

Valid from 12 September 2018

Jensen Metal A/S – General Sales and Delivery Terms

1. PREAMBLE

1.1. These sales and delivery terms shall apply to all deliveries made by Jensen Metal A/S (Seller) to customers of Jensen Metal A/S (Buyer) as an integral part of any delivery agreement made between the parties. These sales and delivery terms shall take precedence over any terms and conditions printed on Buyer's purchase orders or Jensen Metal A/S quotations, e-mails or other written documents. Deviations from the sales and delivery terms in force from time to time will be binding only if an outline agreement has been signed or if a written agreement has been concluded between the parties in a separate document signed by the CEO of Jensen Metal A/S and entitled "Special sales and delivery terms".

2. PRODUCT INFORMATION

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

3. DRAWINGS AND OTHER DOCUMENTS

3.1. All drawings and other technical documents regarding the goods or the preparation of such drawings or documents 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, reproduced, transmitted or otherwise communicated to a third party.

4. DELIVERY TEST

4.1. Where a delivery test has been agreed, it shall, unless otherwise agreed, be carried out where the goods are manufactured. If technical requirement for the test has not been agreed upon, the test shall be carried out in accordance with general practice in the industry concerned in the country of manufacture.

4.2. If, at the delivery test the goods are found not to be in accordance with the contract, the Seller shall without delay ensure that the goods comply with the contract. A new test shall be carried out if so required by the Buyer. A new test shall, however, not be carried out if the defect was insignificant.

5. DELIVERY

5.1. Where a delivery term has been agreed, it shall be interpreted in accordance with the INCOTERMS in force at the formation of the contract. If no delivery term has been specifically agreed, the delivery shall be considered to be FCA, however, the Seller should not arrange or pay for clearance for export.

6. TIME FOR DELIVERY AND DELAYS

6.1. If, instead of a fixed date for delivery, the parties have agreed on a period of time within which delivery shall take place, such period shall start to run from the time where the Seller has received the final version of the technical specifications, drawings etc., however not earlier than the date of the signed agreement.

6.2. The Seller is exempt from liability in the event of delays of up to 14 days from the confirmed delivery date.

6.3. If delay in delivery is caused by a circumstance which under Clause 11.1 shall be considered a case of relief or by an act or omission on the part of the Buyer, the time for delivery shall be extended accordingly. The time for delivery shall be extended even if the reason for delay occurs after the originally agreed time for delivery.

6.4. If delivery is delayed by more than 14 days after the time of delivery stated in Clauses 6.1-6.3, the Buyer is entitled to liquidated damages, provided that he has submitted a written claim to this effect within two months. Liquidated damages are 0.5% for each full week of delay, calculated on the basis of the share of the agreed price that covers the part of the material that is not delivered due to the delay. The total amount of liquidated damages will not exceed 5% of this calculation basis. Liquidated damages are set off against the payment from the Seller. The Buyer has no other rights or powers in the event of delayed delivery, and the liquidated damages are in full and final settlement.

6.5. If the Buyer finds that he will be unable to accept delivery of the goods on the agreed date or if delay on his part seems likely, he shall forthwith notify the Seller thereof in writing stating the reason for the delay and if possible the time when he will be able to accept delivery.

If the Buyer fails to accept delivery on the agreed date he shall nevertheless make any payment which is dependent on delivery as if the goods in question had been delivered. The Seller shall arrange storage of the goods at the Buyer's risk and expense. The Seller shall also, if the Buyer so requires, insure the goods at the Buyer's expense.

6.6. Unless the Buyer's failure to accept delivery as stated in Clause 6.3 is due to any such circumstance as mentioned in Clause 11.1, the Seller may by notice in writing require the Buyer to accept delivery within a reasonable period. If, for any reason for which the Seller is not responsible, the Buyer fails to accept delivery within such period, the Seller may by notice in writing terminate the contract in respect of that part of the goods which is ready for delivery but has not been delivered due to the Buyer's default. The Seller shall then be entitled to compensation for the loss he has suffered by reason of the Buyer's default. The compensation shall not exceed that part of the price which is attributable to the part of the goods in respect of which the contract is terminated.

7. PAYMENT

7.1. Unless otherwise agreed, the payment term is "Net 20 days from date of invoice".

7.2. If the Buyer fails to pay by the agreed date, the Seller shall be entitled to interest from the day on which payment became due at the rate of interest determined by the law on late payments in the Seller's country. If the Seller's country is Denmark, the rate of late payment interest shall be 1,00% per month.

7.3. In the event that the buyer fails to pay the amount due within one month, the seller is entitled to terminate the agreement by notifying the buyer in writing thereof and to claim compensation, in addition to default interest, from the buyer for any loss suffered. Such compensation cannot exceed the agreed purchase price.

7.4. The seller's company policy is to take out credit insurance for all customers who have or will have large or small outstanding amounts with the seller. In the event that the seller cannot obtain credit insurance on terms that are acceptable to the seller, the seller is entitled, exempt from liability, to withdraw any offers made, change the terms of payment or terminate any agreements concluded with the buyer.

8. RESERVATION OF TITLE

8.1. The goods shall remain the property of the Seller until paid for in full to the extent that such retention of property is permitted by the applicable law of Denmark.

9. LIABILITY FOR DEFECTS

9.1. The Seller shall, pursuant to the provisions of Clauses 9.2-9.14 below, by assessing whether repair or replacement is required, remedy any defect in the goods resulting from faulty materials or workmanship. The Seller is always exempt from liability to the extent that failure is caused by the Buyer's structural design, technical specifications, drawings or instructions.

9.2. The Seller's liability is limited to defects which appear within a period of one year from the date of delivery of the goods. If the goods are used more intensely than agreed or could be foreseen at the formation of the contract, this period shall be reduced proportionally.

9.3. The Seller shall be liable for defects in parts of the goods which have been repaired or replaced under Clause 9.1 for a period of one year under the terms and conditions which apply to the original goods. The liability period defined in Clause 9.2 shall be extended for other parts of the goods only by a period equal to the period during which the goods could not be used because of the defects stated in Clause 9.1.

9.4. The Buyer shall notify the Seller in writing of a defect without delay after the defect has become apparent, and in no case later than two weeks after the expiry of the period defined in Clause 9.2 as supplemented by Clauses 9.3 and 9.14. The notice shall contain a description of how the defect manifests itself. Notice of a defect shall be given immediately if there is reason to believe that the defect may cause damage.

If the Buyer fails to notify the Seller of a defect in writing within the time limits set forth in this Clause, he shall forfeit his right to make any claim in respect of the defect.

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- 9.5. On receipt of the written notice according to Clause 9.4 the Seller shall remedy the defect without undue delay and at his own cost as stipulated in Clauses 9.1–9.13. Remedy of the defect shall take place at the Buyer's premises unless the Seller finds it appropriate to have the defective part or the goods returned to him for repair or replacement at his own premises.
- 9.6. If the Buyer gives such notice as described in Clause 9.4, and no defect is found for which the Seller is liable, the Seller shall be entitled to compensation for the work and costs which he has incurred as a result of the notice.
- 9.7. If dismantling or re-installation of parts necessitates intervention in other equipment than the goods, the labour and costs resulting therefrom shall be the Buyer's responsibility, including the Buyer at his own expense, shall ensure free access to the equipment and conduct any intervention in anything other than the equipment, which is necessary to remedy the defect.
- 9.8. All transports regarding with repair or replacement shall be at the Seller's risk and expense. The Buyer shall follow the Seller's instructions as to how the transport shall be carried out.
- 9.9. The buyer shall bear the increase in costs for remedying a defect which the seller incurs when the goods are situated elsewhere than at the destination stated in the contract or – if no destination has been stated – the place of delivery.
- 9.10. Defective parts which are replaced in accordance with Clause 9.1 shall be placed at the Seller's disposal and shall become his property.
- 9.11. If the Seller fails to fulfil his obligations under Clause 9.5 within a reasonable time, the Buyer may by written notice require him to do so within a final time. If the Seller fails to fulfil his obligations within that time limit, the Buyer may choose to: a) have the necessary remedial work carried out and/or have new parts manufactured at the Seller's risk and expense, provided that the Buyer proceeds in a reasonable manner, or b) demand a reduction of the agreed price not exceeding 15% thereof.
- 9.12. The Seller is not liable for defects arising out of materials provided by, or a structural design stipulated or specified by the Buyer.
- 9.13. The Seller is only liable for defects which appear under the conditions of operation provided for in the contract and under proper use of the goods. The Seller's liability does not cover defects caused by occurrences after the risk in the goods has passed to the Buyer. The liability does not e.g. cover defects which are caused by faulty maintenance or incorrect installation from the Buyer's side, by alterations undertaken without the Seller's consent in writing, or by faulty repairs by the Buyer. Finally, the Seller's liability does not cover normal wear and tear or deterioration. The Seller is always exempt from liability to the extent that failure is caused by the Buyer's technical specifications, drawings or instructions.
- 9.14. Notwithstanding the provisions of Clauses 9.1–9.13 the Seller shall have no liability for defects in any part of the goods for more than one year from the start of the liability period defined in Clause 9.2.
- 9.15. Save as stipulated in Clauses 9.1–9.14 the Seller shall have no liability for defects. This applies to any loss the defect may cause, including but not limited to loss of production, loss of profit and any other consequential economic loss. This limitation of the Seller's liability shall, however, not apply if he has been guilty of gross negligence.

10. LIABILITY FOR DAMAGE TO PROPERTY CAUSED BY THE GOODS

- 10.1. The Buyer shall indemnify and hold the Seller harmless to the extent that the Seller incurs liability towards any third party in respect of any damage for which the Seller is not liable towards the Buyer according to the second and third paragraphs of this Clause.

The Seller shall not be liable for loss or damage caused by the goods

- to any (movable or immovable) property where the damage occurs while the goods are in the Buyer's possession, or
- to products manufactured by the Buyer or to products of which the Buyer's products form a part or for loss or damage to any property, where the damage is caused by these products because of properties in the goods.

The Seller shall under no circumstances be liable for loss of production, loss of profit or any other consequential economic loss.

The above limitations in the Seller's liability shall not apply where the Seller has been guilty of gross negligence. If a claim for loss or damage as described in this Clause is raised by a third party against either party to the contract, the latter shall forthwith notify the other party thereof.

The Seller and the Buyer shall be mutually obliged to let themselves be summoned to the court or arbitral tribunal which examines claims against either of them, where the claim is based on damage alleged to have been caused by the goods. The liability as between the Seller and the Buyer shall, however, always be settled by arbitration in accordance with Clause 12.1–12.2. The Seller is not liable for product liability beyond an amount off DKK 5 million per insurance year. If the total limit of DKK 5 million is exceeded in any one insurance year due to claims from the Buyer or from the Seller's other customers, the limit per customer will be reduced in proportion to the customers' respective claims.

11. GROUNDS FOR RELIEF (FORCE MAJEURE)

- 11.1. The following circumstances shall be considered as 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, currency restrictions, insurrection and civil commotion, shortage of transport, general shortage of materials, restrictions in the use of power and defects or delays in deliveries by sub-contractors. 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.
- 11.2. The party wishing to claim relief shall notify the other party in writing without delay on the intervention and on the cessation of such circumstance. If grounds for relief prevent the Buyer from fulfilling his obligations, he shall compensate the Seller for expenses incurred in securing and protecting the goods.
- 11.3. Notwithstanding other provisions of these General Conditions, either party shall be entitled to terminate the contract by notice in writing to the other party if performance of the contract is delayed more than six months by reason of any grounds for relief as described in Clause 11.1.

12. DISPUTES AND APPLICABLE LAW

- 12.1. Disputes arising out of or regarding 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 Denmark.
- 12.2. All disputes arising out of the contract shall be judged according to the laws of Denmark, in the court of Aarhus in Denmark.

13. THEFT OR DAMAGE

- 13.1. In case of theft or damage to the Buyer's own product or equipment delivered to the Seller's premises or during transport by the Seller from or to the Seller's premises, the Buyer undertakes an excess of DKK 50,000. This excess will not apply where the Seller is guilty of gross negligence.

14. COMMODITY PRICES OF STEEL, FEES AND CHARGES

- 14.1. If the commodity price of steel increases by more than 5%, calculated relative to the commodity price at the time of the Seller's quotation, the Seller may demand an increase in price. A steel price increase beyond 5% can be added to the quoted and accepted price. Unless otherwise explicitly stated, the quoted prices apply FCA excl. packaging and taxes, duties, etc. in both the Seller's and the Buyer's country.
- 14.2. Upon delivery, the Seller reserves the right to charge the Buyer for invoicing, order administration and rush jobs.
- 14.3. Unless otherwise specified, all prices are stated excl. of VAT.

15. QUALITY, PERFORMANCE, QUALITY ASSURANCE AND TRACEABILITY

- 15.1. The Buyer is obligated prior to conclusion of the delivery agreement to inform the Seller in writing of any requirements for delivery quality, execution, quality assurance and traceability, including any specific requirements that apply if parts of the delivery will be coming into contact with food.
- 15.2. The Seller shall only meet the requirements for quality, execution, quality assurance and traceability to the extent explicitly accepted by the Seller in the Seller's order confirmation or in a written delivery agreement, regardless of whether the delivery is to be used for such purposes, which have other requirements for quality, execution, quality assurance and traceability.