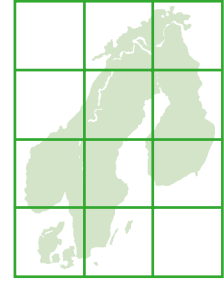


# General Conditions

NLM 02 E

## for the Supply and Erection of Machinery and other Mechanical, Electrical and Electronic Equipment.

Issued in 2002 by the organisations for the engineering industries in Denmark, Finland, Norway and Sweden (Hovedorganisationen Dansk Industri, Denmark; Metalliteollisuuden Keskusliitto, Finland; Teknologibedriftenes Landsforening, Norway; Sveriges Verkstadsindustrier, Sweden).



### Preamble

1. These General Conditions shall apply when the parties agree in writing or otherwise thereto. When the General Conditions apply to a specific contract, modifications of or deviations from them must be agreed in writing.

### Definitions

2. In these General Conditions the following terms shall have the meaning herein assigned to them :

**Contract:** The written agreement between the parties concerning performance of the Works, and all appendices, including agreed amendments and additions to the said documents.

**Plant:** All machinery, apparatus, materials and other articles, including documentation, to be supplied by the Contractor under the Contract.

**Works:** The Plant to be supplied and the result of the work to be performed by the Contractor under the Contract.

If the Works according to the Contract shall be taken over by separate sections intended to be used independently from each other, these General Conditions shall apply to each section separately. The term "Works" shall then refer to the section in question.

**Site:** The place where the Plant is to be finally erected, including as much of the immediately surrounding area as is necessary for transport, unloading and storage of the Plant and erection equipment.

**Contract Price:** The sum, excluding value added tax, to be paid for the Works.

If erection is paid for on a time basis and is not yet completed, the Contract Price for the purposes of Clauses 23,27,49 and 50 shall be the price of the Plant with the addition of 10 per cent or such other percentage as the parties may have agreed.

**Written Notice:** All documents signed by one of the parties and received by the other party, and notices received by the other party by letter, fax, electronic mail or other means agreed by the parties. The contents of minutes from a meeting signed or approved by both parties shall also constitute a Written Notice.

**Software:** The computer software which is included in the Works and which consists of

**Contractor Software,** computer software to which the Contractor holds the copyright, and

**Sublicensed Software,** computer software to which a third party holds the copyright and for which the Contractor transfers the right of use with the permission of the right holder.

### Product Information

3. Data contained in product information and price lists are binding only to the extent that they are by reference expressly included in the Contract.

### Technical Documents and Technical Information

4. All drawings and other technical documents regarding the Works submitted by one party to the other, prior or subsequent to the formation of the Contract, shall remain the property of the submitting party. Drawings, technical documents or other technical information received by one party shall not, without the consent of the other party, be used for any other purpose than that for which they were submitted. They may not without the consent of the submitting party be copied or reproduced.

5. The Contractor shall, not later than at taking over of the Works, free of charge provide the Purchaser with one copy, or the larger number of copies that may have been agreed, of drawings and other technical documents, which are sufficiently detailed to enable the Purchaser to carry out commissioning, operation and maintenance (including running repairs) of the Works. The Contractor shall not, however, be obliged to supply manufacturing drawings of the Plant or spare parts.

### Software

6. Unless otherwise agreed, the Purchaser may use the Software on the following terms and conditions:

6.1 The Purchaser acquires the right to use the Contractor's Software in the use of the Works. The Purchaser may transfer this right to subsequent owners of the Works. The Contractor retains the copyright to Contractor's Software even when it has been produced specially for the Purchaser. The Purchaser is entitled to make changes in the Contractor's Software which are consistent with the general purpose of the Works.

Unless otherwise agreed the Contractor is not obliged to provide the source code of the Contractor's Software

**6.2** Subject to the limitations agreed between the right holder and the Contractor, the Purchaser acquires the right to use Sub-licensed Software in the use of the Works and to transfer this right of use to subsequent owners of the Works. The Contractor shall inform the Purchaser by Written Notice of such limitations no later than when entering into the Contract.

**6.3** Unless otherwise agreed the Contractor is not obliged to provide updated versions of the Software to the Purchaser.

**7.** The Contractor shall, in accordance with sub-clauses 7.1–7.5, hold the Purchaser harmless against claims from third parties based on infringement of copyright or other intellectual property rights caused by the Purchaser's use of Software.

**7.1** The Contractor shall not be liable for claims resulting from:

- use of the Software in a manner or in a place not agreed or which the Contractor should not reasonably have foreseen, or
- changes in the Software by the Purchaser.

**7.2** Defence against claims as referred to in Clause 7 shall be for the Contractor's account. He shall indemnify the Purchaser against such amounts as the latter is obliged to pay under a final judgment or a settlement approved by the Contractor.

The Contractor shall only be liable, however, on condition that the Purchaser informs the Contractor without delay by Written Notice of any claims received, and that the Purchaser allows the Contractor to decide how such claims shall be dealt with in litigation and out of court.

**7.3** If an infringement of copyright or other intellectual property right is found to occur and the conditions of sub-clause 7.2, second paragraph are fulfilled, the Contractor shall within a reasonable time at his own option either:

- secure the right for the Purchaser to continue to use the Software, or
- change the Software so that the infringement ceases, or
- replace the Software with non-infringing software with the equivalent function.

**7.4** If the Contractor fails to rectify the infringement as described in sub-clause 7.3, the provisions of Clause 65 shall apply.

**7.5** Except as specified in this Clause 7, the Contractor shall have no liability towards the Purchaser for infringement of third parties' rights resulting from the Purchaser's use of the Software. This limitation of the Contractor's liability shall not apply if the Contractor has been guilty of gross negligence.

**8.** For other defects in the Software than that it causes infringement of intellectual property rights the provisions of Clauses 54–67 shall apply.

## **Confidentiality**

**9.** Neither party shall, without the consent of the other, be entitled to provide any third party with technical or commercial information which either party, at the formation of the Contract or later, has stated to be confidential. This does not apply to the extent that the provision of such information is necessary to enable the parties to fulfil their obligations under the Contract or for operation and maintenance of the Works.

Each party is obliged to prevent that such confidential information is disclosed to or used by its employees, consultants, subcontractors and other contractors or others who through that party have or may obtain access to such information, to a greater extent than permitted by the first paragraph of this Clause.

## **Scope of the Works. Laws and Regulations**

**10.** The scope of the Works shall be as set out in the Contract.

The Works shall be in accordance with the laws and other official regulations which were in force at the date of the tender in the country where the Site is located. The Purchaser shall, at the Contractor's request, provide information on such laws and regulations which apply to the Works.

**11.** The Contractor shall perform such variations as are required due to amendments in laws and other official regulations which apply to the Works, or in their generally accepted interpretation, where such change occurs after the date of the tender and before taking over of the Works. The provisions of Clauses 37–38 shall apply to such variations.

## **Working Conditions**

**12.** The Purchaser shall be responsible to the Contractor for ensuring that erection is carried out under conditions which comply with the applicable laws and regulations for working conditions at the Site. The Purchaser shall inform the Contractor by Written Notice of the safety regulations in force on the Site.

Further the Purchaser shall at his own expense, on or near the Site, provide satisfactory facilities for the erection personnel for changing, washing and eating. The Purchaser shall also ensure that the Contractor's personnel have access to board and lodging in the vicinity of the Site in accordance with the applicable collective labour agreements, regulations or as specified in the Contract. Unless otherwise agreed the Contractor shall bear all expenses for board and lodging.

## **Preparatory Work**

**13.** The Contractor shall inform the Purchaser by Written Notice of the time when the Plant will be ready for erection in sufficient time to enable the Purchaser to carry out in time his obligations under Clauses 15 and 16, which are necessary for carrying out the erection.

**14.** The Contractor shall at the time agreed, or, if no time has been agreed, in good time before erection starts prov-

ide to the Purchaser drawings and descriptions showing how the Plant is to be erected. The Contractor shall at the same time provide all information necessary for preparing proper foundations and beddings for the Works, for enabling unhindered transport of the Plant and necessary equipment to and on the Site and for preparing all necessary connections to the Plant.

The Contractor shall bear any expense incurred by reason of errors or omissions which appear before taking over in the drawings, descriptions or information mentioned in the preceding paragraph. If such errors or omissions appear after taking over, the provision of Clauses 54–67 shall apply.

**15.** The Purchaser shall carry out the necessary preparatory work in accordance with the drawings, descriptions and information referred to in Clause 14. If the parties have failed to agree when the Purchaser's work shall be completed, it shall be completed at least one week before erection is due to commence and so that foundations and beddings are ready to receive the Plant at the agreed time. The Purchaser shall inform the Contractor by Written Notice when the preparatory work has been completed.

**16.** The Purchaser shall before erection is due to commence ensure that water and power, including compressed air and electric power, is available to the Contractor on the Site to the extent necessary or as specified in the Contract. These facilities shall be provided without cost to the Contractor. Nor shall he be obliged to pay for the use of such water and power.

The Purchaser shall also on or near the Site place at the Contractor's disposal lockable or otherwise secured premises or storage facilities, which are suitable for protecting the Plant and the Contractor's tools and equipment against theft and damage.

### **Testing of the Plant in connection with Manufacture. Inspection**

**17.** If the Contract provides for the Plant to be tested in connection with its manufacture, such test shall, unless otherwise agreed, be carried out where the Plant is manufactured. If the technical requirements for the test have not been agreed, it shall be carried out in accordance with general practice in the industry concerned in the country of manufacture.

**18.** The Contractor shall inform the Purchaser by Written Notice of such test as referred to in Clause 17 in sufficient time to permit the Purchaser to be present at the test. If the Purchaser has received such notice, the test may be carried out in his absence.

The Contractor shall record the test. The report of the test shall be sent to the Purchaser. Unless the Purchaser proves otherwise, the test report shall be considered to be an accurate description of how the test was carried out and its result.

**19.** If, at a test referred to in Clause 17, the Plant is found not to comply with the Contract, the Contractor shall without delay ensure that the Plant complies with the Contract. A new test shall then be carried out if the Purchaser

so requires. The Purchaser may not, however, require a new test if the defect was insignificant.

**20.** The Purchaser may further to a reasonable extent, or as specified in the Contract, at three days' notice inspect the manufacture of the Plant during normal working hours.

**21.** Unless otherwise agreed, the Contractor shall bear all costs for tests carried out where the Plant is manufactured. The Purchaser shall, however, bear all costs for his representatives, including travel- and subsistence costs at such tests and at inspections referred to in Clause 20.

### **Purchaser's Delay, etc.**

**22.** If the Purchaser finds that he will not be able to carry out the measures required by him for performance of the Works, hereunder his obligations according to Clauses 12, 15 and 16, within the agreed time, or if such delay on his part seems likely, he shall without delay give Written Notice thereof to the Contractor. The notice shall state the reason for the delay and, if possible, how long the delay will last.

If the Purchaser fails to fulfil his obligations as referred to in the first paragraph, he shall nevertheless make any payment dependent on the Contractor's progress as if such delay had not occurred.

**23.** If the Purchaser is in delay or otherwise fails to perform his obligations as referred to in Clause 22, first paragraph, he shall reimburse any additional costs for the performance of the Works which may be incurred by the Contractor in addition to any claims in accordance with Clause 26, second paragraph. The Contractor shall be entitled to a reasonable extension of the time for completion due to the Purchaser's default. If the Contractor wishes to claim an extension he shall without undue delay inform the Purchaser thereof by Written Notice.

If the Purchaser's default must be considered substantial, the Contractor may suspend his performance of the Contract until the default has been remedied. The Contractor may further terminate the Contract by Written Notice to the Purchaser if the Purchaser fails to remedy the default within one month after receipt of a Written Notice from the Contractor stating the Contractor's intention to terminate the Contract. At such termination the Contractor shall be entitled to compensation for the loss he has suffered due to the Purchaser's default. The compensation shall not exceed the Contract Price.

### **Payment**

**24.** Unless otherwise agreed payment shall be made against invoice 30 days after the date of the invoice. Invoicing shall be as follows:

**24.1** Where erection is carried out for a lump sum included in the Contract Price.

30 % of the Contract Price shall be invoiced at the formation of the Contract. 30% of the Contract Price shall be invoiced at Written Notice that the Plant is ready for dispatch from the place of manufacture. 30 % of the Contract Price shall be invoiced on arrival of the Plant at the Site. The remaining part of the Contract Price shall be invoiced at taking over.

**24.2** When erection is carried out on a time basis. One third of the price of the Plant shall be invoiced at the formation of the Contract. One third of the price of the Plant shall be invoiced at Written Notice that the Plant is ready for dispatch from the place of manufacture. One third of the price of the Plant shall be invoiced on arrival of the Plant at the Site. Payment for the erection shall be made against monthly invoices.

**25.** When erection is carried out on a time basis the following items shall be charged separately:

**25.1** All travel expenses for the Contractor's personnel (including local transports), and all expenses for transport of their equipment and personal effects.

**25.2** The cost of board and lodging and other living expenses for the Contractor's personnel for each day's absence from home, including non-working days and holidays. Unless otherwise agreed, such costs shall be reimbursed at the highest rates payable to public employees in the Contractor's country when travelling to the country where erection is carried out.

**25.3** Payment for work during normal working hours based on the number of hours certified by the Purchaser.

**25.4** Payment for overtime work based on the number of hours certified by the Purchaser.

**25.5** Payment according to the rate for normal working hours for time spent on:

- a) Necessary preparations for outward and homeward journeys.
- b) Outward and homeward journeys and other journeys to which the personnel are entitled according to law, regulation or collective agreement in the Contractor's country.
- c) Daily travel between the lodgings and the Site if the time exceeds 30 minutes per day or the time limit that may be specified in the applicable collective agreement in the Contractor's country.

**25.6** Costs incurred by the Contractor for supplying equipment in accordance with the Contract, including payment for use of the Contractor's own erection equipment.

**25.7** Payment for waiting time according to the rates for normal working time when work is held up by circumstances for which the Contractor is not responsible according to these General Conditions or otherwise under the Contract.

**25.8** Taxes and dues levied on the amount of the invoice and to be paid by the Contractor.

**26.** When erection is carried out for a lump sum all items under sub-clauses 25.1. through 25.6. are included in the price for the erection. Value added tax and similar dues shall be added.

If the erection work is altered, delayed or must be temporarily suspended due to any circumstances for which the Purchaser or his other contractors are responsible, the Contractor shall, in addition to the agreed price for erection, be entitled to payment for:

**26.1** Waiting time and time spent on extra journeys.

**26.2** Extra work, including removing, securing and re-instating erection equipment.

**26.3** Additional costs incurred by the Contractor in having to keep his equipment on the Site for a longer period than anticipated.

**26.4** Additional costs for journeys and for board, lodging and living expenses for the Contractor's personnel.

**26.5** Any other costs and expenses documented by the Contractor to have been incurred by him as a result of the alteration of the erection programme.

**27.** If the Purchaser fails to pay, the Contractor shall be entitled to interest from the due date at the rate of interest determined by the law on late payments in the Contractor's country. If the Purchaser fails to pay by the due date, the Contractor shall also, after having given the Purchaser Written Notice thereof, suspend performance of his contractual obligations until payment is made.

If the Purchaser has failed to pay the amount due within three months after the due date, the Contractor may terminate the Contract by Written Notice to the Purchaser and, in addition to interest on late payment, claim compensation for the loss he has suffered. The compensation shall not exceed the Contract Price.

### **Retention of Title**

**28.** The Plant shall remain the property of the Contractor until the Works have been paid for in full, to the extent that such retention of title is valid.

### **Erection**

**29.** Each party shall appoint a representative to act on their behalf during the work on Site. Such appointment shall be made no later than when the Contractor gives notice that the Plant is ready for dispatch from the place of manufacture.

The representatives shall be present on or near the Site during working hours. Unless otherwise specified in the Contract, the representatives shall be authorized to act on behalf of their respective parties in all matters concerning the erection work. Wherever these General Conditions stipulate that Written Notice shall be given, the representative shall always be authorized to receive such notice on behalf of the party he represents.

**30.** Unless otherwise agreed, the Purchaser shall free of charge provide the Contractor with cranes, lifting equipment, scaffolding and equipment for transport on the Site to the extent necessary for carrying out erection and as specified by the Contractor by Written Notice no later than one month before start of the erection work.

**31.** The Contractor shall ensure that his personnel observe the safety regulations in force on the Site. This does not in any way reduce the Purchaser's obligations under Clause 12.

The Purchaser may demand that any of the Contractor's personnel who fails to comply with these safety regulations is denied access to the Site.

32. The Contractor shall inform the Purchaser by Written Notice of any special dangers for the immediate environment which erection of the Works may entail.

33. The Purchaser may not order the Contractor's personnel to carry out any work without the Contractor's previous consent by Written Notice.

### **Contractor's Right to Inspect**

34. The Contractor shall have the right at any time during working hours on the Site to inspect the Works at his own expense. This right applies until the Works are taken over and during any work pursuant to the provisions of Clauses 54–67.

### **Variations**

35. The Purchaser may until the Works have been taken over, subject to the limitations in Clause 38, require variations in the originally agreed scope, design and construction of the Works.

A request for a variation shall be made by Written Notice to the Contractor with an exact description of the variation required.

36. The Contractor may until taking over by Written Notice propose such variations as referred to in Clause 35, first paragraph.

37. The Contractor shall, as soon as possible after receipt of a request for a variation or after having himself proposed a variation, by Written Notice inform the Purchaser whether and how the variation can be carried out, stating the effects of the variation on the Contract Price, the time for completion and other terms of the Contract.

The Contractor shall also give such notice when a variation is required by reason of changes in such laws and regulations as referred to in Clause 11.

38. Save as provided in Clause 11, the Contractor shall not be obliged to carry out variations before the parties have agreed on how the variation will affect the Contract Price, the time for completion and other terms of the Contract.

If the parties are unable to agree on the effects of a variation as referred to in Clause 11, the Contractor shall carry out the variation on a time basis pending agreement or solution of the dispute in accordance with Clause 72.

### **Taking-over Tests**

39. When erection is completed the Works shall, unless otherwise agreed, undergo taking-over tests in order to determine whether the Works are in accordance with the Contract.

The technical requirements for the taking-over tests shall be as specified in the Contract. If the technical requirements have not been agreed, the tests shall be carried out in accordance with normal practice and generally applied standards in the country where the Site is located.

The Contractor shall inform the Purchaser by Written Notice that the Works are ready for taking over. He shall thereby specify a reasonable time within which the tests shall be carried out. Thereafter the parties shall jointly de-

cide on when the tests shall be carried out. Unless otherwise agreed the taking-over tests shall be carried out during the Purchaser's normal working hours.

The taking-over tests shall be conducted by the Contractor in the presence of representatives of both parties. The Contractor shall record the taking-over tests in a test report and send the report to the Purchaser. The report shall be accepted as accurate unless the Purchaser proves otherwise.

40. The Purchaser shall free of charge provide the Contractor with any power, fuel, lubricants, water, raw materials and other materials required for the taking-over tests in accordance with Clauses 39, 41 and 42, and for final adjustments in connection with such tests. He shall further free of charge install the apparatus and provide the labour required for the taking-over tests.

41. If the Purchaser is prevented from attending the taking-over tests or fails to perform his obligations under Clause 40 and thereby prevents the tests from being carried out, the Contractor shall by Written Notice to the Purchaser specify a new date for such tests. The Purchaser shall be given a reasonable notice before such tests are carried out.

If the Purchaser fails to attend the tests at the new date specified, the taking-over tests may, if possible, be carried out in his absence. The Contractor may then at the Purchaser's expense engage an independent competent person to witness the tests.

If the taking-over tests cannot be carried out due to a failure by the Purchaser to perform his obligations under Clause 40 after having received the Contractor's notice under the first paragraph of this Clause, then the taking-over tests shall be deemed to have been satisfactorily completed at the expiry of the time limit specified in the Contractor's notice.

42. If taking-over tests show that the Works are not in accordance with the Contract, the Contractor shall as soon as possible remedy such deficiencies. Thereafter new tests shall be carried out unless the parties agree otherwise or the deficiencies do not affect the operation of the Works. Clause 39 shall apply to such new tests.

### **Taking Over**

43. When the Works are as specified in the Contract for taking over the Purchaser shall be deemed to have taken over the Works,

- a) when the taking-over tests have been completed or are deemed to have been completed under the Clauses 39–42, or
- b) if it is agreed that taking over tests shall not be carried out, when the Purchaser receives the Contractor's notice under Clause 39, third paragraph.

Taking over shall not be prevented however by any minor deficiencies which do not affect the operation of the Works.

The Purchaser shall without undue delay by Written Notice confirm to the Contractor that the Works are taken over and the time for taking over. Failure by the Purchaser to give such confirmation shall not affect the judgment whether the Works have been taken over.

The Purchaser is not entitled to take the Works or any part of them into operation before taking over. If the Purchaser takes any part of the Works into operation without the Contractor's consent by Written Notice, the Purchaser shall then be deemed to have taken over the Works. The Contractor shall thereby be relieved of his obligation to carry out taking-over tests.

**44.** Unless otherwise agreed, the risk of loss of or damage to the Works shall pass to the Purchaser on taking over.

If it is agreed that the Purchaser shall receive the Plant at the Site, he shall inspect the Plant on arrival and immediately inform the Contractor by Written Notice of any transport damage.

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

**45.** Delivery of the Works shall be regarded as having been completed on the day when the Works are taken over pursuant to Clause 43.

**46.** If, instead of a fixed date for taking over, the parties have agreed on a period of time within which the Works shall be taken over, such period shall start to run at the formation of the Contract.

**47.** If the Contractor finds that he will not be able to complete the Works in time or if delay on his part seems likely, he shall by Written Notice without undue delay inform the Purchaser thereof stating the reason for the delay and, if possible, the time when the Works will be ready for taking over. If the Contractor fails to give such notice, he shall, notwithstanding the provisions of Clauses 49 and 50, reimburse any extra expenses which are incurred by the Purchaser and which the latter would have avoided had he received notice in time.

**48.** If takingover is delayed by a circumstance which under Clause 69 shall be considered a case of relief, or by an act or omission on the part of the Purchaser or his other contractors, including the Contractor's suspension under Clauses 23 and 27, or as a result of a variation under Clause 11 and Clauses 35-38, the time for taking over 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 date for takingover.

**49.** If the Works are not taken over in accordance with Clause 43 at the correct time, the Purchaser shall be entitled to liquidated damages from the date taking over should have occurred.

The liquidated damages shall be payable at a rate of 0.5 per cent of the Contract Price for each complete week of delay. The liquidated damages shall not exceed 7.5 per cent of the Contract Price.

The liquidated damages become due at the Purchaser's demand by Written Notice, but not before the Works have been taken over or the Contract has been terminated pursuant to Clause 50.

The Purchaser shall forfeit his right to liquidated damages if he fails to lodge a claim for liquidated damages by Written Notice within six months after the date when taking over of the Works should have taken place.

**50.** If the Purchaser has become entitled to maximum liquidated damages under Clause 49 and if the Works are still not taken over, the Purchaser may by Written Notice demand that the Works be made ready for taking-over tests within a final reasonable period which shall not be less than one week.

If the Contractor fails to complete the Works within such final period and this is not due to any circumstance for which the Purchaser or any other contractor engaged by him is responsible, then the Purchaser may terminate the Contract by Written Notice to the Contractor.

In case of such termination the Purchaser shall also be entitled to compensation for the loss he suffers because of the Contractor's delay to the extent that the loss exceeds the maximum of liquidated damages to which the Purchaser has become entitled under Clause 49. This compensation shall not exceed 7.5 per cent of the Contract Price.

The Purchaser shall also have the right to terminate the Contract by Written Notice to the Contractor if it is clear from the circumstances that a delay will occur which under Clause 49 would entitle the Purchaser to maximum liquidated damages. In case of such termination the Purchaser shall be entitled to both maximum liquidated damages and compensation under the third paragraph of this Clause.

**51.** Liquidated damages under Clause 49 and termination with limited compensation under Clause 50 are the only remedies available to the Purchaser in case of delay on the part of the Contractor. All other claims against the Contractor based on such delay shall be excluded. This limitation of the Contractor's liability shall not, however, apply if he has been guilty of gross negligence.

### **Liability for Damage to Property Before Taking Over**

**52.** The Contractor shall be liable for any damage to the Works which occurs before the risk has passed to the Purchaser. This applies irrespective of the cause of the damage, unless the damage has been caused by the Purchaser or anyone for whom he is responsible. Even if the Contractor is not liable for damage to the Works under this Clause, the Purchaser may require the Contractor to remedy the damage at the Purchaser's cost.

**53.** The Contractor shall be liable for damage to the Purchaser's property occurring before taking over of the Works only if it can be proved that such damage was caused by negligence on the part of the Contractor or anyone for whom he is responsible in connection with the performance of the Contract. The Contractor shall under no circumstances be liable for loss of production, loss of profit or any other consequential economic loss.

### **Liability for Defects**

**54.** Pursuant to the provisions of Clauses 56-67 below, the Contractor shall by repair or replacement remedy any defect in the Works resulting from faulty design, materials or workmanship.

The Contractor shall not be liable for defects resulting from materials provided by the Purchaser, or from a design stipulated or specified by the Purchaser, or from defective preparatory work carried out by the Purchaser as referred to in Clause 15.

**55.** The Contractor's liability does not cover defects which are caused by circumstances arising after taking over of the Works pursuant to Clause 43. The liability does not, for example, cover defects due to the conditions of operation deviating from those foreseen in the Contract or to incorrect use of the Works. Nor does the liability cover defects due to faulty maintenance or incorrect erection by the Purchaser, variations in the Works carried out without the Contractor's consent by Written Notice, or faulty repairs by the Purchaser. Finally the liability does not cover normal wear and tear or deterioration.

**56.** The Contractor's liability is limited to defects which appear within a period of one year after taking over of the Works pursuant to Clause 43. If the Works are used more intensively than agreed, this period shall be reduced proportionately.

**57.** For parts of the Works which have been repaired or replaced pursuant to Clause 54, the Contractor shall have the same liability for defects as for the original Works for a period of one year. For other parts of the Works the liability period specified in Clause 56 shall only be extended by the period during which the Works could not be used due to a defect for which the Contractor is liable under Clause 54.

**58.** The Purchaser shall give the Contractor Written Notice 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 defined in Clause 56 as supplemented by Clause 57. The notice shall contain a description of how the defect manifests itself. If the Purchaser fails to give Written Notice to the Contractor 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 Written Notice is not given forthwith, the Purchaser loses the right to make any claim based on damage which occurs and which could have been avoided if such notice had been given.

**59.** After receipt of a Written Notice under Clause 58, the Contractor 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 Purchaser's activities. The Contractor shall bear the costs as specified in Clauses 54–65.

Remedial work shall be carried out where the Works are located, even if this is not at the Site, unless the Contractor finds it appropriate to have the defective part or the Plant sent to him for repair or replacement at his own premises.

The Contractor shall carry out dismantling and re-installation of the part if this requires special knowledge. If such special knowledge is not required, the Contractor has fulfilled his obligations in respect of the defect when he delivers a duly repaired or replaced part to the Purchaser.

**60.** When remedial work takes place where the Works are located, Clauses 12, 16 and 53 shall apply correspondingly.

**61.** If the Purchaser gives such notice as referred to in Clause 58, and no defect is found for which the Contractor is liable, the Contractor shall be entitled to compensation for the work and costs which he has incurred as a result of the notice.

**62.** If remedy of the defect requires intervention in other equipment than the Works, the Purchaser shall be responsible for any work or costs caused thereby.

**63.** All transports in connection with repair or replacement shall be at the Contractor's risk and expense. The Purchaser shall follow the Contractor's instructions regarding how the transport shall be carried out.

The Purchaser shall bear the increase in costs for remedying a defect which the Contractor incurs when the Works are located elsewhere than at the Site.

**64.** Defective parts, which have been replaced under Clause 54, shall be placed at the Contractor's disposal and shall become his property.

**65.** If the Contractor fails to fulfil his obligations under Clause 59 within a reasonable time, the Purchaser may by Written Notice require him to do so within a final time. If the Contractor fails to fulfil his obligations within that time limit, the Purchaser may at his option:

- a) have the necessary remedial work carried out and/or have new parts manufactured at the Contractor's risk and expense, provided that the Purchaser proceeds in a reasonable manner, or
- b) demand a reduction of the Contract Price not exceeding 15 per cent thereof.

If the defect is substantial, the Purchaser may instead terminate the Contract by written notice to the Contractor. The Purchaser shall also be entitled to such termination where the defect remains substantial after measures referred to in a). In case of termination, the Purchaser shall be entitled to compensation for the loss he has suffered. The compensation shall not, however, exceed 15 per cent of the Contract Price.

**66.** Regardless of the provisions of Clauses 54–65, the Contractor shall have no liability for defects in any part of the Works for more than two years after taking over of the Works pursuant to Clause 43.

**67.** The Contractor shall have no liability for defects save as stipulated in Clauses 54–66. 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 Contractor's liability shall not apply, however, if he has been guilty of gross negligence.

#### **Liability for Damage to Property Caused by the Works After Taking Over**

**68.** The Purchaser shall indemnify and hold the Contractor harmless to the extent that the Contractor incurs liability towards any third party in respect of loss or damage for which the Contractor is not liable towards the Purchaser according to the second and third paragraphs of this Clause.

The Contractor shall have no liability for damage caused by the Works after taking over:

- a) to any (movable or immovable) property, or consequential loss due to such damage, occurring while the Works are in the Purchaser's possession, or
- b) to products manufactured by the Purchaser or to products of which the Purchaser's products form a part.

The above limitations of the Contractor's liability shall not apply if he has been guilty of gross negligence.

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

The Contractor and the Purchaser 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 Works. The liability as between the Contractor and the Purchaser shall, however, always be settled by arbitration in accordance with Clause 72.

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

**69.** 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, 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 time of formation of the Contract.

**70.** The party wishing to claim relief under Clause 69 shall without delay give the other party Written Notice on the intervention and on the cessation of such circumstance.

If grounds for relief prevent the Purchaser from fulfilling his obligations, he shall reimburse the expenses incurred by the Contractor in securing and protecting the Works. The Purchaser shall further reimburse any costs incurred by the Contractor for personnel, subcontractors or equipment which, with the Purchaser's consent, are held in readiness to resume performance of the Works.

**71.** Notwithstanding other provisions of these General Conditions, either party shall be entitled to terminate the Contract by Written Notice 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 69.

### **Disputes. Applicable Law**

**72.** Disputes arising out of or in connection with the Contract shall not be brought before the court, but shall be finally settled by arbitration in accordance with the law on arbitration applicable in the Contractor's country.

**73.** All disputes arising out of the Contract shall be judged according to the law of the Contractor's country.