

## GENERAL TERMS OF DELIVERY for Danfoss Semco A/S

### Application

1. The following general terms of delivery shall apply in all cases where Danfoss Semco in writing or any other way enters into an agreement with a joint contractor concerning sales, delivery of a service to a joint contractor or submits a quotation for any such service which is accepted and shall form the basis of an agreement. Any deviation from the present general conditions requires a written agreement between the parties. In the following Danfoss Semco shall be referred to as "the seller" and the joint contractor as "the buyer".

### Product information

2. Information materials, price lists and similar documentation concerning products shall only be considered as binding to the extent the agreement makes specific reference to them.

### Drawings, technical documents and other descriptions

3. 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 agreement shall be considered as the property of the party by whom they have been transferred. 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 buyer 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 the seller.
4. Notwithstanding the above the seller shall no later than the delivery date and free of charge provide the buyer with one or several copies of drawings and other technical documents sufficiently detailed for the buyer to carry out installation, start-up, operation and maintenance (including running repairs) of all parts of the material. The seller 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.

### Handover test

5. If a handover 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 agreement, such test shall be performed in accordance with the practice of the industry concerned in the country where the goods are produced.
6. The seller shall give the buyer such notice of the handover test that the buyer can be present. If the buyer has been given proper notification a handover test may be performed even though the buyer is not represented.  
The seller shall keep a protocol of the handover test which shall be sent to the buyer. The test protocol shall be considered as giving a correct description of the handover test performance and the result of such test unless proved otherwise by the buyer.
7. If the handover test proves that the material is not in accordance with the agreement the seller shall undertake to ensure that the material is brought into conformity with the agreement as soon as possible, after which a new handover test shall be performed at the buyer's demand. If the defect was insignificant a new handover test can however not be demanded.
8. Unless another distribution has been agreed the seller shall pay all costs in connection with any handover test performed on the location where the materials are produced. The buyer shall however pay all his representatives' expenses in connection with such handover tests, including travel and accommodation expenses.

### Prices

9. The seller's 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 the seller undertakes to arrange for transportation also freight, insurance and customs tariffs. The quotation price or the seller's prices in general shall not include unspecified ancillary products and equipment nor assembly and installation costs unless specifically agreed.
10. The seller shall be entitled to adjust the prices mentioned in section 9 corresponding to any price increases of raw materials, labour, purchased equipment, transportation, changes in tariff rates and other public duties, exchange rates, etc.

11. The seller's delivery shall only include performances, work, components, etc. specifically mentioned in the quotation and any confirmation of order.
12. The seller 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 agreement.
13. All quoted prices are exclusive of VAT.
14. For the agreed delivery time, the prices are firm. For deliveries postponed by the customer, we add 1,5% of the contract amount per accumulated month. However, not exceeding 10%.
15. By cancellation, we invoice 20% of the total contract amount in addition to the cost incurred by Danfoss Semco.

#### **Delivery**

16. Delivery shall be "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.

#### **Installation**

17. If the seller undertakes to install the goods delivered the buyer 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 the seller the buyer shall undertake to document that such aspects have been settled before installation.
18. Any increased costs incurred by the seller as a result of delayed or defective delivery on the part of the buyer shall be paid by the buyer according to vouchers submitted by the seller. Any such costs shall be paid immediately on demand.
19. The buyer undertakes to take out the standard insurance necessary in connection with the installation thereby insuring the seller against defective installation as well as personal injury and damage to property in all respects including injury to a third party or damage to the property of that third party. The insurance shall provide adequate coverage to exempt the seller from any loss in connection with payment of compensation. Any own risk in connection with an insurance event shall be paid by the buyer.
20. In addition to installation a special written agreement shall be made in which the seller's and the buyer's performances respectively are defined, including time schedules and time limits for payment for installation.

#### **Time of delivery, delay**

21. The time of delivery shall be the date agreed by the parties. If no such agreement has been made the seller shall deliver the goods as soon as possible in which case the buyer shall not be entitled to make a claim for delay. If instead of a specific time of delivery the parties have agreed on a period of time during which delivery shall take place, the date of the agreement shall be considered the start of such period.
22. A precondition for the agreed times of delivery shall be that the seller has received the information necessary for the completion of the order in due time.
23. If the seller is unable to make the delivery in time or if the buyer is able to substantiate that the seller is unable to make timely delivery, the seller shall notify the buyer hereof in writing without undue delay, indicating the cause of the delay and if possible the date on which delivery will be possible.
24. The seller shall not be held liable for the delay of deliveries or parts thereof resulting from strikes, lockouts, restrictions, work accidents, transportation obstacles, fire, war, mobilisation or drafting for military service to a similar extent, currency restrictions, riots and civil commotion, transportation shortage, fuel restrictions, and other events out of the seller's control, and in cases involving circumstances which evidently make timely delivery unreasonable, where such circumstances are not attributable to conditions at the seller's. Furthermore, the seller 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.
25. If the seller fails to give notice of the fact that delivery cannot take place on time in accordance with the above section 22 the seller shall compensate the buyer for the additional expenditure incurred by him as a result of such lack of notification. The seller shall however not be held

liable for any indirect loss including operating loss. If the seller is held liable the extent of such liability shall be limited as indicated in section 26.

26. If the buyer is unable to receive the material on the agreed date or if delay on his part seems likely, the buyer shall notify the seller 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 buyer 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. The seller shall ensure that such material is stored at the buyer's expense and risk. If requested by the buyer the seller shall insure the material at the expense of the buyer, but shall be under no obligation to do so unless a request for such insurance is made by the buyer and the premium is paid by the buyer on demand. The seller shall not be held liable for the stored material.
27. Unless the buyer's failure to receive the material is due to the conditions described in the above section 23, notwithstanding section 27 the seller shall request the buyer in writing to receive the material before a time limit decided by the seller. Should the buyer fail to do so due to causes for which the seller cannot be held liable the seller shall be entitled to cancel the agreement by written notice to the buyer concerning the part of the material ready for delivery but which has not been delivered due to the buyer's failure to receive. Furthermore, the seller 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 buyer fails to give such on-sight bank guarantee without legal proceedings for the timely payment of the purchase sum the seller shall be entitled to cancel the agreement concerning the aggregate delivery. In connection with all delay caused by the buyer the seller shall be entitled to compensation for any loss caused by the buyer's breach of contract. The compensation shall not exceed the part of the purchase sum which covers the part of the material for which the agreement is cancelled, unless no bank guarantee is given. In such case the compensation shall be equivalent to the purchase sum. The buyer shall furthermore pay all extra costs incurred by the seller in connection with the buyer's delay and the seller's subsequent cancellation of the agreement.

#### **Retention of title**

28. The sold material shall remain the property of the seller until the entire agreed purchase sum has been paid. The buyer 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 purchase sum has not been paid on the agreed date of payment or if the buyer disposes of the material contrary to the seller's title a claim for immediate return of the sold material can be made. A statement shall be provided in accordance with legislative regulations.
29. The buyer shall be obliged to insure all material affected by the seller's retention of title at full value and replacement value.

#### **Payment**

30. Unless otherwise agreed 1/3 of the agreed purchase sum shall be paid on the date of the agreement and 1/3 in connection with the seller's written notice that an essential part of the material is ready for delivery. The residual amount shall be paid on delivery of the material.
31. If the buyer fails to pay on the agreed date the seller shall be entitled to suspend all further work and cancel further deliveries. The buyer shall in this connection not be entitled to assert delay on the seller. From the date of maturity the seller shall be entitled to claim a default interest equivalent to the official discount rate of The National Bank of Denmark with a 9% additional charge. Any agreed cash discount shall lapse simultaneously.
32. If the buyer fails to pay the amount due within one month the seller shall be entitled to cancel the agreement 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 purchase sum for the total delivery.
33. The buyer shall under no circumstances be entitled to retain any part of the purchase sum as collateral for any counterclaim made.

#### **Liability for defects**

34. The seller shall be obliged to remedy deficiencies due to defects in design, defects in the material or manufacture if the defect is incumbent on the seller. The seller shall remedy such defect through repair or replacement of the material as decided by the seller.
35. The seller's liability shall only include defects which appear within one year after the date on which the material was delivered. If the material is used more intensively than agreed or assumed when the agreement was made, the one-year period shall be reduced proportionately.
36. If claims on account of a defect are made against the seller the buyer shall make a written complaint against the seller 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 buyer has become aware of such defect and under no circumstances later than 14 days after the time limits stated in sections 36 and 38. 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 buyer 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 section 35 the seller shall assume the same obligation as for the original material for a period of one year. In connection with the other parts of the material the period mentioned in section 36 shall only be extended for the time in which the material was incapacitated as a result of the defects mentioned in section 35.

37. Notwithstanding the provisions of the current section "Liability for defects" the seller's liability for defects shall not apply to any part of the material for a period of more than two years from the start of the period stated in section 36 irrespective of the time of delivery.
38. After having received a written complaint from the buyer concerning a defect the seller 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 buyer's address unless the seller finds it appropriate to carry out such repair at the seller's address. If the repair is carried out at the seller's address the buyer shall be obliged to pay all costs in connection with dismantling and reassembly after the repair irrespective of whether the seller has carried out the installation in accordance with the agreement.  
The buyer shall be obliged to pay all extra costs incurred by the seller 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 agreement or if no such place has been indicated the place of delivery, e.g. the seller's costs in connection with transport and stay.
39. The seller's obligations regarding the defective part shall be considered fulfilled after delivery of a duly repaired or replaced part to the buyer.
40. If the buyer has made a complaint concerning a defect for which the seller cannot be held liable the seller shall be entitled to compensation for any work performed and the costs incurred in connection with the complaint.
41. 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 buyer.
42. The seller's liability shall not include defects caused by material provided by the buyer or designs prescribed and specified by the buyer.
43. Defective parts replaced in accordance with the seller's obligation to perform remedial actions shall be at the disposal of the seller and shall remain his property.
44. The seller shall only be liable for defects resulting from working conditions implied by the agreement as well as correct use of the material.
45. The seller 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 buyer, changes carried out without the seller's written acceptance, use of unoriginal parts or incorrect repair carried out by the buyer. Furthermore, the liability shall not include ordinary wear, tear nor deterioration.
46. If the seller fails to fulfill his obligations within a reasonable period of time in accordance with repair of defects as described under section 39, the buyer shall be entitled in writing to set a reasonable time limit for the seller's fulfillment. If the obligation has still not been fulfilled within such time limit the buyer may choose to either
  - a. allow the necessary repair to be carried out and/or to have new parts produced at the seller's expense and risk provided the buyer does so in a manner which is reasonable and sensible and attempts to limit the seller's obligation as much as possible,
  - b. or claim a proportional discount, but not more than 10% of the agreed purchase sum. Alternatively, if the defect is decisive the buyer shall be entitled to cancel the agreement by written notice to the seller. If the defect concerns a part of the delivered material the buyer shall however only be entitled to cancel the agreement regarding the defective part of the material. The buyer shall furthermore be entitled to cancel the agreement if the defect, regardless of repair and/or production of new parts by a third party remains significant. In connection with cancellation the buyer shall be entitled to claim compensation for his loss, but not more than 10% of the agreed purchase sum. The seller 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 the seller 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 buyer shall furthermore not be entitled to claim compensation for costs in connection with any inconvenience arising in connection with repair of a defect.
47. Notwithstanding the above, complaints cannot be lodged if payment has not been made in time.

**Liability for personal injury/damage to property caused by the goods (product liability)**

48. The seller shall be liable for personal injury only if it can be proved that such injury has been caused as a result of seller's error and neglect in the shape of faulty design, production or installation.
49. The seller shall be liable for damage to property only if it can be proved that such damage is a result of gross negligence on the part of the seller in connection with design, production, control of sub supplies or installation.
50. Under all circumstances the seller's liability can only be asserted in connection with direct damage to property. The seller shall thus under no circumstances be held liable for operating loss, loss of profit or other consequential financial loss of any sort.
51. Furthermore, the seller shall not be liable for damage to real estate or movables caused by the material while in the buyer's possession, to products manufactured by the buyer, or to products in which the material delivered by the seller is applied. Nor shall he be liable for damage to real estate or movables caused by such products as a result of the material.
52. The buyer shall immediately indemnify the seller if the seller is held liable towards a third party for such damage and loss for which the seller cannot be held liable according to the above. If a third party makes a claim against any one of the parties concerning liability for damages in accordance with sections 49-52, the party concerned shall immediately notify the other party hereof. The seller and the buyer 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 buyer and the seller shall however always be decided through litigation in accordance with the following regulations concerning legal venue and choice of law.

**Liability exemption (force majeure)**

53. The following events involve exemption of liability, if they prevent the fulfilling of the agreement or make the fulfillment unreasonably onerous: Work conflict and any other event out of the control of the parties such as mobilisation 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 section. The circumstances mentioned shall only involve exemption of liability if their effect on the fulfillment of the agreement could not be anticipated at the signing of the agreement.
54. The party who wishes to claim exemption of liability in accordance with the above section 54 shall be obliged in writing to notify the other party of the occurrence and its cessation without undue delay. The buyer shall pay all costs in connection with any force majeure events at his place of business incurred by the seller in his process of ensuring and protecting the material.
55. Irrespective of the other content of the present general terms of delivery, any one of the parties shall be entitled to cancel the agreement through written notice to the other party if fulfillment of the agreement is prevented for more than six months by any one of the events mentioned in sections 54 and 23. If an agreement is cancelled in accordance with the present section the parties shall not be entitled to make claims against each other.

**Patent rights**

56. If a patent right infringement is asserted on the buyer by a third party in connection with the seller's delivery of the material the buyer shall be obliged to notify the seller as soon as possible. The seller shall not be liable for claims made by a third party against the buyer in such cases, including loss suffered by the buyer in connection with the third party's legal actions against the buyer as a result of a patent right infringement unless the seller has acted with gross negligence. The seller's liability to pay damages shall then be limited in accordance with section 47 and shall furthermore be limited to 10% of the purchase sum. The seller shall however be entitled to seek correction of the infringement through replacement delivery.

**Litigation. Choice of law**

57. Disputes in relation to the agreement and any related condition shall be settled through arbitration in accordance with current legislation on arbitration in the seller's country. Unless otherwise agreed between the parties in writing the seller 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 the seller's legal venue.
58. Any legal questions arising in connection with the agreement shall be settled in accordance with legislation in the seller's country. If requested by the seller in connection with an arbitration proceeding, any such questions shall be settled at the legal venue of the seller.