

APPLICABILITY, DEFINITIONS

1. These General Terms & Conditions (hereafter known as: Conditions) shall apply unless otherwise agreed in writing by the parties. Deviations from the Conditions shall not apply unless agreed in writing. Any Standard Business Terms of the Buyer are hereby explicitly rejected and shall not apply. This applies even if reference is made to his Standard Business Terms in any of the Buyer's documents. The object or objects which OGRI CONSULTING AS, or trading as "OGRI SALES" (hereafter known as "Seller") shall deliver according to the contract of the parties is (are) in the Conditions referred to as "the Product". When used in these Conditions, the terms "written" or "in writing" refer to a document signed by both parties or a letter, electronic mail or other means of communication agreed by the parties.

PRODUCT INFORMATION

2. All information and data contained in product brochures, technical data sheets and illustrations, and price lists are binding only to the extent that they are by reference expressly referred to in the Contract.

FORMATION OF CONTRACT

3. The Contract shall be deemed to have been entered into when, upon receipt of an order, Seller has sent an acceptance of order in writing to the Buyer.

SUBSTITUTION

4. Seller reserves the right to substitute any part whatsoever of the specified Product for another part of equal quality and function as the part originally specified.

PRICE

5. Prices are based on the agreed scope of supply, delivery time, mode of delivery, and terms of payment. Furthermore, prices may become subject to adjustment due to larger currency fluctuations.
6. Seller reserves the right to modify the prices if any changes occur in the factors referred to above in clause 5.
7. Price modifications according to the provisions of clause 6 will be communicated to the Buyer in writing with the least possible delay, whereupon these modifications shall become binding.

PAYMENT, RETENTION OF TITLE

8. Unless otherwise agreed, the normal payment is to be made by the Buyer within 30 days net, calculated from the invoice issue date. If delivery has been made before payment of the whole sum payable under the Contract, the goods delivered shall remain the sole and absolute property of Seller until such payment has been effected.
9. Unless otherwise agreed, the agreed purchase price, together with value added tax, if any, shall be invoiced with 30 per cent at the formation of the contract and the remaining part at delivery of the Product.

TRADE TERM

10. Any agreed trade term shall be construed in accordance with the ICC INCOTERMS in force at the formation of the contract. If no trade term is specifically agreed the delivery shall be Ex Works Country of Origin, Ex V.A.T.

TIME FOR DELIVERY, DELAY

11. In the absence of any other agreement, the time for delivery shall be calculated from the latest of the following dates:
a) the day of formation of the Contract as defined in Clause 3.
b) The day of receipt of agreed irrevocable Letter of Credit.
12. If 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.
13. Seller's failure to deliver the goods at the agreed time for delivery shall not entitle the Buyer to damages, nor shall it entitle the Buyer to terminate the contract.

14. The time for delivery shall be extended by a period which having regard to the circumstances is reasonable if the delay in delivery is caused by one of the following reasons:

- an act or omission on the part of the Buyer, or
- if the Buyer fails to pay on time, or
- any other circumstance for which the Buyer is responsible, or
- a circumstance which under Clause 37 constitutes ground for relief.

The time for delivery shall be extended even if the reason for delay occurs after the originally agreed time for delivery.

ACCEPTANCE

15. The Buyer shall be deemed to have accepted the goods as soon as the Product has been delivered as agreed. The Buyer shall unpack and inspect the Product upon delivery.

LIABILITY FOR DEFECTS

16. The Seller shall in accordance with the provisions of Clauses 17-28, by repair or replacement, 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 equally liable for damage to the Product that is caused by the defect.

The Seller is not liable for defects arising out of material provided by the Buyer or a design stipulated or specified by the Buyer.

17. The Seller's liability does not cover defects caused by circumstances that 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. PLEASE NOTE that Seller's liability does not cover routine change parts or electrical components, and used / second hand equipment.

18. The Seller's liability is limited to defects that appear within a period of one year from the date of delivery of the Product. If the Product is used more intensely than agreed, this period shall be reduced proportionately.

19. When a defect has been remedied by repair or replacement under Clause 16, the Seller shall have the same liability for defects in repaired parts or in replacement parts as for the original Product for a period of one year. For other parts of the Product, the liability period defined in Clause 18 shall be extended only by the period during which the Product could not be used due to a defect for which the Seller is liable.

20. 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 specified in Clauses 18 and 19. The notice shall contain a description of how the defect manifests itself. If the Buyer fails to notify the Seller in writing within the above time limits, he loses his right to make any claim in respect of the defect.

If there is reason to believe that the defect may cause damage, notice shall be given forthwith. If notice is not given forthwith, the Buyer loses the right to make any claim based on damage which occurs and which could have been avoided if such notice had been given.

21. After receipt of a written notice under Clause 20, the Seller shall remedy the defect without undue delay. Within this limit the time for remedial work shall be chosen in order not to interfere unnecessarily with the Buyer's activities. The Seller shall bear the costs as specified in Clauses 16-28.

Remedial work shall be carried out where the Product is unless the Seller, with regard to the interests of both parties, finds it more appropriate to have the Product sent to him or to a place instructed by him.

If the defect can be remedied by replacing or repairing the defective part, and if removal and re-installation of the part does not require special knowledge, the Seller may demand that the Buyer sends the defective part to him, or to a place assigned by him, for repair or replacement. In such case the Seller has fulfilled his obligations in respect of the defect when he delivers a duly repaired part or a replacement part to the Buyer.

22. The Buyer shall at his own expense provide the Seller access to the Product and arrange for any intervention in equipment other than the Product, to the extent that this is necessary to remedy the defect.

23. All transports in connection with remedial work shall be at the Seller's risk and expense. The Buyer shall follow the Seller's instructions regarding how the transport shall be carried out.

24. The Buyer shall bear any additional costs for remedying a defect which the Seller incurs when the Product is located elsewhere than at the destination for the Seller's delivery to the Buyer stated at the formation of the contract, or – if no destination has been stated – the place of delivery.

25. Defective parts that are replaced under Clause 16, shall be placed at the Seller's disposal and shall become his property.

26. If the Buyer gives such notice as referred to in Clause 20, and no defect is found for which the Seller is liable, the Seller shall be entitled to compensation for the work and costs which he has incurred as a result of the notice.

27. If the Seller fails to fulfil his obligations under Clause 21 in time, the Buyer may by written notice require him to do so within a final reasonable period which shall not be less than one week.

If the Seller fails to fulfil his obligations within that period, the Buyer may at his option:

- a) carry out or have the necessary remedial work carried out at the Seller's risk and expense, provided that the Buyer proceeds in a reasonable manner, or
- b) demand a reduction of the agreed purchase price not exceeding 20 per cent thereof, or
- c) if the defect is substantial, terminate the contract by written notice to the Seller. The Buyer shall also be entitled to such termination where the defect remains substantial after measures referred to in a). In case of termination, the Buyer shall be entitled to compensation for the loss he has suffered. The compensation shall not, however, exceed 20 per cent of the agreed purchase price.

28. Regardless of the provisions of Clauses 16-27, the Seller shall have no liability for defects in any part of the Product for more than one year from the end of the liability period referred to in Clause 18, first sentence, or from the end of any other liability period agreed upon by the parties.

29. The Seller shall have no liability for defects save as stipulated in Clauses 16-28.

LIABILITY FOR INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS

30. Unless otherwise agreed, the Seller shall, in accordance with Clauses 31-34, indemnify the Buyer against claims from a third party based on infringement of patents, copyrights or any other intellectual property rights protected in Denmark, Finland, Norway, Sweden or in any other country specially agreed by the parties.

31. The Seller shall have no liability for infringement of intellectual property rights arising out of:

- the Product being used elsewhere than in a country referred to in Clause 30,
- the Product being used in a manner deviating from that agreed or in a way the Seller should not have foreseen, or
- the Product being used together with equipment or software not supplied by the Seller, or
- alterations in the Product undertaken by the Buyer.

Nor is the Seller liable for infringement of intellectual property rights arising out of a design or construction stipulated or specified by the Buyer.

32. Defence against claims referred to in Clause 30 shall be for the Seller's account. The Seller shall compensate the Buyer for such amounts as the latter is obliged to pay under a final award or a settlement approved by the Seller.

The Seller shall only be liable if the Buyer without delay informs the Seller in writing of any claim which the Buyer receives and allows the Seller to decide how the claim shall be dealt with.

33. In case of an infringement of patent, copyright or other intellectual property rights for which the Seller is liable according to Clauses 30-31, the Seller shall without undue delay, after receipt of written notice under Clause 32, second paragraph, at his option:

- provide for the Buyer the right to continue to use the Product, or
- adjust the Product so that the infringement ceases, or
- replace the Product with another non-infringing product with an equivalent function.

The Seller has the equivalent responsibility if the Buyer informs the Seller in writing of an infringement of patent, copyright or other intellectual property rights, without any claims made against the Buyer from a third party.

34. If the Seller fails to fulfil his obligations under Clause 33 in time, the Buyer may by written notice require him to do so within a final reasonable period, which shall not be less than one week. If the Seller fails to fulfil his obligations within that period, the Buyer may at his option:

a) carry out or have necessary measures carried out at the Seller's risk and expense, corresponding to those referred to under Clause 33, first paragraph, provided that the Buyer proceeds in a reasonable manner, or

b) if the infringement causes him substantial inconvenience, terminate the contract by written notice to the Seller. The Buyer shall also be entitled to such termination where the inconvenience remains substantial after measures referred to in a).

LIABILITY FOR DAMAGE TO PROPERTY CAUSED BY THE PRODUCT

35. The Seller shall have no liability for damage caused by the Product to any immovable or movable property, or for the consequences of such damage, if the damage occurs while the Product is in the Buyer's possession. Nor shall the Seller be liable for any damage to products manufactured by the Buyer or to products of which the Buyer's products form a part.

The Buyer shall indemnify and hold the Seller harmless to the extent that the Seller incurs liability towards any third party in respect of loss or damage for which the Seller is not liable according to the first paragraph of this Clause. The above limitations of the Seller's liability shall not apply if he has been guilty of gross negligence.

If a third party lodges a claim for compensation against the Seller or the Buyer for loss or damage referred to in this Clause, the other party shall forthwith be notified thereof in writing.

The Seller and the Buyer shall be mutually obliged to let themselves be summoned to the court or arbitral tribunal which examines claims against either of them based on damage or loss alleged to have been caused by the Product. The liability as between the Seller and the Buyer shall, however, always be settled in accordance with Clause 40.

GENERAL LIMITATION OF LIABILITY

36. Save as otherwise stated in these Conditions there shall be no liability for either party towards the other party.

This applies to any loss the other party may suffer, including but not limited to loss of production, loss of profit, loss of use and any other consequential or indirect loss whatsoever.

The limitation of the liability referred to in the first paragraph shall, however, not apply if a party has been guilty of gross negligence.

Nor shall the limitation of liability apply to breach the liability for infringement of intellectual property rights under Clauses 30-34.

GROUND FOR RELIEF (FORCE MAJEURE)

37. The following circumstances shall constitute grounds for relief if they impede the performance of the contract or make 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, mobilisation 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, import and export prohibitions, embargo, epidemic or pandemic restrictions, and defects or delays in deliveries by subcontractors caused by any such ground for relief.

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.

38. The party wishing to claim relief under Clause 37 shall without delay notify the other party in writing on the intervention and on the cessation of such circumstance. If force majeure prevents the Buyer from fulfilling his obligations, he shall reimburse the costs incurred by the Seller in securing and protecting the Product.

39. 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 prevented for more than six months by reason of any grounds for relief as described in Clause 37.

DISPUTES, APPLICABLE LAW

40. Disputes arising out of or in connection with the contract shall be settled by arbitration in accordance with the law on arbitration applicable in the Seller's country (here: Norway).

However, if the amount in dispute does not exceed EUR 50,000, VAT excluded, or the equivalent amount in the currency of the contract, the dispute shall be settled by a general court in the Seller's country (here: Norway, Oslo).

41. All disputes arising out of the contract shall be judged according to the law of the Seller's country (here: Norwegian Law).