

General terms for supply of goods (without erection) to the public sector

ALOS 05

These terms have been drafted by the Swedish Municipalities and County Councils (Sveriges Kommuner och Landsting) in consultation with the Swedish Armed Forces (Försvarsmakten), the Swedish Agency for Public Management (Statskontoret), the Swedish Federation of Trade (Svensk Handel), the Swedish Trade Association for Suppliers of Mobile Machines (Maskinleverantörerna), the Association of Swedish Engineering Industries (Teknikföretagen), the Swedish Medical Suppliers Association (Sjukvårdens leverantörsförening) and the Swedish Public Procurement Association (Sveriges Offentliga Inköpare).

Scope of contract

1. It is intended that the terms of ALOS 05 will be used in connection with the supply to the public sector of both standard goods and specially manufactured goods. They can be used both for individual purchases and in connection with framework contracts. ALOS 05 is not intended to be used when the client will provide a substantial part of the material.

Examination and testing prior to delivery

2. If the Purchaser so requests, the Seller shall provide a time schedule for design, acquisition of materials, manufacture and testing. The Purchaser is entitled to monitor how the time schedule is being followed. The Purchaser is also entitled to the information necessary to be able to assess the quality of the goods, provided business secrets are not thereby disclosed.

3. If the goods are to be manufactured for the Purchaser, the Purchaser is entitled to inspect the quality of the goods at the Seller's premises in the course of manufacture, to a reasonable extent and subject to three days' advance notice.

Delivery Clause

4. The supply shall be 'delivered duty paid' (DDP, according to Incoterms 2000). The Seller shall also arrange the transport and unload the goods from the incoming means of transport at the place nominated by the Purchaser. If a delivery point cannot be specified in the contract, the goods shall be supplied from the Seller's factory or warehouse (Ex Works, according to Incoterms 2000).

Delivery time

5. Delivery shall be made at the time or within the period of time stipulated in the contract. If the delivery time is not agreed, the goods shall be delivered within reasonable time from the sale or call.

6. A delivery may not, without the approval of the Purchaser, be made earlier than agreed in the contract.

Delay in delivery and liquidated damages

7. If the Seller considers that it is likely that he will not keep to the agreed delivery date, he shall without delay notify the Purchaser in writing of this and also state the reasons for the delay and the time at which it is estimated that the delivery can be made.

8. If a delay in delivery results from an event as referred to in Clause 25 or from the Purchaser or any circumstance on his part, the agreed date for delivery shall be extended by such time as may be deemed reasonable.

9. If the goods are not delivered in the agreed time, the Purchaser is entitled to liquidated damages. Liquidated damages shall be payable for each seven-day period that commences during the period that the delay lasts at a rate of% of the value of that part of the goods that, as a consequence of the delay, could not be put to its intended use. However, the liquidated damages shall in total not exceed% of the said value.

If the parties have not agreed on any liquidated damages in accordance with the above, then liquidated damages shall be payable for each seven-day period commenced for which the delay lasts at a rate of 1% of the value of that part of the goods that as a consequence of the delay could not be put to its intended use. However, the liquidated damages shall in total not exceed 10% of the said value.

10. The Purchaser may revoke the purchase if the delay in delivery is of fundamental importance for the Purchaser and the Seller realised or ought to have realised this.

The Purchaser may also revoke the purchase if the Purchaser is entitled to maximum liquidated damages according to Clause 9 and thereafter in writing demands delivery within a final reasonable time limit, which may not be less than one week, and the Seller does not deliver within the time limit, unless this omission is the result of some circumstance for which the Purchaser bears the responsibility.

Revocation according to the first and second paragraphs may relate to that part of the supply that the Purchaser owing to the delay cannot use.

If delivery is to comprise several batches, the Purchaser may revoke the contract in its entirety provided the breach of contract is of fundamental importance for the Purchaser as regards the entire contract and the Seller realised or ought to have realised this.

11. If the contract is completely or partially revoked, the Purchaser is entitled, in addition to liquidated damages in accordance with Clause 10, to compensation for damage (damages). The damages shall be reduced by the amount of the liquidated damages that have accrued in relation to the period up to the revocation. The damages do not cover compensation for indirect losses unless the Seller has committed gross negligence. Unless otherwise agreed, the damages for a delay in delivery may amount to a maximum of 20% of the price for that part to which the revocation relates.

Delay by Purchaser

12. If the Purchaser considers it likely that he will not be able to receive the goods at the agreed time, he shall give written notice of this without delay to the Seller and also state the reasons for the delay and the time at which it is estimated that receipt can be effected.

13. If the Purchaser does not accept receipt of the goods at the agreed time and this is not due to events as referred to in Clause 25 or due to the Seller, the Purchaser is liable to make payment in accordance with the agreement as if the goods in question had been delivered. The Seller shall then, at the risk and cost of the Purchaser, ensure that the goods are stored. If the Purchaser requests, the Seller shall also insure the goods at the expense of the Purchaser.

Price

14. Unless otherwise agreed in writing, the agreed price shall be fixed and not index-adjusted and shall also include packaging of goods.

The agreed price does not include value added tax.

Payment

15. Payment shall be made in accordance with the conditions agreed between the parties.

16. The Seller shall issue and send invoices in the manner agreed. The invoice shall state value added tax and any discounts separately.

Furthermore, the invoice shall contain the details that the Purchaser needs to be able to identify the goods supplied and also the details that are otherwise required according to law.

17. If the invoice is issued in paper form, the Purchaser shall pay the invoice no later than thirty days from when it was received. In the case of electronic invoicing, the Purchaser shall pay the invoice no later than thirty days from when it was issued.

If the parties have agreed that the Purchaser should issue invoices, so-called 'self-invoicing', the Purchaser shall pay the invoice no later than thirty days from when the transaction note or a similar receipt was sent to the Seller.

18. Invoicing charges or corresponding charges may not be debited. Charges for reminders may be debited.

In the event of delay in payment, interest for delay is payable according to the Interest Act.

Payment does not imply approval of the goods.

Faulty goods

19. The Seller is responsible, according to the following rules, for faults in goods that result from inadequacies of design, material, manufacture or whereby the goods do not otherwise satisfy the agreed characteristics.

The Seller has the same responsibility for sub-contractors' material and work as for his own. The Seller's responsibility does not cover faults that result from material that the Purchaser has provided or the design that he has specified, unless the Seller discovered or ought to have discovered the fault.

The Seller's responsibility does not cover faults caused by circumstances that arose after the risk for the goods has passed to the Purchaser. This responsibility consequently does not cover faults that are caused by, among other things, inadequate maintenance, improper storage or incorrect assembly on the part of the Purchaser, amendments without the written consent of the Seller, normal wear and tear or deterioration or repairs conducted through the agency of the Purchaser. However, the Seller is responsible for faults that arose as a consequence of the Seller's instructions being inadequate.

The Seller shall be responsible for damage that redelivered or repaired parts caused to other parts of the goods.

20. A fault that transpires within one year of delivery of the goods shall be deemed to have existed at the time of delivery unless the Seller can prove otherwise or this is incompatible with the nature of the goods or fault. In a corresponding way, a fault that transpires within one year of the goods or a part of the goods being exchanged or repaired shall be deemed to have existed when the repair or exchange was completed.

If the goods as a consequence of a fault in accordance with Clause 19 are unusable for more than one month, the above-mentioned times shall be extended by the time during which the goods were unusable.

Notwithstanding the above provisions, the Purchaser's right to refer to a fault lapses unless he complained about the defect within two years from the original date of delivery.

21. The Purchaser shall within a reasonable period from when he discovered or ought to have discovered the fault notify the Seller that

the goods are faulty. If he fails to do this, his right to refer to the fault lapses.

After the Seller has received a notification from the Purchaser about the fault referred to in Clause 19, the Seller shall rectify the fault or implement a redelivery expedited as called for in the circumstances. The Purchaser is entitled to have a redelivery if the fault is fundamental for him and the Seller realised or ought to have realised this and redelivery can be made without inconvenience to the Seller.

If the fault is to be rectified and if the fault is of such a nature that it is not appropriate that the rectification be carried out at the place where the goods are kept, the Purchaser shall at the request and cost of the Seller facilitate the performance of the work by returning faulty goods or parts of goods to the Seller for exchange or repair.

22. If the Seller does not fulfil his obligations according to Clause 21, the Purchaser may give him a written final reasonable notice to do so. If the Seller has not satisfied his obligations within this time limit, the Purchaser may at his own option:

- a. allow the necessary repairs to be conducted and/or produce new parts at the risk and expense of the Seller, provided the Purchaser proceeds prudently in this respect, or
- b. demand and receive such a price reduction as corresponds to the fault.

If the fault or measure according to item a. above remains but is not fundamental, the Purchaser is entitled to demand and receive a price reduction corresponding to the fault.

If the defect is fundamental, the Purchaser may instead revoke the contract by written notice to the Seller. The Purchaser may also revoke the sale if the fault or measure referred to under item a. is still fundamental. Upon revocation the Purchaser is entitled to compensation for the damage he has suffered. However, the compensation shall not amount to more than 20% of the agreed price, and does not include compensation for indirect loss.

23. The Seller does not have any liability for faults beyond that prescribed under Clauses 19 to 22, unless the Seller has committed gross negligence.

24. The provisions of Clauses 19 to 23 in regard to faulty goods shall in appropriate respects apply where the goods do not amount to the agreed quantity, but the Seller, according to what the Purchaser must assume, considers he has performed his obligation.

Grounds for release (*force majeure*)

25. A party shall be released from his obligations if he proves that an impediment outside his control occurred, which he could not reasonably have foreseen or anticipated at the time of the sale and whose consequences he could neither have reasonably avoided nor overcome.

If the delay is due to someone engaged by a party to completely or partially perform the sale, such party shall only be released from a liability to pay damages if the person whom he engaged would have been released from liability according to the first paragraph. The same applies if the delay results from a supplier engaged by the Seller or anyone at an earlier stage in the chain of sale.

For a party to be entitled to claim a ground for release in accordance with the above, he shall without delay notify the other party of the occurrence thereof, and similarly of its cessation.

A party shall notify the other party of when it is estimated that performance can be effected.

In the event of *force majeure* on the part of the Purchaser, the Purchaser shall compensate the Seller for the additional costs that

the Seller may be caused in order to safeguard and protect the goods.

26. Regardless of what otherwise applies according to ALOS 05, either party may withdraw from the contract by written notice to the other party if performance of the contract is delayed for more than three months from the occurrence of grounds for release according to Clause 25.

Disputes

27. Disputes between the Purchaser and the Seller shall be determined by a Swedish court applying Swedish law.