

GENERAL PROVISIONS FOR DELIVERIES OF CONSTRUCTION MACHINERY AND ACCESSORIES, EQUIPMENT ETC. FOR PROFESSIONAL USE

MASKIN 21

Drawn up by MaskinLeverantörerna (ML) [the Swedish Trade Association for Suppliers of Mobile Machines] and Maskinentreprenörerna (ME) [the association of Heavy Equipment Contractors]

Applicability

1. These general provisions apply unless otherwise agreed. Changes or deviations from these general provisions must be agreed in writing.

The Vendor's undertakings under these general provisions apply only in the event of deliveries of goods which are to be used within Sweden. Otherwise, a separate written agreement must be reached between the Parties.

Ordering and contractual obligation

2. An order is binding on the Purchaser when the order slip is signed or when fourteen days have passed from the date of the order acknowledgement. The order is binding on the Vendor when it has been accepted by the Vendor and written confirmation of this has been sent to the Purchaser by an authorised representative of the Vendor or when fourteen days have passed from the receipt of the order.

If the confirmation deviates from the order through addition, limitation or reservation and the Purchaser is unwilling to accept these changes, the Purchaser must inform the Vendor of this within two weeks. Otherwise, the contract is in accordance with the Vendor's confirmation.

Price, price change

3. Over and above the contracted price, the Purchaser shall compensate the Vendor for taxes and charges imposed by the authorities on the date of delivery.
4. If the value of the Purchaser's trade-in changes after the valuation date by more than the amount that should follow from normal maintenance and use of the goods, the price agreed for the trade-in will be adjusted accordingly.

Product specifications and information

5. Unless otherwise agreed, the goods, even second-hand, must meet the specifications applicable for the goods as at the date of delivery in accordance with statutes, ordinances, regulations and instructions cited in the contract documents. The goods must be inspected in accordance with applicable regulations.

If this provision is changed after the contract has been signed, but before the delivery of the goods, the Vendor or Purchaser must inform the other Party of this without delay. To the extent that the costs of the goods are affected by a changed provision which the Vendor could not reasonably have foreseen, the price shall be renegotiated.

6. If attention is expressly drawn to information in catalogues, circulars, advertisements, pictorial material, price lists or suchlike in the contract between the Parties, the goods must correspond with this. Such information shall otherwise be regarded as approximate.
7. The Vendor shall – no later than on delivery – provide the Purchaser with the main technical data in respect of weight, dimensions and capacity, operating instructions, safety instructions and instructions for use. For new machines, the Vendor must also provide the environmental product declaration. On delivery to the Purchaser or the Purchaser's representative, the Vendor's representative shall go through the instructions for the care and maintenance and for the management of the machinery.

Design changes

8. The Vendor shall be entitled, before delivery and without prior notice to the Purchaser, to make any detailed changes to the design intended improve the goods as he may feel are called for. Such a change shall not entail any change in the price.

If the Vendor realises or should have realised that any such change entails a substantial inconvenience to the Purchaser, he shall inform the Purchaser of this. If the Purchaser shows that the change entails a substantial inconvenience to him, he shall be entitled to cancel the contract. In the event of cancellation by virtue of this clause, no other remedy may be claimed against the other Party.

9. After the contract date, the Purchaser shall not be entitled to have any specification and design changes made by the Vendor incorporated in the goods.

Delivery clause and delivery time

10. Unless otherwise agreed, the goods are sold ex-works in accordance with the Incoterms applicable to the contract. The delivery time shall be specified and taken from the date on which the contract was concluded. If no specific delivery date has been set, the goods shall be delivered within a reasonable time.

Notice of delay

11. Should either Party consider that he will be delayed in delivering or receiving the goods, he shall inform the other Party of this in writing without delay. The notifying Party shall at the same time state the date on which he estimates delivery or receipt may take place.

Extension of delivery time

12. If a delay in delivery should occur due to any circumstance specified in Clause 5, due to any action or omission on the part of the Purchaser, or to a cause specified in Clause 28 (force majeure), the delivery time shall be extended by a reasonable period.

Penalty for delay on the part of the Vendor

13. If the Vendor does not deliver the goods within the delivery time or within the extended time as provided for by Clause 12, the Purchaser shall be entitled to a penalty unless the Vendor indemnifies the Purchaser by placing other equivalent goods, for example a hire or trade-in machine, at the Purchaser's disposal.

The penalty shall not, however, be payable if the Vendor can show that he informed the Purchaser of the delay and that the latter accepted it without demur.

Unless otherwise agreed, the penalty shall be calculated per week or part thereof as follows: for the first week the penalty shall amount to a total of 0.25% of the contractual purchase price, for the second week to a total of 1.0%, for the third week to a total of 2.5%, for the fourth week to a total of 4.5% and for the fifth week to a total of 7.5%. The total penalties shall thus be limited to a maximum of 7.5% of the contractual purchase price.

The Purchaser shall forfeit his right to penalties unless he presents a written demand within six months of the date of delivery.

Cancellation in the event of delay on the part of the Vendor

14. If a delay as provided for in Clause 13 has arisen, the Purchaser shall be entitled, by means of written notice to the Vendor, to demand delivery and to set a final extension of the time of delivery, amounting to at least two weeks. If, as a result of any circumstance for which the Purchaser is not liable, the Vendor does not deliver within the period specified, the Purchaser shall have the right to terminate the contract in respect of such part of the goods which could not be put to the intended use.

During the first ten weeks of delay the Purchaser shall, however, be entitled to terminate the contract only if the delay constitutes a substantial inconvenience to him.

In addition to the penalties provided for in Clause 13 arising from a delay in delivery on the part of the Vendor, the Purchaser shall be entitled to compensation for any direct loss suffered by the Purchaser. Unless otherwise agreed, such compensation including the accrued penalties shall not, however, exceed 10% of the contractual purchase price of the goods affected by the cancellation.

The Purchaser shall forfeit his right to compensation under this Clause if he does not submit a written demand for this within three months of the cancellation date.

Delay on the part of the Purchaser, the Vendor's right to cancel and cancellation charge

15. If the Purchaser fails to take receipt of the goods on the agreed date, and this is not due to any circumstance mentioned in Clause 28 (force majeure), he shall be liable to make every payment resulting from delivery as though the goods concerned had been delivered.

The Vendor shall, on behalf of the Purchaser and at his own expense, take reasonable measures to safeguard the goods. This undertaking also includes a duty upon the Vendor to keep the goods insured at the Purchaser's expense.

If, despite a written demand from the Vendor, the Purchaser fails to accept receipt of the goods within the contracted period, the Vendor may terminate the contract by giving the Purchaser written notice in writing and shall receive from the Purchaser a penalty of 7.5% of the purchase price attributable to the part of the goods not received.

Payment

16. Unless otherwise agreed, full payment shall be made in cash no later than on the delivery of the goods

Interest on overdue payment

17. If the purchaser does not make payment at the proper time, the Vendor shall be entitled to late payment as provided by the Swedish Interest Act applicable at the time the contract was entered into; such interest shall, however, exceed any contractual instalment purchase interest by at least two percentage points.

Retention of title and right of repossession

18. The goods delivered remain the property of the Vendor until the Purchaser has satisfied all his obligations under the contract. The Vendor reserves the right to repossess the goods until the Purchaser has satisfied all his obligations under the contract.

If it may be assumed that the Purchaser will not duly satisfy his obligations under the contract, or if the Vendor terminates the contract, the Vendor shall be entitled to repossess such goods as can still legally be repossessed. Before the goods are paid in full the Purchaser has no right, without the written permission of the Vendor, to dispose of them in such a way that the Vendor's right of repossession is imperilled.

Should the question of distraint, sequestration or other custodial measure over the goods arise, the Purchaser shall present this purchase contract to the bailiff or otherwise demonstrate title and inform the Vendor immediately in writing.

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The Purchaser shall be under a duty to care for and use the goods in such a way that the Vendor's rights are not imperilled. This shall include keeping the goods insured to the extent and on the terms approved by the Vendor. Should the Purchaser neglect to do so, the Vendor shall be entitled to take out such insurance at the Purchaser's expense. The right to the sum insured or to any other indemnification that may be payable due to loss or damage shall be assigned to the Vendor if there is any likelihood of his rights being imperilled. In such event the Vendor shall be entitled to offset that part of the indemnification that corresponds to the Purchaser's remaining debt under the contract.

The Purchaser shall inform the Vendor in writing without delay of any loss or damage that substantially reduces the value of the goods.

The goods shall be placed at the disposal of the Vendor for inspection or trial operation at the place where the goods are located whenever the Vendor so requests.

Repairs may only be carried out at a workshop approved by the Vendor.

The Purchaser shall inform the Vendor of all changes of address or domicile.

Warranty

19. At the time of purchase, the Vendor shall issue a written warranty undertaking in respect of the goods. The undertaking shall be explained to the Purchaser at the same time.

Warranty claims

20. Within a reasonable time after he has or ought to have detected that the goods are defective, the Purchaser shall inform the Vendor of the defect. The claim must be made in accordance with the terms of the warranty.

The Purchaser shall provide the Vendor with a reasonable opportunity to determine the nature and origin of the defect and, if the repair is to be carried out by the Vendor, the Purchaser shall place the goods at the Vendor's disposal as soon as possible.

Obligation to rectify

21. After a claim has been lodged, the Vendor shall rectify the defect at his own expense during the Vendor's normal working hours without unreasonable delay.

Depending on the nature of the defect, rectification shall be carried out either by the Vendor repairing the defective part or by his furnishing a part in as-new condition to replace the defective one.

The meaning of "without unreasonable delay" shall be determined having regard primarily to the nature and scope of the defect, the difficulty of diagnosing it, the Purchaser's need for the goods and the availability of spare parts and workshop capacity.

22. The Vendor shall decide, after consultation with the Purchaser, whether the repair can be carried out on-site where the goods are located or whether it must be carried out in a workshop indicated by the Vendor or other suitable place. In the case of an on-site repair, the Purchaser shall be responsible for ensuring that any person required by law during solitary work is on the spot and – to the extent that they are available – make available assistance, repair premises, lifting/hoisting equipment etc.

While the defect is being rectified, the Purchaser shall be responsible for any transport and/or travel expenses to/from the Vendor's closest service workshop incurred by the Vendor. The Purchaser is not, however, liable for any delivery expenses incurred by the Supplier to the Vendor in connection with the rectification of any defect. In the event of repeated journeys relating to the same warranty claim, the Vendor is liable for any travel/transport costs for the second and subsequent travel/transport journeys.

23. If the defect is of such a nature that the Purchaser can carry out the repair himself and if the parties are so agreed, or rectifying the defect requires only trivial knowledge, the Vendor shall be deemed to have satisfied his undertakings by supplying the Purchaser with an as-new part or with the original part repaired. The Purchaser shall, at the Vendor's request, immediately return the defective part at the minimum cost in carriage. If the defect is covered by the Vendor's warranty, carriage shall be at the Vendor's expense.
24. Should the Vendor neglect to rectify a defect for which he is responsible within a reasonable time, or should such a defect persist after repeated attempted repairs, the Purchaser shall be entitled to remedy it himself at the Vendor's expense or to demand a corresponding reduction in the purchase price.

If a persisting defect is of a substantial nature, the Purchaser shall be entitled to cancel the contract insofar as it applies to the defective goods. Should the defective goods bear such a relationship to the remainder of the goods that the Purchaser would incur substantial inconvenience through accepting the remaining part of the goods purchased, he shall be entitled to cancel the contract in its entirety.

The Purchaser does not, however, have the right to cancel the contract during the repair period if the Vendor has placed other equivalent goods at the Purchaser's disposal.

Limitation of liability

25. The Vendor shall not be liable for defects arising from materials provided by the Purchaser or any design stipulated by him. Parties shall be liable for changes to their designs proposed by the Counterparty only where they have expressly assumed such liability.

The Vendor shall be liable only for defects that occur when the goods are used correctly during normal working conditions or those assumed in the contract. It is assumed for this purpose that the Purchaser follows the applicable user instructions provided by the Vendor or his representative.

Liability shall not extend to defects caused by faulty maintenance or incorrect assembly by the Purchaser, alterations made without the Vendor's permission, repairs performed incorrectly by the Purchaser or normal wear and tear. The Vendor's liability shall be limited to the normal service life of wearing parts and consumables such as incandescent bulbs, filters, fuses and the like.

Where parts and components subject to particularly heavy wear are replaced, the Purchaser shall make reasonable recompense for the time for which they have been used.

Tests and fault-finding measures performed at the Purchaser's request shall be at no cost to the Purchaser if defects for which the Vendor is responsible are detected. Otherwise the Purchaser shall be charged for all the costs involved.

Unless otherwise agreed, rectification of a defect during the warranty period shall not entail the total warranty period being extended.

26. The warranty periods of the various sub-suppliers shall apply to parts of the goods such as tyres, batteries, electric motors, wearing parts or aftermarket accessories not manufactured by the Vendor or his principal, insofar as such period exceeds the agreed warranty period for the goods.
27. Except as provided in Clauses 19–26, the Vendor shall not be liable for any defects after the goods have passed to the Purchaser. The Vendor shall not be liable by reason of any defect in the goods to pay any compensation for loss of production, loss of profit or any other indirect loss. This limitation of the Vendor's liability shall not, however, apply if the Vendor has been guilty of gross negligence.

Grounds for exemption from liability (force majeure)

28. The Parties do not have the right to invoke failure to fulfil the contract against each other if fulfilment is frustrated as a result of a circumstance outside the Party's control. This may apply to industrial disputes, war, natural disasters, pandemics, epidemics, quarantines, decision of a government agency, serious operational disruption in the Party's business or that of the Party's suppliers, and which the Party could not have foreseen or the prejudicial effect of which could not reasonably be avoided.
29. For the right of an extension of the delivery period to apply, the Party affected must inform the Counterparty in writing and without delay that a circumstance giving rise to exemption from liability has occurred.
30. If the performance of the contract is not possible within a reasonable time as a result of a circumstance as provided for in Clause 28, either Party may terminate the contract to the extent that the performance of the contract has been frustrated.

In the event of cancellation by virtue of this clause, no other remedy may be claimed against the other Party.

Disputes

31. Should a dispute arise between the Parties by reason of the contract and/or its terms of delivery, the Parties shall attempt to resolve the dispute by direct negotiation on the matter at issue. Should this not succeed, the dispute should be referred to the Claims Board jointly established by Maskinentreprenörerna [The association of Heavy Equipment Contractors] and MaskinLeverantörerna [the Swedish Trade Association for Suppliers of Mobile Machines].

If no resolution of a dispute that has arisen between the Parties can be arrived at in the manner stated in the first paragraph, the dispute shall be determined by a court of general jurisdiction under Swedish law.

Without prejudice to the provisions of the previous paragraph, a Party may bring a claim before a court of general jurisdiction or an executive body concerning overdue accounts or undertakings under the Hire Purchase Sales Between Businessmen Act (1978:599) provided that no proceedings as provided for above have been commenced.