



GENERAL PROVISIONS FOR DELIVERIES OF FORKLIFT TRUCKS AND MATERIAL HANDLING EQUIPMENT

*Drawn up and adopted by The Swedish Trade Association for Suppliers of Mobile Machines
(MaskinLeverantörerna), Forklift Truck Section*

**TRUCK
(FORKLIFT)**

22

Applicability

1. These general provisions apply unless otherwise agreed. Any such agreement shall be in writing.
2. The seller's undertakings under these general provisions shall apply only to deliveries of goods for use in Sweden. In any other event, a separate agreement shall be concluded between the parties.

Binding order

3. An agreement shall be considered concluded when the buyer notifies the seller in writing that the latter accepts the seller's offer, alternatively when an authorised representative of the seller confirms the buyer's order in writing.

If the confirmation deviates from the order through addition, limitation or reservation, and the buyer is unwilling to accept these changes, he must inform the seller of this within two weeks. Otherwise, the contract is accepted in accordance with the seller's confirmation.

Product specification and information

4. Unless otherwise agreed, new goods must meet the requirements applicable for the goods at the date of delivery in accordance with laws, statutes, regulations and instructions, as well as the regulations and instructions cited in the contract. The goods shall be inspected in accordance with applicable regulations.

If any of the above provisions are changed after the contract has been signed, but before the delivery of the goods, the seller or buyer must inform the other party of this without delay. In so far as the cost of the goods is affected by such amended provision, which the seller could not reasonably have foreseen, the price shall be renegotiated. Regarding used goods, these must meet the requirements in force for such goods on the date when they were originally put on the market.

5. Data in product information, price lists and similar documents are binding only to the extent that the purchase agreement expressly refers to them.

The seller shall, no later than on delivery, provide the buyer with operating-, safety- and instructions for use. Upon delivery, the seller's representative should go through instructions for care and maintenance as well as operation of the goods with the buyer or the buyer's representative.

Design changes

6. The seller is entitled, before delivery and without previously informing the buyer, to carry out minor changes in the design of the goods with the aim of improving them, that he considers necessary. Such changes shall not entail any changes in the price. If the seller realises or should have realised that any such minor change involves considerable inconvenience to the buyer, he shall inform the buyer of this. In that case the buyer has the right to terminate the agreement. Changes made and termination of the contract by virtue of this clause does not entitle damages or other penalty.

Price and price adjustments

7. In addition to the agreed price, the buyer shall pay applicable VAT.

The seller reserves the right to change the agreed price with regard to changes in cost due to exchange rate changes, government decisions or unforeseen or significantly increased production or transport costs, that occur after the was entered into but before the delivery date.

If this leads to a price increase that exceeds 5 % of the agreed price, and the seller imposes such a surcharge, the buyer has the right to terminate the agreement. Such termination must take place within a reasonable time.

If the seller increases the price for any reason other than those stated above, the buyer shall, if the seller so demands, pay a corresponding price supplement. In that event, however, the buyer has the right to terminate the agreement within a reasonable time. In the above-mentioned cases, the buyer is not entitled to any compensation by reason of the cancellation.

8. Should any trade-in goods have undergone changes by more than should follow from normal maintenance and use, be defective, or if the information provided concerning the trade-in goods turns out to be inaccurate, and this is not without significance for the seller's valuation of the trade-in goods, the buyer is obliged to, at his own expense, restore the trade-in goods to the agreed condition or pay compensation to the seller by an amount corresponding to the difference between the agreed trade-in price and the value of the trade-in goods taking into account the significance of the defect or the information provided.

If the trade-in goods, regardless of what is stipulated above, should deviate significantly from what the seller had expected at the conclusion of the agreement, the seller has the right to terminate the agreement in the part relating to the trade-in goods. Such termination shall not affect the rest of the agreement.

Payment

9. Unless otherwise agreed, twenty percent of the agreed price shall be paid upon the conclusion of the agreement and the remainder shall be paid by the time of delivery of the goods. If the buyer fails to pay on time, late payment interest is payable under the provisions of the Swedish Interest Act. However, the late payment interest shall exceed any agreed instalment interest by at least two percentage points.

Delivery clause and delivery time

10. Unless otherwise agreed, the goods are sold with the delivery clause DAP (delivered at place) as defined in the Incoterms® in force at the formation of the contract. The delivery time shall be specified and calculated from the date on which the agreement was concluded. If no specific delivery date has been set, the goods shall be delivered within a reasonable time.

Notice of delay

11. Should either party consider that he will be delayed in delivering or receiving the goods, he shall inform the other party without delay. In the notification, the party shall specify the date on which he estimates delivery can be fulfilled.

Extension of delivery time

12. If a delay should occur due to any circumstance specified in Clause 4 or due to any action or omission on the part of the buyer, or by a cause specified in Clause 27 (force majeure), the delivery time shall be extended by a reasonable period.

Penalty for delay on the part of the seller

13. If the seller does not deliver the goods within the delivery time or within the extended time as provided for by Clause 12, the buyer shall be entitled to liquidated damages unless the seller indemnifies the buyer by placing other equivalent goods, for example a trade-in or hire machine, at the buyer's disposal at a reasonable charge. The liquidated damages shall, for every full week which the delay lasts, constitute 0.5% of the part of the agreed price attributable to that part of the goods which, due to the delay, cannot be put to the intended use. The liquidated damages shall not exceed 7.5% of this calculation base.

The buyer forfeits his right to liquidated damages unless he presents a written demand for such penalty within fourteen days after the seller notifies him of the delay.

Cancellation in the event of delay on the part of the seller

14. If the buyer is entitled to maximum liquidated damages under Clause 12, and the goods have still not been delivered, the buyer has the right to, by written notice, demand delivery within a final reasonable time, which must not be shorter than one week.

If the seller fails to deliver within that period for a reason other than one for which the buyer bears responsibility, the buyer has the right to, by written notice, cancel the agreement in respect of such part of the goods which has not been possible to put to the intended use. Other than the liquidated damages under Clause 13, all other claims made by the buyer against the seller with regard to the seller's delay is excluded.

Delay on the part of the buyer, the seller's right to cancel, cancellation charge

15. If the buyer finds that he will be unable to take delivery of the goods on the agreed date, or it appears likely that there will be a delay on his part, he must without delay, in writing, inform the seller of this, specifying the reason for the delay, and, as far as possible, specifying the date on which he estimates that he will be able to take delivery.

16. If the buyer fails to take delivery of the goods on the agreed date, and this is not due to a circumstance in Clause 27, he is obliged to make payment as though the goods concerned had been delivered.

The seller shall, on behalf of the buyer and at his expense, take reasonable measures to safeguard the goods. This undertaking also includes a duty upon the seller to keep the goods insured at the buyer's expense.

Unless otherwise agreed, any warranty period starts from the agreed delivery date, even if the buyer fails to take delivery of the goods as stipulated in the first paragraph of this clause or omits to sign an approval of delivery.

If, despite a written demand from the seller, the buyer fails to take delivery of the goods within the agreed time, the seller may terminate the contract by giving the buyer a written notice and shall receive compensation from the buyer for the losses he has suffered due to the failure by the buyer to fulfil his part of the agreement. The compensation shall not be less than 20 percent of the purchase price attributable to the undelivered part of the goods.

Retention of title and right of repossession

17. The delivered goods remain the property of the seller until it has been paid in full. The seller reserves the right to repossess the goods until the buyer has fulfilled all his obligations under the contract. Until the goods are paid in full the buyer has no right, without written permission from the seller, to dispose over them in such a way that the seller's right of repossession is imperilled (e.g. pledge, rent, transfer, sell or rebuild the goods).

Warranty

18. The seller shall at the time of purchase issue a written warranty undertaking in respect of the goods.

Complaint

19. Within a reasonable time after he has or ought to have detected that the goods are defective, the buyer shall inform the seller of the defect. The claim shall be made in accordance with the delivery documents.

The buyer shall provide the seller with a reasonable opportunity to determine the nature and origin of the defect and, if the repair is to be carried out by the seller, shall place the goods at the seller's disposal as soon as possible

Undertaking to rectify

20. The seller must, without unreasonable delay, after an approved complaint, rectify the defect at his own expense during the seller's normal working hours.

Depending on the nature of the defect, rectification shall be carried out either by the seller repairing the defective part or providing a part in as-new condition to replace the defective one.

The definition of "without unreasonable delay" shall be assessed with regard primarily to the nature and extent of the defect, the difficulty of diagnosing it, the buyer's need for the goods and the availability of spare parts and workshop capacity.

In addition to bearing his own costs, the buyer shall reimburse the seller's travelling time, travel expenses and allowances.

In the event of repeated journeys relating to the same warranty claim, the seller shall, from the second journey on, bear his own costs for travelling time, travel expenses and allowances.

21. The seller shall decide, after consultation with the buyer, whether the repair can be carried out on site where the goods are located or whether it must be carried out in a workshop indicated by the seller or other suitable place. Any transport costs will be paid by the buyer. In the case of an on-site repair, the buyer shall be responsible for ensuring that any person required by law during solitary work is present, and – to the extent that they are available – make available assistance, repair premises, lifting/hoisting equipment etc. without charge.

22. If the defect is of such a nature that the buyer can carry out the repair himself and if the parties agree on that, or rectifying the defect requires only minor knowledge, the seller shall be deemed to have fulfilled his undertakings by supplying the buyer with an as-new part or with the original part repaired. The buyer shall, at the seller's request, immediately return the defective part at the lowest transport cost. If the defect is covered by the seller's warranty, transport shall be at the seller's expense.

23. Should the seller neglect to rectify a defect for which he is responsible within a reasonable time, or should such a defect persist after repeated rectification attempts, the buyer shall, after written notice to the seller, be entitled to rectify it himself at the seller's expense or to demand a reduction in the purchase price, equivalent to the defect.

If a persisting defect is of a substantial nature, the buyer shall be entitled to cancel the agreement in so far as it applies to the defective goods. Should the defective goods bear such a relationship to the remainder of the goods that the buyer would incur substantial inconvenience by accepting the part of the goods purchased, he shall be entitled to cancel the agreement in its entirety.

Limitations on liability

24. The seller is liable for changes proposed to the seller's design by the buyer only in so far as the seller has assumed such liability.

The seller's liability extends only to defects that occur under normal working conditions or those assumed in the agreement and during correct use. It is presupposed that the buyer follows the instructions for care and use supplied by the seller or his representative. Liability shall not extend to defects caused by faulty maintenance or incorrect assembly by the buyer, alterations made without the seller's permission, incorrectly performed repairs by the buyer or normal wear and tear.

The seller's liability shall be limited to the normal service life of wear parts and consumables.

Where parts and components subject to particularly heavy wear are replaced, the buyer shall make reasonable payment for the time for which they have been used.

Tests and fault-finding measures performed at the buyer's request shall be at no cost to the buyer if defects for which the seller is responsible are detected. Otherwise the buyer shall be charged for all the costs involved.

25. The rectification of a defect during the warranty period shall not entail the total warranty period being extended.

26. Save as stipulated in Clauses 17-25, the seller shall not be liable for any defects. The seller shall not be liable by reason of any defect in the goods to pay compensation for loss of production, loss of profit or any other indirect damage. This limitation of the seller's liability shall not however apply if the seller has been guilty of gross negligence.

Grounds for exemption from liability (force majeure)

27. A party shall be entitled to an extension of the delivery time if fulfilment of the purchase is prevented by circumstances outside the party's control, such as labour disputes, war, natural disasters, pandemics, epidemics, quarantines, government decisions, extensive operational disruptions in the party's business or that of the party's suppliers or any other circumstance not brought about by the party and which the party could not have foreseen or the prejudicial effect of which could not reasonably be avoided.

28. To be entitled to extension of the delivery time, a party is required to inform the other party without delay that a circumstance that gives ground for exemption from liability has occurred.

29. If the purchase cannot be fulfilled within a reasonable time, due to the circumstances listed in Clause 27, either party shall be entitled to cancel that part of the agreement to the extent that its fulfilment is hindered.

In the event of cancellation by virtue of the first paragraph in this clause, no other remedy may be claimed against the other party.

Disputes

30. Disputes arising from this agreement shall primarily be resolved through negotiation between the parties. If the dispute cannot be resolved through negotiation, it shall be settled by a court of general jurisdiction. If the parties agree, the dispute may instead be resolved through arbitration.

Legal issues arising from the agreement shall be resolved in accordance with Swedish law.