

## SM Industries General Sales Conditions

### 1. GENERALITIES AND DEFINITIONS

In these General Sales Conditions ("GSC") the following definitions are applicable:

"Days" shall mean calendar days where not specified otherwise.

"Delivery" means the delivery of any Goods and / or Services and includes Documents, by SM Industries to the purchaser at the place agreed in writing.

"Defect" means any and all defective Goods or Services, or Deliveries being non-conformant to or not meeting specifications, or Deliveries otherwise not in compliance with the PO or PA.

"Document" means all written materials necessary for the Goods and/or Services to be commercially exploited, including but not limited to drawings and technical documents agreed in the PO or PA.

"Force Majeure" means riots and civil commotion, strikes, lockout, wars or hostilities (declared or not), terrorist acts, flooding, storm, hurricane, explosion, epidemics, natural disasters, and any prohibition or restriction by any government or other legal authority, which affects Delivery.

"Goods" means any and all products and/or materials of all kinds, including Documents purchased by purchaser from SM Industries.

"Order Amount" means all Purchase Prices referenced in any Purchase Order(s) and thus the total, accumulated and aggregated sum of each and every Purchase Price and increases/decreases hereof.

"Party or Parties" mean SM Industries and the purchaser individually or collectively.

"Purchaser" means the purchaser, its group companies under common control with the purchaser by vote and/or by share capital, financially, directly or indirectly and/or otherwise by the ultimate mother company controlling the purchaser, all subsidiaries of the purchaser and/or affiliates hereof or part of the group of companies meaning under common control with the purchaser, and/or any person and/or chosen representative duly authorized by the purchaser and their respective personnel. The purchaser is issuing the inquiry, PO and / or PA to SM Industries.

"Purchase Order" or "PO" means a written order from the purchaser for Goods and/or Services specifying inter alia (i) quantity, (ii) price, (iii) time and (iv) place of Delivery.

"Purchase Agreement" or "PA" means a separate written agreement / contract, signed between the purchaser and SM Industries.

"Purchase Price" means the individual purchase price(s) agreed between the Parties in writing for each mentioned or purchased Goods and/or Services.

"Quotation" means a written form, that SM Industries submits to the (potential) purchaser containing proposed price(s) for SM Industries' goods and/or services based on certain specifications and conditions.

"Services" means any performed workmanship.

"Sub-Supplier" means a sub-supplier to SM Industries.

"Third Party" means a legal or physical person that is not a Sub-Supplier and not a party to the PO or PA.

"SM Industries" means the seller and / or supplier that has issued a quotation to and / or which is doing business with the purchaser.

1.1 The GSC shall apply to all quotations, PO's or PA's for the purchase of Goods and/or Services between SM Industries and the purchaser unless otherwise stated.

1.2 Purchaser's general purchase conditions are expressly stipulated to be null and void having no force or effect between the Parties even if sent at later date than SM Industries' order confirmation.

In case of doubt due to differences in interpretation or alleged discrepancies and/or inconsistencies, errors and faults the following order of priority shall be applicable to the Documents; (a) SM Industries' Quotation; (b) SM Industries' Order Confirmation; (c) SM Industries' GSC; (d) Orgalime SE 01 (e) Purchaser's PO and / or PA; (f) Purchaser's general purchase conditions (g) Other documents.

### 2. PRODUCT INFORMATION

2.1 Material information, price lists and similar documentation concerning products shall only be considered as binding to the extent the PO or PA makes specific reference to them.

### 3. DRAWINGS, TECHNICAL DOCUMENTS AND OTHER DESCRIPTIONS

3.1 All drawings, descriptions and other technical documents concerning the material or the production hereof transferred by the one party to the other before or after entering into the PO or PA shall remain the property of the submitting party. Drawings, descriptions, and other technical documents received may not be used for any purpose other than the purpose for which such material was transferred without prior permission from the party to whom it belongs.

The above material may not be copied, reproduced, distributed to or in any other way be brought to the knowledge of a third party without the permission of the party to whom the material belongs. If the purchaser has borrowed the material or the material has been transferred to him without being used in connection with the delivery and the application of the goods the material shall be returned to SM Industries.

3.2 Notwithstanding the above SM Industries shall free of charge provide the purchaser with drawings and other technical documents sufficiently detailed for the purchaser to carry out installation, start-up, operation and maintenance (including running repairs) of all parts of the material. SM Industries shall however be under no obligation to

transfer drawings and documents, which form the basis of the production of the material or the spare parts.

### 4. FAT – FACTORY ACCEPTANCE TEST

4.1 If a FAT test has been agreed the test shall be performed at the place where the goods are produced unless otherwise agreed. If no technical requirements on the test are mentioned in the PO or PA, such test shall be performed in accordance with the practice of the industry concerned in the country where the goods are produced.

4.2 SM Industries shall give the purchaser such notice of the FAT test that the purchaser can be present. If the purchaser has been given proper notification, a FAT test may be performed even though the purchaser is not represented.

SM Industries shall keep a protocol of the FAT test, which shall be sent to the purchaser. The test protocol shall be considered as giving a correct description of the FAT test performance and the result of such test unless proved otherwise by the purchaser.

4.3 If the FAT test proves, that the goods are not in accordance with the PO or PA, SM Industries shall undertake to ensure that the goods are brought into conformity with the PO or PA as soon as possible, after which a new FAT test shall be performed at the purchaser's demand. If the defect was insignificant, a new FAT test can however not be demanded.

4.4 Unless another distribution has been agreed, SM Industries shall pay all costs in connection with any FAT test performed on the location where the goods are produced. The purchaser shall however pay all his representatives' expenses in connection with such FAT tests, including travel and accommodation expenses.

### 5. PRICES

5.1 SM Industries' prices shall be based on the prices of raw materials, materials, purchased equipment, salary, exchange rates, etc. in force on the date of the quotation, and if SM Industries undertakes to arrange for transportation also freight. The quotation price or SM Industries' prices in general shall neither include unspecified ancillary products and equipment nor assembly and installation costs unless specifically agreed.

5.2 SM Industries shall be entitled to adjust the prices mentioned in article 5.1 corresponding to any price increases of raw materials, labour, purchased equipment, transportation, changes in tariff rates and other public duties, exchange rates, etc.

5.3 SM Industries' delivery shall only include performances, work, components, etc. specifically mentioned in the quotation and any confirmation of order.

5.4 SM Industries reserves the right to replace the goods delivered or parts hereof with another similar delivery of the same quality and with the same function as specified in the PO or PA.

5.5 All quoted prices are exclusive of VAT.

### 6. DELIVERY

6.1 Delivery shall be EXW ("Ex Works") unless otherwise agreed in writing. Interpretation of the delivery clauses shall be in accordance with current INCOTERMS at the date of the transaction.

### 7. INSTALLATION

7.1 If SM Industries undertakes to install the goods delivered, the purchaser shall be obliged to arrange and pay for any public authorization and to carry out any installation, fitting, etc. necessary in order for the installation to be carried out without any problems. At the request of SM Industries, the purchaser shall undertake to document that such aspects have been settled before installation.

7.2 Any increased costs incurred by SM Industries as a result of delayed or defective delivery on the part of the purchaser shall be paid by the purchaser according to vouchers submitted by SM Industries. Any such costs shall be paid immediately on demand.

7.3 In addition to installation a special written agreement (or mentioned in the PO or PA) shall be made in which SM Industries' and the purchaser's performances respectively are defined, including time schedules and time limits for payment for installation.

7.4 Unless otherwise specified in the parties' written PO or PA, the General Conditions for the Supply and Erection of Mechanical, Electrical and Electronic Products, Orgalime SE 01, shall apply together with the present SM Industries GSC, when installation is part of the scope.

### 8. TIME OF DELIVERY, DELAY

8.1 The time of Delivery is the date agreed by the parties. If no such agreement has been made, SM Industries shall deliver the goods as soon as possible in which case the purchaser shall not be entitled to make a claim for delay.

8.2 A precondition for the agreed times of delivery shall be that SM Industries has received the information necessary for the completion of the order in due time from purchaser.

8.3 If SM Industries is unable to make the delivery in time, SM Industries shall notify the purchaser hereof in writing with-out undue delay, indicating the cause of the delay and if possible the date on which delivery will be possible.

8.4 SM Industries shall not be held liable for the delay of deliveries or parts thereof resulting from Force Majeure, and other events out of SM Industries' control, and in

cases involving circumstances which evidently make timely delivery unreasonable, where such circumstances are not attributable to conditions at SM Industries'. Furthermore, SM Industries shall assume no responsibility for delayed or defective materials and components ordered from sub-suppliers if the delay is the cause of any of the above events.

The time of delivery shall be extended to a similar extent to which any of the above events occur even though the cause of the delay occurs after the expiry of the time of delivery originally agreed.

**8.5** If SM Industries fails to give notice of the fact that delivery cannot take place on time in accordance with the above article 8.3, SM Industries shall compensate the purchaser for the additional expenditure incurred by him as a result of such lack of notification. SM Industries shall however not be held liable for any indirect loss including operating loss.

If SM Industries is held liable, the extent of such liability shall be limited as indicated in article 8.7.

**8.6** If SM Industries fails to deliver the material in time, the purchaser shall be entitled to claim liquidated damages from the date on which delivery should have taken place. The liquidated damages shall amount to 0.5% for each completed week of the delay, calculated on the basis of the part of the agreed order amount covering the part of the material which due to the delay cannot be taken into use as implied. The liquidated damages shall not exceed 7.5% of such basis of calculation and shall be payable on written demand from the purchaser, but no sooner than the date on which the material is delivered in full or possibly on the date the purchaser terminates the PO or PA in accordance with the following article 8.7. The purchaser's right to claim liquidated damages shall lapse if he fails to make a demand hereof in writing within three months after the date on which delivery should have taken place.

**8.7** If the purchaser is entitled to claim maximum liquidated damages and the material is still not delivered the purchaser can by written notice to SM Industries demand delivery within a reasonable time limit of not less than 14 days. If SM Industries also fails to deliver within such fixed time limit and the delay is not due to circumstances for which the purchaser can be held liable, the purchaser shall be entitled to terminate the PO or PA by written notice to SM Industries concerning the part of the material which cannot be taken into use as implied.

If the purchaser thus terminates the PO or PA he shall furthermore be entitled to compensation for the loss inflicted on him due to SM Industries' delay if such loss exceeds the maximum liquidated damages to which he could be entitled in accordance with article 8.6. The total compensation including liquidated damages shall however not exceed 15% of the order amount for the part of the material covered by the termination.

The purchaser shall not be entitled to make any claim due to SM Industries' delay apart from the above liquidated damages and termination with limited compensation in accordance with the above. SM Industries shall not be held liable for any indirect loss, including operating loss.

**8.8** If the purchaser is unable to receive the material on the agreed date or if delay on his part seems likely, the purchaser shall notify SM Industries hereof without undue delay indicating the cause of the delay and if possible the date on which receipt of the material will be possible.

If the purchaser fails to receive the material on the agreed date, he shall nevertheless be obliged to pay any amount conditional on delivery as if delivery of the material concerned had taken place. SM Industries shall ensure that such material is stored at the purchaser's expense and risk. If requested by the purchaser, SM Industries shall insure the material at the expense of the purchaser but shall be under no obligation to do so unless a request for such insurance is made by the purchaser and the premium is paid by the purchaser on demand. SM Industries shall not be held liable for the stored material.

**8.9** Unless the purchaser's failure to receive the material is due to the conditions described in the above article 8.4, notwithstanding article 8.8 SM Industries shall request the purchaser in writing to receive the material before a time limit decided by SM Industries. Should the purchaser fail to do so due to causes for which SM Industries cannot be held liable, SM Industries shall be entitled to terminate the PO or PA by written notice to the purchaser concerning the part of the material ready for delivery but which has not been delivered due to the purchaser's failure to receive. Furthermore, SM Industries shall be entitled to claim an irrevocable guarantee for payment of material not yet delivered if the delay does not concern the entire material or the latest delivered part hereof. If the purchaser fails to give such on-sight bank guarantee without legal proceedings for the timely payment of the order amount SM Industries shall be entitled to terminate the PO or PA concerning the aggregate delivery.

In connection with all delay caused by the purchaser SM Industries shall be entitled to compensation for any loss caused by the purchaser's breach of contract. The compensation shall not exceed the part of the order amount which covers the part of the material for which the PO or PA is terminated, unless no bank guarantee is given. In such case the compensation shall be equivalent to the order amount. The purchaser shall furthermore pay all extra costs incurred by SM Industries in connection with the purchaser's delay and SM Industries' subsequent termination of the PO or PA.

## 9. RETENTION OF TITLE

**9.1** The sold material shall remain the property of SM Industries until the entire agreed order amount has been paid. The purchaser shall thus not be entitled to sell the material, provide the material as security or in any other way to dispose of the sold material until unconditional payment has taken place. If the order amount has not been paid on the agreed date of payment or if the purchaser disposes of the material

contrary to SM Industries' title, a claim for immediate return of the sold material can be made. A statement shall be provided in accordance with legislative regulations.

**9.2** The purchaser shall be obliged to insure all material affected by SM Industries' retention of title at full value and replacement value.

## 10. PAYMENT

**10.1** Unless otherwise agreed, payment shall be made within 21 days from the date of the invoice.

**10.2** Unless otherwise agreed 1/3 of the agreed order amount shall be paid on the date of the PO or PA and 1/3 in connection with SM Industries' written notice that an essential part of the material is ready for delivery. The residual amount shall be paid on delivery of the material.

**10.3** If the purchaser fails to pay on the agreed date SM Industries shall be entitled to suspend all further work and cancel further deliveries. The purchaser shall in this connection not be entitled to assert delay on SM Industries.

From the date of maturity SM Industries shall be entitled to claim a default interest equivalent to the official lending rate of The National Bank of Denmark with a 8% additional charge.

Any agreed cash discount shall lapse simultaneously.

**10.4** If the purchaser fails to pay the amount due within three month SM Industries shall be entitled to terminate the PO or PA by written notice and claim compensation in addition to the default interest for any loss incurred. The compensation shall be equivalent to no less than the agreed order amount for the total delivery.

**10.5** The purchaser shall under no circumstances be entitled to retain any part of the order amount as collateral for any counterclaim made.

## 11. LIABILITY FOR DAMAGE TO PROPERTY BEFORE DELIVERY

**11.1** SM Industries shall be liable for any damage to the goods that occurs before risk has passed to purchaser. This applies regardless of the cause of the damage unless the damage has been caused by the purchaser or anyone for whom he is responsible. Even if SM Industries is not liable for damage to the goods under this paragraph, purchaser is entitled to claim remedy of the damage by SM Industries at the purchaser's expense.

**11.2** SM Industries shall only be liable for damage to the purchaser's property before delivery if it can be proved that such damage in connection with the execution of the delivery is a result of negligence on the part of SM Industries or anyone for whom he is responsible. Notwithstanding SM Industries' possible liability for the damage under this paragraph, SM Industries' total liability towards the purchaser cannot exceed the order amount or the purchase price for partial delivered goods. SM Industries, however, is not in any case liable for loss of production, loss of profit or other financial, consequential losses.

## 12. LIABILITY FOR DEFECTS

**12.1** SM Industries shall be obliged to remedy deficiencies due to defects in design, defects in the material or manufacture if the defect is incumbent on SM Industries. SM Industries shall remedy such defect through repair or replacement of the material as decided by SM Industries.

**12.2** SM Industries' liability shall only include defects which appear within 12 month after the date on which the material was delivered. If the material is used more intensively than agreed or assumed when the PO or PA was made, the 12 month period shall be reduced proportionately.

**12.3** If claims on account of a defect are made against SM Industries, the purchaser shall make a written complaint against SM Industries who shall be held liable for the defect only if the complaint is made without undue delay and no later than 14 days after the purchaser has become aware of such defect and under no circumstances later than 14 days after the time limits stated in article 12.2 and 12.4. If the purchaser fails to notify SM Industries in writing of a defect within the time-limits set forth in this article, the purchaser loses the right to have the defect remedied.

If there is reason to believe that the defect can result in a risk of damage or injury, any such complaint shall be made immediately.

The purchaser is furthermore expected to describe the nature of the defect and to describe how such defect is manifested.

For parts replaced or repaired in accordance with article 12.1 SM Industries shall assume the same obligation as for the original material for a period of 12 month. In connection with the other parts of the material the period mentioned in article 12.2 shall only be extended for the time in which the material was incapacitated as a result of the defects mentioned in article 12.1.

**12.4** Notwithstanding the provisions of the current article "Liability for defects" SM Industries' liability for defects shall not apply to any part of the material for a period of more than 24 month from the start of the period stated in article 12.2 irrespective of the time of delivery.

**12.5** After having received a written complaint from the purchaser concerning a defect, SM Industries shall be obliged to repair such defect without undue delay and shall pay all costs in this connection.

The repair shall be carried out at the purchaser's address unless SM Industries finds it appropriate to carry out such repair at SM Industries' address. If the repair is carried out at SM Industries' address, the purchaser shall be obliged to pay all costs in connection with dismantling and reassembly after the repair irrespective of whether SM Industries has carried out the installation in accordance with the PO or PA.

The purchaser shall be obliged to pay all extra costs incurred by SM Industries in connection with remedy of defects as a result of the material being located in a place other than the place of assembly indicated in the PO or PA or if no such place has been indicated the place of delivery, e.g. SM Industries' costs in connection with transport and stay.

**12.6** SM Industries' obligations regarding the defective part shall be considered fulfilled after delivery of a duly repaired or replaced part to the purchaser.

**12.7** If the purchaser has made a complaint concerning a defect for which SM Industries cannot be held liable SM Industries shall be entitled to compensation for any work performed and the costs incurred in connection with the complaint.

**12.8** If any assembly and reassembly involves intervention in equipment other than the material, all work and costs in this connection shall be incumbent on the purchaser.

**12.9** SM Industries' liability shall not include defects caused by material provided by the purchaser or designs prescribed and specified by the purchaser.

**12.10** Defective parts replaced in accordance with SM Industries' obligation to perform remedial actions shall be at the disposal of SM Industries and shall remain his property.

**12.11** SM Industries shall only be liable for defects resulting from working conditions implied by the PO or PA as well as correct use of the material.

**12.12** SM Industries shall not be held liable for defects due to causes arising after the risk no longer exists such as defects resulting from lacking/defective maintenance, incorrect installation carried out by the purchaser, changes carried out without SM Industries' written acceptance, use of unoriginal parts or incorrect repair carried out by the purchaser.

Furthermore, the liability shall neither include ordinary wear and tear nor deterioration.

**12.13** If SM Industries fails to fulfil his obligations within a reasonable period of time in accordance with repair of defects as described under article 12.5, the purchaser shall be entitled in writing to set a reasonable time limit for SM Industries' fulfilment.

If the obligation has still not been fulfilled within such time limit the purchaser may choose to either

a. allow the necessary repair to be carried out and/or to have new parts produced at SM Industries' expense and risk provided the purchaser does so in a manner which is reasonable and sensible and attempts to limit SM Industries' obligation as much as possible,

b. or claim a proportional discount, but not more than 15% of the agreed order amount.

Alternatively, if the defect is decisive the purchaser shall be entitled to terminate the PO or PA by written notice to SM Industries. If the defect concerns a part of the delivered material, the purchaser shall however only be entitled to terminate the PO or PA regarding the defective part of the material. The purchaser shall furthermore be entitled to terminate the PO or PA if the defect, regardless of repair and/or production of new parts by a third party, remains significant. In connection with termination the purchaser shall be entitled to claim compensation for his loss, but not more than 15% of the agreed order amount.

SM Industries shall under no circumstances be held liable for defects and compensation as a result of defects, apart from the previously mentioned aspects concerning replacement and repair, regardless of whether SM Industries has acted with gross negligence and cannot be held liable for damage to property, production loss, operating loss, loss of earnings or other financial consequential loss of any sort.

The purchaser shall furthermore not be entitled to claim compensation for costs in connection with any inconvenience arising in connection with repair of a defect.

**12.14** Notwithstanding the above, complaints cannot be lodged if payment has not been made in time.

### **13. LIABILITY FOR PERSONAL INJURY / DAMAGE TO PROPERTY CAUSED BY THE GOODS AFTER DELIVERY (PRODUCT LIABILITY)**

**13.1** The purchaser shall indemnify SM Industries to the extent SM Industries is held liable to third party for such damage and such loss for which SM Industries under article 2 and 3 of this paragraph is not liable to the purchaser.

**13.2** SM Industries shall not be liable for damage caused by the goods after delivery.

a) to real property or movables occurring while the goods are in the possession of the purchaser;

b) to products manufactured by the purchaser or to products in which these are part, or for damage to real property or movables caused by these products as a result of the delivery.

**13.3** The above-mentioned limitations of SM Industries' liability do not apply if such damage is a result of gross negligence on the part of SM Industries.

**13.4** In no event shall SM Industries be liable for consequential losses, loss of profit or other financial consequential losses.

**13.5** In the event any of the parties is held liable for damages by third party under this paragraph, this party shall immediately notify the other party hereof.

SM Industries and the purchaser shall be under a mutual obligation to enter legal proceedings at the court of law or arbitration which deals with any claim for damages made against any one of them on the basis of damage or loss allegedly caused by the material. The relationship between the purchaser and SM Industries shall however always be decided through litigation in accordance with below regulations on arbitration, legal venue and choice of law.

### **14. LIABILITY EXEMPTION (FORCE MAJEURE)**

**14.1** The following events involve exemption of liability, if they prevent the fulfilling of the PO or PA or make the fulfilment unreasonably onerous:

Work conflict and any other event out of the control of the parties (see also article 1) such as mobilization or drafting for military service to a similar extent, requisition, attachment, currency restrictions, riots and civil commotion, transportation shortage, general scarcity of goods, fuel restrictions and short or delayed deliveries from sub-suppliers due to any of the circumstances mentioned in the present article.

The circumstances mentioned shall only involve exemption of liability if their effect on the fulfilment of the PO or PA could not be anticipated at the signing of the PO or PA.

**14.2** The party who wishes to claim exemption of liability in accordance with the above article 14.1 shall be obliged in writing to notify the other party of the occurrence and its cessation without undue delay.

The purchaser shall pay all costs in connection with any force majeure events at his place of business incurred by SM Industries in his process of ensuring and protecting the material.

**14.3** Irrespective of the other content of the present general terms of delivery, any one of the parties shall be entitled to terminate the PO or PA through written notice to the other party if fulfilment of the PO or PA is prevented for more than three months by any one of the events mentioned in article 14.1 and 8.4.

If a PO or PA is terminated in accordance with the present article, the parties shall not be entitled to make claims against each other.

### **15. CONSEQUENTIAL LOSSES**

**15.1** Unless otherwise stated in this GSC, there shall be no liability for either party towards the other party for loss of production, loss of profit, loss of use, loss of contracts or for any other consequential or indirect loss whatsoever.

### **16. PATENT RIGHTS**

**16.1** If a patent right infringement is asserted on the purchaser by a third party in connection with SM Industries' delivery of the material, the purchaser shall be obliged to notify SM Industries as soon as possible. SM Industries shall not be liable for claims made by a third party against the purchaser in such cases, including loss suffered by the purchaser in connection with the third party's legal actions against the purchaser as a result of a patent right infringement unless SM Industries has acted with gross negligence. SM Industries' liability to pay damages shall then be limited in accordance with article 12.13 and shall furthermore be limited to 15% of the order amount. SM Industries shall however be entitled to seek correction of the infringement through replacement delivery.

### **17. APPLICABLE LAW AND DISPUTE RESOLUTION**

**17.1** Disputes in relation to the PO or PA and any related condition shall be settled through arbitration in accordance with current legislation on arbitration in Denmark. Unless otherwise agreed between the parties in writing SM Industries may however choose to allow the courts of law to settle the dispute. The case shall be brought before the Maritime and Commercial Court in Copenhagen or SM Industries' legal venue.

**17.2** Any legal questions arising in connection with the PO or PA shall be settled in accordance with legislation in Denmark. If requested by SM Industries in connection with an arbitration proceeding, any such questions shall be settled at the legal venue of SM Industries.