwise agreed. Bank Acceptances, checks or other payment orders are not considered payment until they are redeemed in full.

In the case of any delay in payment, the buyer is to pay interest on overdue payments in accordance with Norwegian Act no. 100 of 17 December 1976 relating to interest on overdue payments.

## 8. Cancellation in the case of a delay in delivery

If the agreed delivery time – guiding 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 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 sales object have been notified to the buyer, see clause 18. These provisions replace sections 22-29 of the Norwegian Sale of Goods Act.

Should a force majeure situation occur (see clause 10) the delivery time is extended by the period for which the force majeure situation lasts.

## 9. Damages in the case of delayed delivery

Stated delivery times are indicative if it is not expressly stated in the agreement or contract terms that it is warranted. Stock items are subject to prior sale. For disregard of indicative delivery no form of compensation is paid. If failure to respect guaranteed delivery time and causes economic loss to the buyer that can be documented, the buyer is entitled to liquidated damages which constitute 0.25% of the contract price for each full week delivery time is exceeded, a maximum limited to 5% of the contract sum. The buyer may not claim any other kind of damages/compensation.

If the sales object is to be delivered from a factory or entirely or partially by a subcontractor, the buyer is only entitled to liquidate damages if the seller can enforce a corresponding claim against its supplier. It is a prerequisite that the terms and conditions of sale of the factory or subcontractor that delivered the sales object have been notified to the buyer – see clause 18.

## 10. Force majeure

Force majeure is counted as any impediment which is covered by section 23 of the Norwegian Sale of Goods Act, both when such impediments are general and when they affect the seller itself or the factory chosen to manufacture the sales object or the works' subcontractors in particular. 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.

## 11. Vendor's fixed charge

The seller has a vendor's fixed charge on the sales object equal to the purchase price including interest, costs, hire-purchase supplements and outlays 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.

Until the purchase price has been fully settled, the buyer is not entitled to use the sales object – legally or actually – in a way that diminishes the sales object's value or the seller's opportunity to obtain payment, hereunder the buyer is not permitted to resell the sales object until the purchase price is made up entirely. 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 (see 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.

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

The buyer is obliged to take delivery of the sales object. Even if the buyer does not accept delivery of a sales object that is ready for delivery at the delivery time or delivery otherwise cannot take place due to the buyer's circumstances, the buyer is nonetheless obliged to pay as if the sales object had been delivered. Should the buyer fail to accept delivery of the sales object within a reasonable period after being urged to do so, the seller may cancel the sale and claim damages. Otherwise the provisions stipulated in sections 72, 73 (1) and 74-78 of the Norwegian Sale of Goods Act apply.

## 13. Safety rules

The delivery of a new sales object is to be in accordance with the requirements stipulated by the Norwegian Working Environment Act (Act of 17 June 2005 no.462) 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.

## 14. Defects, obligation to examine and complaints

The buyer is obliged to examine the sales object promptly (see section 31 of the Sale of Goods Act). The buyer bears the burden of proving that a contractual defect exists. The buyer may only invoke faults and defects that arise under the working conditions that were presumed when the contract was entered into and if the sales object has been used correctly. The buyer may not, therefore, invoke defects that, for example, are due to random events, normal wear and tear or defective maintenance, including incorrect lubrication, the buyer's incorrect installation or erroneous use of the sales object. The right to plead 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. Complaints are to be made promptly and without unreasonable delay after the defect has been or ought to have been discovered.

Complaints must in all cases be received by the seller 14 days after the defect has been or ought to have been discovered. 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 promptly after the defect has been ascertained. Complaints must in any case be received by the seller 14 days after the defect has been or ought to have been discovered.

The buyer may no longer complain about defects 12 months after the filing date, or after six months in operation for more than one shift. Second hand machines are sold in the condition they are without any warranty, unless stated in a written agreement. The above complaints deadlines are not extended even if the buyer does not start to use the sales object immediately, irrespective of the reason for this.

Any complaint must be in writing and state the nature and extent of the defect. A normal request for service or the rectification of defects is not a complaint in the sense of the law. Such a request is only a complaint if it meets the requirements stipulated in this clause.

## 15. The rectification of defects

The seller is entitled to rectify a contractual defect within a reasonable time of receiving the buyer's notification of this in accordance with clause 14.

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 and any overtime pay are to be paid for by the buyer. The buyer bears the risk relating to, and any costs resulting from, 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. This clause applies instead of sections 34-40 of the Norwegian Sale of Goods Act.

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

Provided the seller rectifies 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 defect or fault is not rectified 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 material.

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 rectified. The right to cancel the purchase only exists provided the buyer has invoked the defect in accordance with clause 14. If the buyer rightfully cancels the purchase, it may demand to be repaid the purchase price without the addition of interest in return for making the sales object available to the seller in its premises. If the sales object has been used, the seller is to be credited with the normal rent.

The dismantling of the sales object is to take place 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 or removal of the sales object.

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 to a subcontractor that will not be repaid to the seller.

If the sales object was manufactured by the seller (or the seller's subcontractor) 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 upheld with regard to this share in return for a proportionate reduction in the purchase price.

After the expiry of the abovementioned deadlines, the buyer may not invoke a defect unless the seller has undertaken in writing to vouch for the sales object for a longer period of time or has acted fraudulently. This clause applies instead of section 39 of the Norwegian Sale of Goods Act.

## 17. Limitation of liability

Apart from the duty to remedy defects and the buyer's right to liquidated damages in accordance with clauses 15 and 9 respectively, the seller is not obliged to pay damages or allow a price reduction or any other form of compensation for direct or indirect damage or loss resulting from a defective product or delay, including damage/loss resulting from an interruption to operations, loss of use, loss of profits, harm which the product has caused to a person or property (such as damage to raw materials or semi-finished products), damage/losses due to the buyer's use of the product or any other consequential loss. This applies even if the damage/loss must be regarded as a foreseeable and/or immediate consequence of the defective product/delay. 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, see clause 13. Any claim for damages arising 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 of this clause apply instead of sections 40 and 67-69 of the Sale of Goods Act.

## 18. Deliveries from factories

When delivery from one specific factory is assumed in the contract, the sale takes place on the delivering factory's terms and conditions in addition to these terms and conditions. In the case of any conflict, the factory's terms and conditions take precedence. However, the provision concerning vendor's fixed charge in clause 11 above always applies as an independent provision irrespective of the works' provisions regarding this.

## 19. Used machinery, etc.

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

The seller is not responsible for any hidden faults or defects such as specified year, the speedometer or timed otherwise exhibiting etc., unless otherwise expressly provided in this agreement. The buyer is given the opportunity to review the equipment and read through any condition report.

## 20. Installation

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

## 21. Legal venue

Any dispute that arises is to be determined in accordance with Norwegian law and by Oslo District Court as the parties after the order confirmation or agreement resolves as the Courts in the local jurisdiction of the seller.

N.B.:

THIS UNOFFICIAL TRANSLATION 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.