

Almindelige leveringsbetingelser
for
maskiner, materiel m.v.

Med indledning af
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og
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Forord

Industriraadet har i denne publikation samlet en række dokumenter indeholdende almindelige leveringsbetingelser, herunder for leverancer af maskiner, materiel m.v., for montering eller blot overvågning af montagen samt for leverancer af varige konsumgoder.

ECE (FN's økonomiske kommission for Europa) har gjort en værdifuld indsats ved at tilvejebringe almindelige leveringsbetingelser, hvor købers og sælgers interesser er afbalancerede, og Industriraadet har villet medvirke til udbredelse af kendskabet til disse leveringsbetingelser, som har fundet udstrakt anvendelse i udlandet. Det sparer tid for alle, hvis disse leveringsbetingelser lægges til grund for forhandlinger vedrørende indgåelse af aftaler inden for ovennævnte område.

Industriraadet har forud for hvert dokument henholdsvis gruppe af dokumenter givet nogle få praktiske oplysninger vedrørende disse anvendelse.

En nærmere omtale og vurdering af dokumenterne og deres anvendelse findes i indledningen, der er forfattet af professor, dr. jur. Stig Jørgensen og lektor, cand. jur. Jens Sanvig, begge Aarhus Universitet.

Industriraadet takker de to videnskabsmænd, fordi de har villet påtage sig denne opgave.

INDUSTRIRAADET

De i publikationen nævnte leveringsbetingelser kan rekvireres fra Industriraadet samt fra Sammenslutningen af Arbejdsgivere indenfor Jern- og Metalindustrien i Danmark.

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Indledning

ved professor Stig Jørgensen og lektor Jens Sanvig

I løbet af dette århundrede er det blevet stadig almindeligere, at en virksomhed benytter standardvilkår, når den sælger sine produkter. I stedet for at forhandle om individuelle leveringsbetingelser for hver enkelt handel, formulerer virksomheden een gang for alle sine leveringsbetingelser og lader dem trykke, således at de en bloc kan indgå i de enkelte handeler.

Ved denne frengangsmåde er der åbenlyse *fordele*. Først og fremmest sparer begge kontraktsparter tid og dermed personale og omkostninger. Ved kontraktsafslutningen indskrænker forhandlingerne sig til de punkter, der nødvendigvis må variere fra kontrakt til kontrakt. Denne standardisering af vilkårene letter virksomhedsledelsen ved kontrakternes opfyldelse, og i tilfælde af misligholdelse spares der tid, f.eks. fordi individuel skadesvurdering kan være overflødig gjort af standardiserede erstatnings- eller afslagsregler. Standardisering af leveringsbetingelserne er en rationaliseringsforanstaltung, der harmonerer godt med de øvrige rationaliseringsbestræbelser i produktions- og omsætningsled. Hvis alle producenter inden for en vis branche benytter de samme leveringsbetingelser, får køberen også bedre mulighed for at bedømme indhentede tilbud, idet han kun behøver at sammenligne pris, kvalitet og leveringstid; denne fordel træder i eksporterhvervene særlig klart frem, hvis producenterne i de forskellige lande benytter de samme standardvilkår.

De funktioner, som standardvilkårene således udfylder: rationalisering, særlig af kontraktindgåelsen, og ensartet behandling af kunderne kunne også tænkes opfyldt af lovgivning, som parterne kunne

henholde sig til ved aftalernes indgåelse. Det har imidlertid vist sig, at købelovene, fordi de er så vidtspændende, ikke i tilstrækkeligt omfang kan tage hensyn til de særlige omstændigheder og behov inden for de enkelte brancher. I hvert fald har industrien til stædighed fastholdt, at den nugældende købelov, der er af ældre dato, og som i særlig grad byggede på sædvaner inden for handelen med grovvarer, ikke i fornødent omfang tog hensyn til den fremvoksende industriens behov. I eksporterhvervene har benyttelsen af standardvilkår endvidere den betydning, at man undgår de vanskeligheder, som den divergerende lovgivning og retsopfattelse i de forskellige lande ellers medfører. Fra det udvalg af standardvilkår, som her præsenteres, skal i denne forbindelse eksempelvis henvises til ECE-dokumenternes klausuler om *reliefs*. Her har man givet en selvstændig definition af omstændigheder, som kan fritage parterne for deres forpligtelser i henhold til kontrakten, og bevidst undgået brugen af ordet *force majeure*, for at man ikke ved fortolkningen skulle falde tilbage til de enkelte retssystemers særlige opfattelse af force majeure-begrebet.

Der er imidlertid i praksis også følelige *ulemper* og *farer* forbundet med brugen af standardvilkår. I reglen har disse været formuleret af de enkelte producenter og sælgere eller af deres organisationer, og ofte har de derfor for ensidigt varetaget sælgersidens interesser på købersidens bekostning, f.eks. ved at afskære køberen fra at hæve aftalen og købe sin vase andetsteds trods en nok så langvarig forsinkelse med leveringen, eller ved at sælgeren fraskriver sig ethvert erstatningsansvar selv i anledning af grov uagtighed. Det er også forekommet, at producenterne har afskåret køberne fra misligholdelsesbeføjelser i anledning af forsinkelse med levering simpelthen ved at undlade at aftale nogen leveringstid. Endvidere forekommer der luskeri med den typografiske opsætning,

f.eks. derved at der benyttes en utydelig eller særlig lille sats, eller ved at vigtige bestemmelser placeres på steder, hvor man ikke ville vente at finde dem. Køberne kan i almindelighed ikke selv gardere sig mod sådanne misbrug. Hvis de vil købe hos den pågældende producent, må de samtidig en bloc akceptere hans almindelige leveringsbetingelser, der derfor i virkeligheden bliver dikteret af den stærkeste kontraktspart. Ofte læser køberen ikke engang de trykte kontraktsvilkår igennem; det forekommer ham omsonst, når han alligevel ikke kan gøre sig håb om at få indføjet ændringer i dem. Dertil kommer, at de ofte er lange og vanskelige at forstå. Dette indebærer, at køberne ikke sjældent kommer ud for ubehagelige overraskelser, når aftalens opfyldelse ikke forløber normalt.

Domstolene har i en vis udstrækning beskyttet køberne mod ensidigt fastsatte leveringsbetingelser. For det første fortolkes uklare kontraktsbestemmelser til skade for koncipisten. Dernæst kan domstolene tilsidesætte ubillige bestemmelser i leveringsvilkårene, hvis de er overraskende og byrdefulde for kunden, forudsat at kunden ikke kendte de pågældende bestemmelser ved aftalens indgåelse, og de heller ikke er blevet således fremhævet, at han burde have sat sig ind i dem. I Sverige er forholdet endda det, at generalklausulen i gældsbrevsloven, hvorefter domstolene sættes i stand til at tilsidesætte en bestemmelse i et gældsbrev helt eller delvis, hvis det ville være utilbørligt eller stride klart mod god forretningsskik at anvende den, analogt har fundet anvendelse på kontrakter i almindelighed. Herved opnås, at domstolene kan rykke køberen til undsætning, selv hvor han med åbne øjne har underskrevet en utvetydig kontraktsbestemmelse. Denne mulighed er hidtil blevet afvist af de juridiske forfattere i Danmark, men det kan næppe udelukkes, at domstolene her i landet vil følge de svenske domstoles eksempel, hvis der forelægges dem et klart tilfælde af misbrug, hvor det ikke

er muligt at beskytte køberen på anden måde. Det skal også nævnes, at man efter almindelig opfattelse ikke kan fraskrive sig erstatningsansvaret for grov uagtsomhed.

Det vil fremgå af det nu anførte, at også sælgeren udsætter sig for ulemper ved at bruge ensidigt fastsatte leveringsbetingelser. Han risikerer, at kontraktsbestemmelserne fortolkes imod ham eller til sidesættes som ugyldige, og dette gør hans retlige position usikker. Hertil kommer, at sælgeren skader sin goodwill ved at bruge leveringsbetingelser, der ikke i rimeligt omfang tager hensyn til køberens interesser.

Endelig medfører anvendelsen af ensidigt fastsatte leveringsbetingelser særlige ulemper, såfremt kontraktsparterne har hver sine faste leveringsbetingelser. Hvis parterne ikke er opmærksomme på problemet, vil der da opstå tvivl om, hvilke leveringsbetingelser der skal anses for gældende, og er de omvendt opmærksomme på forholdet, vil der kræves lang tid til forhandlinger om, hvis vilkår der skal gælde i kontraktsforholdet.

Det skulle imidlertid være muligt at bideholde de ubestridelige fordele, der er ved anvendelse af standardvilkår, og samtidig undgå alle de ulemper for både køber og sælger, som er omtalt ovenfor. Dette skulle kunne opnås gennem anvendelse af *almindelige leveringsbetingelser, der er blevet til efter forudgående detaljerede forhandlinger mellem repræsentanter for både køber- og sælgerinteresser*, specielt hvis forhandlingerne er ført *inden for et anerkendt internationalt forum*. Særlig skal det understreges, at sælgerne ikke behøver at frygte, at domstolene vil underkende standardvilkår, hvis indhold køberne således har haft en reel indflydelse på.

Den samling af standardvilkår, som hermed udgives, skulle efter sin tilblivelseshistorie repræsentere det bedste, man hidtil har nået inden for jern- og metalindustrien. Arbejdet med at udarbejde rimelige internationale standardvilkår inden for denne branche begyndte

i 1950 i ECE (the Economic Commission for Europe of the United Nations), hvor der under the Industry and Materials Committee blev nedsat en arbejdsgruppe med den foreløbige opgave at standardisere salgsbetingelserne for maskiner og andet mekanisk og elektrisk udstyr. Medlemmerne af arbejdsgruppen, hvis navn blev *Ad Hoc Working Party on Contract Practices in Engineering*, blev udpeget af de deltagende landes regeringer. Desuden deltog eksperter fra Det internationale Handelskammer og fra Rom-Instituttet (the International Institute for the Unification of Private Law). Det blev fra første færd praksis, at regeringerne udnævnte deres repræsentanter blandt folk, der som sælgere, producenter eller købere fra deres daglige arbejde i den pågældende branche vidste, hvor skoen trykkede. Denne praksis har man fulgt lige siden med den virkning, at de udarbejdede kontrakter er befriet for overleverede, juridiske konstruktioner, formuleret i et sprog, der er tilgængeligt for handelsfolk, og tilpasset de praktiske behov i den pågældende branche.

Det første resultat af arbejdsgruppens arbejde blev *General Conditions for the Supply of Plant and Machinery for Export No. 188*, der blev offentliggjort i 1953. Disse standardvilkår – såvel som de senere tilkomne – er ikke godkendt af ECE, men er resultatet af et ekspertarbejde, der er udført under ECE's auspicier. Under forhandlingerne var som nævnt både eksportører og importører repræsenteret, og det lykkedes at forbedre importørernes stilling så meget, at der er fundet et rimeligt kompromis mellem sælger- og købersidens interesser.

I forhandlingerne om General Conditions No. 188 deltog hovedsagelig repræsentanter for de vesteuropæiske lande, særlig Frankrig, Storbritannien og Vesttyskland. Af de nordiske lande var kun Sverige repræsenteret og af de østeuropæiske kun Jugoslavien, der til gengæld var initiativtager, hvilket skyldtes stærkt sælgerprægede

standardsalgsvilkår i forbindelse med hjælpeprogrammet i slutningen af 40'erne. Efter offentliggørelsen af General Conditions No. 188 kom bl.a. Danmark og resten af de østeuropæiske lande med Sovjetunionen i spidsen med i det fortsatte arbejde. Allerede i 1955 lykkedes det at blive enige om et nyt dokument: *General Conditions for the Supply of Plant and Machinery for Export No. 574*, der efter parternes valg kan bruges som alternativ til General Conditions No. 188, idet de dækker samme område, nemlig eksport af maskiner og andet mekanisk og elektrisk udstyr uden monteringsforpligtelse for sælgeren. Skønt nr. 188 fortrinsvis er beregnet til eksport til Vesteuropa og nr. 574 fortrinsvis til øst-vesthandelen, er der dog kun ganske ringe forskel på deres indhold. Væsentlig forskel forekommer kun i force majeure- og voldgiftsklausulerne. Mens det i nr. 188 kun er den engelske og den franske tekst, som er autentiske, er i nr. 574 og alle de senere ECE-dokumenter også den russiske tekst autentisk.

Arbejdet i Ad Hoc Working Party on Contract Practices in Engineering er siden fortsat med udarbejdelsen af yderligere standardvilkår for maskiner og andet mekanisk og elektrisk udstyr. I 1957 kom *General Conditions for the Supply and Erection of Plant and Machinery for Import and Export No. 188 A and No. 574 A*, der er alternative dokumenter for aftaler om salg og montering. I 1963 udsendtes *General Conditions for the Erection of Plant and Machinery Abroad No. 188 D and No. 574 D*, der kan anvendes alternativt ved monteringsaftaler, og endelig kom i 1964 *Additional Clauses for Supervision of Erection of Plant and Machinery Abroad No. 188 B and No. 574 B*, der kan anvendes alternativt, når producenten i forbindelse med salget påtager sig at føre tilsyn med monteringen. Disse dokumenter anvendes derfor i forbindelse med dokumenterne nr. 188 og 574.

I 1961 lykkedes det endvidere den samme arbejdsgruppe at ud-

arbejde *General Conditions of Sale for the Import and Export of Durable Consumer Goods and of Other Engineering Stock Articles* No. 730, der kan anvendes ved eksport og import af varige forbrugsgoder og andre industrielle lagervarer. Dokumentet, der på grund af salgsgenstandens karakter af standardvare og færdigvare i visse henseender afviger en del fra nr. 188 og nr. 574, kan bruges i handelen med både Vest- og Østeuropa.

I 1957 udgav Sammenslutningen af Arbejdsgivere indenfor Jern- og Metalindustrien i Danmark sammen med sine søsterorganisationer i Finland, Norge og Sverige *Almindelige Leveringsbetingelser for leverancer af maskiner og andet mekanisk og elektrisk udstyr mellem Danmark, Finland, Norge og Sverige samtid inden for disse lande*. Der er i det væsentligste tale om en oversættelse af ECE-standardvilkårene nr. 188, dog tilpasset de særlige forhold i de nordiske lande. Det samme gælder de i 1961 udgivne *Almindelige Betingelser for levering og montering af maskiner og andet mekanisk og elektrisk udstyr mellem Danmark, Finland, Norge og Sverige samtid inden for disse lande*, der i hovedsagen er en oversættelse af ECE-standardvilkårene nr. 188 A. Det er imidlertid vigtigt at bemærke, at »Almindelige Leveringsbetingelser« og »Almindelige Betingelser for Levering og Montering« ikke blot er tænkt anvendt i udenrigshandelen mellem de nordiske lande, men også i *indenrigshandelen*. Herved adskiller de sig fra ECE-dokumenterne.

Det er ikke meningen i denne udgave at give selvstændige *kommentarer* til de forskellige standardvilkår, men man har i så henseende alene optrykt de officielle kommentarer, der af *Ad Hoc Working Party on Contract Practices in Engineering* blev udarbejdet til nr. 188, 574 og 730 i forbindelse med disse dokumenters tilblvelse. Med henblik på mere fyldige kommentarer kan henvises til *Gunnar von Sydow og Torsten Andersson, Allmänna Leveransbestämmelser, Stockholm 1955 (nyt optryk 1962)*. Denne bog inde-

holder en gennemgang af og kommentarer til Dokument nr. 188 af de to svenske eksperter, der deltog i arbejdsgruppens forhandlinger 1951-53, men det vil fremgå af den ovenstående fremstilling, at kommentaren også i større eller mindre grad kan kaste lys over de øvrige standardvilkår, der er optaget i nærværende samling.

Derimod skal der her gives enkelte yderligere vink med hensyn til standardvilkårenes anvendelse. For det første må det fremhæves, at de alle er frivillige; ingen er bundet af organisationsvedtagelser eller andet til at anvende dem. Der kræves derfor en eller anden form for *vedtagelse* mellem kontraktsparterne, for at nogle af disse standardvilkår skal blive en del af deres aftale. Den producent, der vil være sikker på, at et givet sæt standardvilkår indgår i hans aftaler, bør derfor i det mindste tydeligt henvise til dem i sine tilbud og ordrebekræftelser og vedlægge dem ved fremsendelsen af disse. Disse forholdsregler kan dog undlades, hvis det drejer sig om et løbende forretningsmellemværende, som hidtil har været underkastet vedkommende standardvilkår. De særlige vedtagelsesregler i indledningsklausulerne til Dokument nr. 188 D, 574 D og 730 bør bemærkes.

Opmærksomheden skal dernæst henledes på, at alle ECE-standardvilkår indeholder et *appendix*. I alle 188- og 574-dokumenterne er det i større eller mindre omfang nødvendigt at udfylde dette appendix, idet kontrakten for flere eller færre punkters vedkommende er ladt helt åben. I nr. 730 er det kun absolut nødvendigt at udfylde punkt G. De andre punkter er »idiotsikrede«, idet kontrakten indeholder regler at falde tilbage på, dersom parterne skulle undlade at udfylde appendix. De nordiske standardvilkår har helt undgået et appendix, og de løsninger på de pågældende spørgsmål, som er optaget i »Almindelige Leveringsbetingelser«, er særskilt optaget i et addendum til ECE-standardvilkårene nr. 188, der således kan anvendes som supplement hertil af danske producenter ved handel med firmaer uden for Norden.

ECE-standardvilkårene nr. 188 og 574, 188 A og 574 A og 188 D og 574 D indeholder en *tillægsklausul om prisjustering*. Den betragtes netop som et tillæg til og ikke som en del af vedkommende standardvilkår, og den kommer derfor kun til anvendelse, såfremt det er særligt aftalt mellem kontraktsparterne.

De standardvilkår, der er optaget eller omtalt i nærværende samling, er alle anbefalet af industriorganisationerne i de deltagende lande. ECE-standardvilkårene er også anbefalet af Det internationale Handelskammer. Ved undersøgelser foretaget af ECE's sekretariat har det vist sig, at General Conditions Nos. 188 og 574 anvendes i meget vidt omfang ved salg af maskiner og andet mekanisk og elektrisk udstyr ikke blot inden for Europa, men også i europæiske landes handel med andre verdensdele. Det samme synes at være tilfældet med de øvrige ECE-standardvilkår.

Stig Jørgensen.

Jens Sanvig.

BEMÆRKNINGER TIL
samtlige ECE-betingelser

Samtlige leveringsbetingelser m.v., der bærer kodenumrene 188, 574 og 730 (alene eller med tilføjet bogstav), er udgivet under ECE's auspicier.

I disse leveringsbetingelser er de engelske, franske og russiske tekster lige autentiske, bortset fra Dokument nr. 188, hvor kun de engelske og franske tekster er autentiske.

Selv om parterne i en konkret eller generel kontrakt kan vedtage disse leveringsbetingelser med sådanne ændringer, de måtte finde hensigtsmæssige for deres formål, bør det erindres, at leveringsbetingelserne er udfærdiget med den internationale handels kutymmer og øvrige praksis for øje. Det vil derfor ikke være anbefalelsesværdigt at fravige principperne i leveringsbetingelserne.

Til Dokumenterne nr. 188, 188 A, 188 D, 574, 574 A og 574 D findes en tillægsklausul vedrørende prisjustering i tilfælde af ændringer i materialepriser og/eller lønninger. Denne tillægsklausul er enslydende for de pågældende dokumenter og er derfor kun gengivet efter Dokument nr. 188. Den kræver som allerede i indledningen anført særlig vedtagelse.

BEMÆRKNINGER TIL

alle 188-betingelser

De leveringsbetingelser, der bærer kodenummeret 188 (alene eller med tilføjet bogstav), er anvendelige inden for den internationale handel med alle lande med undtagelse af de østeuropæiske lande (bortset fra Jugoslavien) og Den kinesiske Folkerepublik, for hvilke leveringsbetingelserne med kodenummeret 574 (alene eller med tilføjet bogstav) er bedre egnede og alene akceptable.

BEMÆRKNINGER TIL

**General Conditions for the Supply
of Plant and Machinery for Export
Document No. 188**

Disse leveringsbetingelser vedrører leverancer af maskiner og materiel. Dette er dog ikke til hinder for, at leveringsbetingelserne anvendes på andre produkter, for hvilke parterne finder dem egne, da det er parternes vedtagelse, der er afgørende. Det bør dog først undersøges, om andre leveringsbetingelser ikke er bedre egne, jfr. f.eks. det senere gengivne dokument 730.

Dokument nr. 188 findes – ud over på de officielle sprog: engelsk og fransk – oversat til dansk, hollandsk, italiensk, jugoslavisk, portugisisk, spansk og tysk.

Den foreliggende tekst er udfærdiget i 1953.

188

GENERAL CONDITIONS

FOR THE SUPPLY OF PLANT AND MACHINERY FOR EXPORT *

Prepared under the auspices of the

UNITED NATIONS ECONOMIC COMMISSION FOR EUROPE

Geneva, March 1953

1. PREAMBLE

1.1. These General Conditions shall apply, save as varied by express agreement accepted in writing by both parties.

2. FORMATION OF CONTRACT

2.1. The Contract shall be deemed to have been entered into when, upon receipt of an order, the Vendor has sent an acceptance in writing within the time-limit (if any) fixed by the Purchaser.

2.2. If the Vendor, in drawing up his tender, has fixed a time-limit for acceptance, the Contract shall be deemed to have been entered into when the Purchaser has sent an acceptance in writing before the expiration of such time-limit, provided that there shall be no binding Contract unless the acceptance reaches the Vendor not later than one week after the expiration of such time-limit.

3. DRAWINGS AND DESCRIPTIVE DOCUMENTS

3.1. The weights, dimensions, capacities, prices, performance ratings and other data included in catalogues, prospectuses, circulars, advertisements, illustrated matter and price lists constitute an approximate guide. These data shall not be binding save to the extent that they are by reference expressly included in the Contract.

3.2. Any drawings or technical documents intended for use in the construction of the Plant or of part thereof and submitted to the Purchaser prior or subsequent to the formation of the Contract remain the exclusive property of the Vendor. They may not, without the Vendor's consent, be utilised by the Purchaser or copied, reproduced, transmitted or communicated to a third party. Provided, however, that the said plans and documents shall be the property of the Purchaser :

- (a) if it is expressly so agreed, or
- (b) if they are referable to a separate preliminary Development Contract on which no actual construction was to be performed and in which the property of the Vendor in the said plans and documents was not reserved.

3.3. Any drawings or technical documents intended for use in the construction of the Plant or of part thereof and submitted to the Vendor by the Purchaser prior or subsequent to the formation of the Contract remain in the exclusive property of the Purchaser. They may not, without his consent, be utilised by the Vendor or copied, reproduced, transmitted or communicated to a third party.

3.4. The Vendor shall, if required by the Purchaser, furnish free of charge to the Purchaser at the commencement of the Guarantee Period, as defined in Clause 9, information and drawings other than manufacturing drawings of the Plant in sufficient detail to enable the Purchaser to carry out the erection, commissioning, operation and maintenance (including running repairs) of all parts of the Plant. Such information and drawings shall be the property of the Purchaser and the restrictions on their use set out in paragraph 2 hereof shall not apply thereto. Provided that if the Vendor so stipulates, they shall remain confidential.

4. PACKING

4.1. Unless otherwise specified :

- (a) prices shown in price-lists and catalogues shall be deemed to apply to unpacked Plant;
- (b) prices quoted in tenders and in the contract shall include the cost of packing or protection required under normal transport conditions to prevent damage to or deterioration of the Plant before it reaches its destination as stated in the Contract.

* The English and French texts are equally authentic. The observations of the experts who drew up these General Conditions, together with a description of the procedure followed, are embodied in the "COMMENTARY ON THE GENERAL CONDITIONS FOR THE SUPPLY OF PLANT AND MACHINERY FOR EXPORT", published by the Economic Commission for Europe. It can be obtained direct from the Sales Section of the European Office of the United Nations, Geneva, Switzerland, or through United Nations Sales Agents.

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5. INSPECTION AND TESTS

Inspection

5.1. If expressly agreed in the Contract, the Purchaser shall be entitled to have the quality of the materials used and the parts of the Plant, both during manufacture and when completed, inspected and checked by his authorised representatives. Such inspection and checking shall be carried out at the place of manufacture during normal working hours after agreement with the Vendor as to date and time.

5.2. If as a result of such inspection and checking the Purchaser shall be of the opinion that any materials or parts are defective or not in accordance with the Contract, he shall state in writing his objections and the reasons therefor.

Tests

5.3. Acceptance tests will be carried out and, unless otherwise agreed, will be made at the Vendor's works and during normal working hours. If the technical requirements of the tests are not specified in the Contract, the tests will be carried out in accordance with the general practice obtaining in the appropriate branch of the industry in the country where the Plant is manufactured.

5.4. The Vendor shall give to the Purchaser sufficient notice of the tests to permit the Purchaser's representatives to attend. If the Purchaser is not represented at the tests, the test report shall be communicated by the Vendor to the Purchaser and shall be accepted as accurate by the Purchaser.

5.5. If on any test (other than a test on site, where tests on site are provided for in the Contract) the Plant shall be found to be defective or not in accordance with the Contract, the Vendor shall with all speed make good the defect or ensure that the Plant complies with the Contract. Thereafter, if the Purchaser so requires, the test shall be repeated.

5.6. Unless otherwise agreed, the Vendor shall bear all the expenses of tests carried out in his works, except the personal expenses of the Purchaser's representatives.

5.7. If the Contract provides for tests on site, the terms and conditions governing such tests shall be such as may be specially agreed between the parties.

6. PASSING OF RISK

6.1. Save as provided in paragraph 7.6, the time at which the risk shall pass shall be fixed in accordance with the International Rules for the Interpretation of Trade Terms (Incoterms) of the International Chamber of Commerce in force at the date of the formation of the Contract.

Where no indication is given in the Contract of the form of sale, the Plant shall be deemed to be sold *ex works*.

6.2. In the case of a sale *ex works*, the Vendor must give notice in writing to the Purchaser of the date on which the Purchaser must take delivery of the Plant. The notice of the Vendor must be given in sufficient time to allow the Purchaser to take such measures as are normally necessary for the purpose of taking delivery.

7. DELIVERY

7.1. Unless otherwise agreed, the delivery period shall run from the latest of the following dates:

- (a) the date of the formation of the Contract as defined in Clause 2;
- (b) the date on which the Vendor receives notice of the issue of a valid import licence where such is necessary for the execution of the Contract;
- (c) the date of the receipt by the Vendor of such payment in advance of manufacture as is stipulated in the Contract.

7.2. Should delay in delivery be caused by any of the circumstances mentioned in Clause 10 or by an act or omission of the Purchaser and whether such cause occur before or after the time or extended time for delivery, there shall be granted subject to the provisions of paragraph 5 hereof such extension of the delivery period as is reasonable having regard to all the circumstances of the case.

7.3. If a fixed time for delivery is provided for in the Contract and the Vendor fails to deliver within such time or any extension thereof granted under paragraph 2 hereof, the Purchaser shall be entitled, on giving to the Vendor within a reasonable time notice in writing, to claim a reduction of the price payable under the Contract, unless it can be reasonably concluded from the circumstances of the particular case that the Purchaser has suffered no loss. Such reduction shall equal the percentage named in Paragraph A of the Appendix of that part of the price payable under the Contract which is properly attributable to such portion of the Plant as cannot in consequence of the said failure be put to the use intended for each complete week of delay commencing on the due date of delivery but shall not exceed the maximum percentage named in paragraph B of the Appendix. Such reduction shall be allowed when a payment becomes due on or after delivery. Save as provided in paragraph 5 hereof, such reduction of price shall be to the exclusion of any other remedy of the Purchaser in respect of the Vendor's failure to deliver as aforesaid.

7.4. If the time for delivery mentioned in the Contract is an estimate only, either party may after the expiration of two thirds of such estimated time require the other party in writing to agree a fixed time.

Where no time for delivery is mentioned in the Contract, this course shall be open to either party after the expiration of six months from the formation of the Contract.

If in either case the parties fail to agree, either party may have recourse to arbitration, in accordance with the provisions of Clause 13, to determine a reasonable time for delivery and the time so determined shall be deemed to be the fixed time for delivery provided for in the Contract and paragraph 3 hereof shall apply accordingly.

7.5. If any portion of the Plant in respect of which the Purchaser has become entitled to the maximum reduction provided for by paragraph 3 hereof, or in respect of which he would have been so entitled had

he given the notice referred to therein, remains undelivered, the Purchaser may by notice in writing to the Vendor require him to deliver and by such last mentioned notice fix a final time for delivery which shall be reasonable taking into account such delay as has already occurred. If for any reason whatever the Vendor fails within such time to do everything that he must do to effect delivery, the Purchaser shall be entitled by notice in writing to the Vendor, and without requiring the consent of any Court, to terminate the Contract in respect of such portion of the Plant and thereupon to recover from the Vendor any loss suffered by the Purchaser by reason of the failure of the Vendor as aforesaid up to an amount not exceeding the sum named in paragraph C of the Appendix or, if no sum be named, that part of the price payable under the Contract which is properly attributable to such portion of the Plant as could not in consequence of the Vendor's failure be put to the use intended.

7.6. If the Purchaser fails to accept delivery on due date, he shall nevertheless make any payment conditional on delivery as if the Plant had been delivered. The Vendor shall arrange for the storage of the Plant at the risk and cost of the Purchaser. If required by the Purchaser, the Vendor shall insure the Plant at the cost of the Purchaser. Provided that if the delay in accepting delivery is due to one of the circumstances mentioned in Clause 10 and the Vendor is in a position to store it in his premises without prejudice to his business, the cost of storing the Plant shall not be borne by the Purchaser.

7.7. Unless the failure of the Purchaser is due to any of the circumstances mentioned in Clause 10, the Vendor may require the Purchaser by notice in writing to accept delivery within a reasonable time. If the Purchaser fails for any reason whatever to do so within such time, the Vendor shall be entitled by notice in writing to the Purchaser, and without requiring the consent of any Court, to terminate the Contract in respect of such portion of the Plant as is by reason of the failure of the Purchaser aforesaid not delivered and thereupon to recover from the Purchaser any loss suffered by reason of such failure up to an amount not exceeding the sum named in paragraph D of the Appendix or, if no sum be named, that part of the price payable under the Contract which is properly attributable to such portion of the Plant.

8. PAYMENT

8.1. Payment shall be made in the manner and at the time or times agreed by the parties.

8.2. Any advance payments made by the Purchaser are payments on account and do not constitute a deposit, the abandonment of which would entitle either party to terminate the Contract.

8.3. If delivery has been made before payment of the whole sum payable under the Contract, Plant delivered shall, to the extent permitted by the law of the country where the Plant is situated after delivery, remain the property of the Vendor until such payment has been effected. If such law does not permit the Vendor to retain the property in the Plant, the Vendor shall be entitled to the benefit of such other rights in respect thereof as such law permits him to retain. The Purchaser shall give the Vendor every assistance in taking any measures required to protect the Vendor's right of property or such other rights as aforesaid.

8.4. A payment conditional on the fulfilment of an obligation by the Vendor shall not be due until such obligation has been fulfilled, unless the failure of the Vendor is due to an act or omission of the Purchaser.

8.5. If the Purchaser delays in making any payment, the Vendor may postpone the fulfilment of his own obligations until such payment is made, unless the failure of the Purchaser is due to an act or omission of the Vendor.

8.6. If delay by the Purchaser in making any payment is due to one of the circumstances mentioned in Clause 10, the Vendor shall not be entitled to any interest on the sum due.

8.7. Save as aforesaid, if the Purchaser delays in making any payment, the Vendor shall on giving to the Purchaser within a reasonable time notice in writing be entitled to the payment of interest on the sum due at the rate fixed in paragraph F of the Appendix from the date on which such sum became due. If at the end of the period fixed in paragraph F of the Appendix, the Purchaser shall still have failed to pay the sum due, the Vendor shall be entitled by notice in writing to the Purchaser, and without requiring the consent of any Court, to terminate the Contract and thereupon to recover from the Purchaser the amount of his loss up to the sum mentioned in paragraph 10 of the Appendix.

9. GUARANTEE

9.1. Subject as hereinafter set out, the Vendor undertakes to remedy any defect resulting from faulty design, materials or workmanship.

9.2. This liability is limited to defects which appear during the period (hereinafter called "the Guarantee Period") specified in paragraph G of the Appendix.

9.3. In fixing this period due account has been taken of the time normally required for transport as contemplated in the Contract.

9.4. In respect of such parts (whether of the Vendor's own manufacture or not) of the Plant as are expressly mentioned in the Contract, the Guarantee Period shall be such other period (if any) as is specified in respect of each of such parts.

9.5. The Guarantee Period shall start from the date on which the Purchaser receives notification in writing from the Vendor that the Plant is ready for despatch from the works. If despatch is delayed, the Guarantee Period shall be extended by a period equivalent to the amount of the delay so as to permit the Purchaser the full benefit of the time given for trying out the Plant. Provided however that if such delay is due to a cause beyond the control of the Vendor such extension shall not exceed the number of months stated in paragraph 11 of the Appendix.

9.6. The daily use of the Plant and the amount by which the Guarantee Period shall be reduced if the Plant is used more intensively are stated in paragraph I of the Appendix.

9.7. A fresh Guarantee Period equal to that stated in paragraph G of the Appendix shall apply, under the same terms and conditions as those applicable to the original Plant, to parts supplied in replacement of defective parts or to parts renewed in pursuance of this Clause. This provision shall not apply to the remaining parts of the Plant, the Guarantee Period of which shall be extended only by a period equal to the period during which the Plant is out of action as a result of a defect covered by this Clause.

9.8. In order to be able to avail himself of his rights under this Clause the Purchaser shall notify the Vendor in writing without delay of any defects that have appeared and shall give him every opportunity of inspecting and remedying them.

9.9. On receipt of such notification the Vendor shall remedy the defect forthwith and, save as mentioned in Paragraph 10 hereof, at his own expense. Save where the nature of the defect is such that it is appropriate to effect repairs on site, the Purchaser shall return to the Vendor any part in which a defect covered by this Clause has appeared, for repair or replacement by the Vendor, and in such case the delivery to the Purchaser of such part properly repaired or a part in replacement thereof shall be deemed to be a fulfilment by the Vendor of his obligations under this paragraph in respect of such defective part.

9.10. Unless otherwise agreed, the Purchaser shall bear the cost and risk of transport of defective parts and of repaired parts or parts supplied in replacement of such defective parts between the place where the Plant is situated and one of the following points:

- (i) the Vendor's works if the Contract is ~~ex works~~ or F.O.R.;
- (ii) the port from which the Vendor dispatched the Plant if the Contract is F.O.B., F.A.S., C.I.F. or C. & F.;
- (iii) in all other cases the frontier of the country from which the Vendor despatched the Plant.

9.11. Where, in pursuance of paragraph 9 hereof, repairs are required to be effected on site, the conditions covering the attendance of the Vendor's representatives on site shall be such as may be specially agreed between the parties.

9.12. Defective parts replaced in accordance with this Clause shall be placed at the disposal of the Vendor.

9.13. If the Vendor refuses to fulfil his obligations under this Clause or fails to proceed with due diligence after being required so to do, the Purchaser may proceed to do the necessary work at the Vendor's risk and expense, provided that he does so in a reasonable manner.

9.14. The Vendor's liability does not apply to defects arising out of materials provided, or out of a design stipulated, by the Purchaser.

9.15. The Vendor's liability shall apply only to defects that appear under the conditions of operation provided for by the Contract and under proper use. It does not cover defects due to causes arising after the risk in the Plant has passed in accordance with Clause 6. In particular it does not cover defects arising from the Purchaser's faulty maintenance or erection, or from alterations carried out without the Vendor's consent in writing, or from repairs carried out improperly by the Purchaser, nor does it cover normal deterioration.

9.16 Save as in this Clause expressed, the Vendor shall be under no liability in respect of defects after the risk in the Plant has passed in accordance with Clause 6, even if such defects are due to causes existing before the risk so passed. It is expressly agreed that the Purchaser shall have no claim in respect of personal injury or of damage to property not the subject matter of the Contract or of loss of profit unless it is shown from the circumstances of the case that the Vendor has been guilty of gross misconduct.

9.17. Gross misconduct does not comprise any and every lack of proper care or skill, but means an act or omission on the part of the Vendor implying either a failure to pay due regard to serious consequences which a conscientious Contractor would normally foresee as likely to ensue, or a deliberate disregard of any consequences of such act or omission.

10. RELIEFS

10.1. The following shall be considered as cases of relief if they intervene after the formation of the Contract and impede its performance: industrial disputes and any other circumstances (e.g. fire, mobilization, requisition, embargo, currency restrictions, insurrection, shortage of transport, general shortage of materials and restrictions in the use of power) when such other circumstances are beyond the control of the parties.

10.2. The party wishing to claim relief by reason of any of the said circumstances shall notify the other party in writing without delay on the intervention and on the cessation thereof.

10.3. The effects of the said circumstances, so far as they affect the timely performance of their obligations by the parties, are defined in Clauses 7 and 8. Save as provided in Paragraphs 7.5., 7.7. and 8.7., if, by reason of any of the said circumstances, the performance of the Contract within a reasonable time becomes impossible, either party shall be entitled to terminate the Contract by notice in writing to the other party without requiring the consent of any Court.

10.4. If the Contract is terminated in accordance with paragraph 3 hereof, the division of the expenses incurred in respect of the Contract shall be determined by agreement between the parties.

10.5. In default of agreement it shall be determined by the arbitrator which party has been prevented from performing his obligations and that party shall bear the whole of the said expenses. Where the Purchaser is required to bear the whole of the expenses and has before termination of the Contract paid to the Vendor more than the amount of the Vendor's expenses, the Purchaser shall be entitled to recover the excess.

If the arbitrator determines that both parties have been prevented from performing their obligations, he shall apportion the said expenses between the parties in such manner as to him seems fair and reasonable, having regard to all the circumstances of the case.

10.6. For the purposes of this Clause, ~~expenses~~ means actual out-of-pocket expenses reasonably incurred, after both parties shall have mitigated their losses as far as possible. Provided that as respects Plant delivered to the Purchaser the Vendor's expenses shall be deemed to be that part of the price payable under the Contract which is properly attributable thereto.

11. LIMITATION OF DAMAGES

- 11.1.** Where either party is liable in damages to the other, these shall not exceed the damage which the party in default could reasonably have foreseen at the time of the formation of the Contract.
- 11.2.** The party who sets up a breach of the Contract shall be under a duty to take all necessary measures to mitigate the loss which has occurred provided that he can do so without unreasonable inconvenience or cost. Should he fail to do so, the party guilty of the breach may claim a reduction in the damages.

12. RIGHTS AT TERMINATION

- 12.1.** Termination of the Contract, from whatever cause arising, shall be without prejudice to the rights of the parties accrued under the Contract up to the time of termination.

13. ARBITRATION AND LAW APPLICABLE

- 13.1.** Any dispute arising out of the Contract shall be finally settled, in accordance with the Rules of Conciliation and Arbitration of the International Chamber of Commerce, by one or more arbitrators designated in conformity with those Rules.
- 13.2.** Unless otherwise agreed, the Contract shall be governed by the law of the Vendor's country.
- 13.3.** If the parties expressly so agree, but not otherwise, the arbitrators shall, in giving their ruling, act as ~~amicable~~ ~~compositors~~.

APPENDIX

(To be completed by parties to the Contract)

CLAUSE

	CLAUSE
A.	Percentage to be deducted for each week's delay
	7.3 per cent
B.	Maximum percentage which the deductions above may not exceed
	7.3 per cent
C.	Maximum amount recoverable for non-delivery
	7.5(in the agreed currency)
D.	Maximum amount recoverable on termination by Vendor for failure to take delivery or make payment
	7.7(in the agreed currency) and 8.7
E.	Rate of interest on overdue payments
	8.7 per cent per annum
F.	Period of delay in payment authorizing termination by Vendor
	8.7 months
G.	Guarantee Period for original Plant and parts replaced or renewed
	9.2 and 9.7 months
H.	Maximum extension of Guarantee Period
	9.5 months
I.	(1) Daily use of Plant
	9.6 hours/day
	(2) Reduction of Guarantee Period for more intensive use
	9.6

SUPPLEMENTARY CLAUSE

PRICE REVISION

Should any change occur in the cost of the relevant materials and/or wages during the period of execution of the contract, the agreed prices shall be subject to revision on the basis of the following formula:

$$P_1 = \frac{P_0}{100} (a + b \frac{M_1}{M_0} + c \frac{S_1}{S_0})$$

where :

P₁ = final price for invoicing

P₀ = initial price of goods, as stipulated in the contract and as prevailing at the date of
.....

M₁ = mean (2) of the prices (or price indices) for (type of materials concerned)
..... over the period (3)

M₀ = prices (or price indices) for the same materials at the date stipulated above for P₀.

S₁ = mean (2) of the wages (including social charges) or relevant indices (4) in respect
of
and social charges) over the period (3)

S₀ = wages (including social charges) or relevant indices (4) in respect of the same categories
at the date stipulated above for P₀.

a, **b**, **c**, represent the contractually agreed percentage of the individual elements of the
initial price, which add up to 100.

$$(a + b + c = 100)$$

a = fixed proportion

b = percentage proportion of materials

c = percentage proportion of wages
(including social charges)

Where necessary, b (and if need be, c) can be broken down into as many partial percentages
(b₁, b₂, b₃) as there are variables taken into account (b₁ + b₂ + b_n = b).
.. .. + b_n = b).

DOCUMENTATION For the purpose of determining the values of materials and wages, the parties agree to use the following documents as sources of reference :

1. Materials : prices (or price indices) published by under the headings (type of materials)
2. Wages : wages (including related social charges) (or relevant indices) published by under the headings (5)

Rules for applying the Clause. In the case of partial deliveries which are invoiced separately, the final price shall be calculated separately for each such delivery.

Period of application of the Clause. The revision clause shall cover the delivery period fixed in the contract, together with any extension thereof granted under Clause 7.2, but shall in no case apply after the date on which manufacture is completed.

Tolerances. Prices shall not be revised unless the application of the formula produces a plus or minus variation of (6)

Saving Clause. If the parties wish the revision formula to be adjusted or replaced by a more accurate method of calculation when the plus or minus variation exceeds a certain percentage, they shall expressly so agree.

-
- (1) It is recommended that the parties should, as far as possible, adopt as the initial price the price prevailing at the date of the contract and not at an earlier date. This is normally the contract price less cost of packing, trans. port and insurance.
 - (2) Arithmetical or weighted.
 - (3) Specify the datum period, which may be defined as part or the whole of the delivery period.
 - (4) If legal social charges are covered by the index, they need not be taken into account again.
 - (5) Indices relating specifically to the engineering and electrical industries should be used as far as possible.
 - (6) State the percentage plus or minus variation which must be exceeded before the formula is applied.

BEMÆRKNINGER TIL

**Commentary on the General Conditions for the
Supply of Plant and Machinery for Export
(No. 188)**

Disse officielle kommentarer til Dokument nr. 188 er udarbejdet af det samme »Ad Hoc Working Party on Contract Practices in Engineering«, der skabte selve dokumentet.

Kommentarerne indeholder et indlednings afsnit om arbejdsgruppens mødesamlinger, hvilke lande og internationale organisationer, der deltog i arbejdet, deltagernes eventuelle erhvervsmæssige tilknytning, leveringsbetingelsernes formål og deres forhold til handelskutymper og -praksis.

I særlig tilknytning til de enkelte paragraffer findes endvidere oplysninger om særlige forbehold, enkelte regeringsrepræsentanter har taget, og særlige kompromisløsninger, man har fundet frem til for i videst muligt omfang at kunne dække nationale lovgivningers særegenheder.

ECE/IM/WP.5/9

**COMMENTARY ON THE GENERAL CONDITIONS
FOR THE SUPPLY OF PLANT AND MACHINERY
FOR EXPORT**

ECE/169
ECE/IM/WP.5/9



UNITED NATIONS. ECONOMIC COMMISSION FOR EUROPE
INDUSTRY DIVISION
Geneva, August 1953

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ECONOMIC COMMISSION FOR EUROPE
INDUSTRY AND MATERIALS COMMITTEE
Ad Hoc Working Party on Contract Practices
in Engineering

COMMENTARY ON THE GENERAL CONDITIONS FOR
THE SUPPLY OF PLANT AND MACHINERY FOR EXPORT

by the Experts of the Ad Hoc
Working Party on Contract Practices in
Engineering

Copies of this document may be obtained from the Sales Section,
European Office of the United Nations, Palais des Nations, Geneva,
Switzerland, at the price of \$0.10 (US), 9d (Stg.) or Swiss Francs 0.40.

PRELIMINARY REMARKS

1. The general conditions for the supply of plant and machinery for export were drafted by an Ad hoc Working Party of the Economic Commission for Europe. The Working Party held six sessions: 5 - 7 March 1951, 24 - 26 September 1951, 14 - 19 January 1952, 19 - 24 May 1952, 8 - 13 December 1952 and 2 - 4 February 1953. The sessions were attended by experts from Belgium, France, Germany (Western Zones), Italy, the Netherlands, Sweden, Switzerland, Turkey, the United Kingdom and Yugoslavia. Experts from the International Institute for the Unification of Private Law and the International Chamber of Commerce also attended. The experts from the various countries were all appointed by their governments. The national delegations included representatives either of groups of importers or of groups of exporters, or, in most instances, of both.

2. The general conditions for the supply of plant and machinery for export were drafted in order to unify trading practices in this important field of international trade. From the point of view of plant and machinery importers and exporters alike, such unification appeared essential, facilitating the conduct and conclusion of negotiations for both parties by giving them a single text to refer to, in place of the innumerable general conditions of sale now used by the industry, which differ greatly from country to country and even within a single country. By standardizing the conditions offered by the various national industries, uniform general conditions will also make it easier for importers to compare the various tenders they receive and to appraise them solely on their essential elements, that is to say quality, price and delivery dates. In addition, the fact that the general conditions were prepared under the auspices of the Economic Commission for Europe means that they are bound to carry considerable morale weight.
3. In drafting uniform general conditions of sale for plant and machinery, the Working Party had of course to make a choice among the various approaches so far adopted in the general conditions applied by the various national industries. This meant close study of a series of problems involved in the drafting of general conditions of sale, while continuing to hold a just balance between manufacturers' and importers' interests. The fact that general conditions which international

trre is free to adopt or reject are obviously only likely to be generally used if they really take into account the various interests involved, made the Working Party particularly anxious to find the most equitable solution. In addition, it endeavoured to keep as close as possible to current trading practice.

4. Since the general conditions are intended to be applied under different national systems of law, the Working Party consistently tried to formulate clauses compatible with all the legal systems represented.
5. The attempt to hold the scales even between the different interests involved and to take the various legal systems into account, sometimes led the experts to formulate provisions which match certain national practices, but appear unnecessary or peculiar from the point of view of other legal systems. In other cases, the compromise reached failed to satisfy all the experts present, and some of them made

reservations with regard to the decisions taken by the majority. These reservations, together with an explanation of the means adopted to take into account certain national laws or certain national trading practices, are the subject of the commentary which follows.

II. COMMENTARY

Paragraph 2.1

6. Since contracts of sale in engineering are frequently formed in the course of a lengthy exchange of correspondence, the experts endeavoured to determine which was the document clinching the contract, i.e. marking unequivocally the agreement of the parties on all points.

In addition, in such contracts arranged by correspondence, time required for the passage of communications makes it particularly important to determine whether the operative date shall be that of despatch or that of receipt. The experts decided in favour of the date of despatch, while stipulating a time-limit of one week for the message to reach its destination.

Paragraph 5.1

7. The Turkish and Yugoslav experts made a reservation concerning the decision taken by the Working Party regarding the purchaser's right of inspection both during manufacture and after completion of the plant. In their opinion the purchaser normally

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has the right of inspection and if in special circumstances the vendor feels unable to grant it to him, special provision to that effect should be included in the contract. Accordingly they expressed their preference for the following wording of paragraph 5.1: "Unless otherwise stated, the Purchaser shall be entitled to have inspected and checked by his authorized representatives ...". The only difference between these two positions relates to the situation arising when a contract contains no mention of inspection by the purchaser. All the experts agreed that in certain circumstances, which might frequently arise at the present time, the requirements of commercial secrecy or considerations of national defence might stand in the way of a foreign purchaser being allowed to inspect the plant he has ordered while it is being manufactured. Some of the experts felt that, as a general rule, the purchaser should have the right of inspection, and that the vendor should be

allowed to restrict or refuse the right in certain special contracts. Others expressed the view that, for reasons of commercial courtesy, it might be simpler not to sanction the principle of the purchaser's right of inspection in the general conditions, and to grant it in particular contracts, rather than to recognize it in general and consequently have to refuse it explicitly to certain purchasers. It was this point which caused the Working Party, with the exception of the Yugoslav and Turkish representatives, to favour the clause adopted in the general conditions.

Paragraph 5.2

8. The Swiss expert asked that the text should specify that in the absence of a stipulation in the contract, acceptance tests were not called for under paragraph 5.3 where it was current practice to dispense with them - for example, in the case of a large number of types of plant in common use. The Working Party took the view that the point was adequately covered by the present wording, which need not therefore be amended.
9. The Yugoslav expert proposed an amendment to cover the case of plant put out to sub-contract. The majority of the Working Party, however, took the view that the present wording provided for acceptance tests to be carried out at the sub-contractor's works whenever desirable, while retaining sufficient flexibility to meet all possible cases.

Paragraph 5.4

10. At the request of the Yugoslav expert, the Working Party confirmed that the provision in question should not prevent the Purchaser from challenging the accuracy of a test report prepared in his absence if it contained an error obvious on the face of the document.

Paragraph 7.3

11. This paragraph provides among other things that the price reduction which the Purchaser is entitled to claim should the Vendor fail to effect delivery in time, should be allowed when a payment becomes due on or after delivery. The term "allowed" was employed in order to bring out the point that if sums payable by the Purchaser on or after delivery were insufficient to cover the reduction, the Vendor was under the obligation to reimburse the Purchaser for the difference between the

two amounts. The words "a payment" were used in order to cover cases in which several payments are due on or after delivery. The Turkish expert asked whether the text did not fail to cover cases in which the whole price had been paid by the Purchaser before taking delivery. In reply, it was pointed out that a situation of that kind was exceptional in current commercial practice and that, should it ever arise, it would be the Parties' own responsibility to stipulate in the relevant contract the date by which the Purchaser ought to be paid the reduction to which he was entitled.

Paragraph 7.4

12. The Swiss expert felt unable to accept the Working Party's recommendation empowering the arbitrator to fix a time for delivery. He took the view that it was often impracticable for contracts to stipulate a time for delivery. Yet paragraph 7.4 would still allow one of the Parties, after the expiration of six months from the formation of the Contract, to force the other Party by recourse to arbitration to accept a time for delivery. The Working Party, however, did not share this view. It considered that it was not possible to tolerate contracts so drafted as to permit one of the Parties to delay its execution indefinitely by refusing to fix a time for delivery. It seemed, moreover, that the fears expressed were possibly a trifle exaggerated since the text provided that, where recourse was had to arbitration, the

arbitrator's role would be to determine a reasonable time for delivery. If what the Swiss expert had in mind should prove to be the case, namely that the reasons why the Parties on signing the Contract had not fixed a time for delivery were still valid when the case went to arbitration, it would be for the arbitrator to decide whether, having regard to all the relevant circumstances, it was fair or not to fix a time for delivery. He would if necessary postpone the fixing of a definite time for delivery if he considered when the matter was referred to him for arbitration, that stipulation of such a time ran counter to the original intentions of the parties or to the special circumstances of the case in question.

Paragraph 7.5

13. The Swiss expert favoured the deletion of the end of the paragraph following the words "in paragraph C of the Appendix ...", arguing that the parties should be

completely free in the matter of fixing the maximum compensation payable for the loss suffered. He felt that the wording he wished to see deleted already implied a course of action limiting the freedom of the parties.

Paragraph 8.3.

14. The Yugoslav expert pointed out that the reservation of property referred to in this paragraph could in no case apply to plant imported into his country, since such a provision was regarded by Yugoslav law as contrary to public policy. The text was, however, drafted so as to take into account precisely those cases in which the law of the country where the plant is situated after delivery does not permit the vendor to retain ownership.

Paragraphs 8.4 and 8.5

15. Most of the experts considered that these provisions concerning the results of a breach of the contract by one or other of the parties were not absolutely essential, since for practical purposes the law of all countries recognized exceptio inadempti contractus. The Netherlands expert nevertheless drew the attention of the Working Party to the fact that under Netherlands law non-fulfilment of his obligations by one of the parties did not automatically entitle the other party to suspend fulfilment of his own obligations. The Working Party therefore decided to include the two complementary clauses.

Paragraph 8.7

16. The experts of Turkey and Yugoslavia thought that the last sentence of this clause might give rise to misunderstanding and should have been so drafted as to make it clear that recovery of loss by the Vendor in case of delay in payment by the Purchaser, should cover only loss caused through the Purchaser's breach and not loss through termination of the contract. The wording was not changed because the Working Party considered that it was capable of bearing that interpretation, which was what the authors of the draft had intended.

Paragraph 9.1

17. Several experts, particularly those of Turkey and Yugoslavia, would have preferred this basic guarantee clause to be made more explicit by including, in particular, the idea that a defect should be judged by reference to the normal use for which the type of plant was intended and by reference to the specifications

contained in the contract. It was stated in reply, however, that the more flexible and concise formula adopted by the Working Party and which was taken from the general conditions applied in the British engineering industry, fully met the wishes of the Turkish and Yugoslav experts. By its terms, the Vendor in fact undertook to remedy any defect resulting from a cause other than the fault of the Purchaser, for unless the Purchaser was himself responsible for faulty operation of the plant, it was impossible to conceive of any defect which did not result from faulty design, materials or workmanship.

18. At the request of the Yugoslav expert, it was made clear that acceptance of plant after satisfactory tests did not cause the guarantee obligation to lapse, provided of course that any defect resulting from faulty design, materials or workmanship came to light during the guarantee period.

Paragraph 9.5

19. The Working Party's intention in stipulating that "The Guarantee Period shall start from the date on which the Purchaser receives notification in writing from the Vendor that the Plant is ready for despatch from the works" was that two conditions must be fulfilled before the period started - in the first place, the Purchaser must have received notification that the plant is ready or will be ready by a given date, and secondly, the plant must actually be ready.

Paragraphs 9.2, 9.10 and 9.11.

20. The Turkish and Yugoslav experts considered that the General Conditions should not contain detailed provisions concerning apportionment between the Purchaser and the Vendor of expenses in respect of repairs carried out by the Vendor under this guarantee obligation. In their view it was obvious that the Vendor should, in principle, carry out the repairs at his own expense under the guarantee. If, in certain special circumstances, an apportionment of expenses between the Vendor and the Purchaser might seem justified, such apportionment should be expressly prescribed in the special clauses of the contract. The Turkish and Yugoslav experts therefore proposed the following text to replace paragraphs 9.9, 9.10 and 9.11:

"The Vendor, having been thus notified, shall be required to remedy the defect with all possible speed; he shall be entitled to choose the

means of doing so and, unless otherwise specially provided in paragraph . . . of the Annex, shall do so at his own expense."

Other experts objected that the distance separating the Purchaser from the place where the plant was made was a matter beyond the control of the Vendor, and that selling prices did not make allowance for the risk of expenses arising therefrom.

The Working Party decided in favour of the present text of paragraphs 9.9 9.10 and 9.11, as being in keeping with current practice in the plant and machinery export trade.

Paragraph 9.13

21. The Turkish and Yugoslav experts asked what would happen in the case of an irremediable defect, i.e. if the Purchaser were unable to carry out the necessary repair when the Vendor failed to do so. In their opinion, the General Conditions should have contained a provision on this subject giving the Purchaser the right to recover damages and to automatic termination of the contract. The Working Party thought it unnecessary to consider this extremely remote eventuality in which, moreover, the results described by the Turkish and Yugoslav experts could be obtained simply by applying the general principles of law; for in all European countries the total failure of the Vendor to fulfil his obligations would give the Purchaser

the right to recover damages. Moreover, non-fulfilment of his obligations by the Vendor would be considered as a ground for termination under the law of most countries, except that of the Netherlands, where it would be necessary to apply to the courts for that purpose.

Paragraphs 9.16 and 9.17

22. In accordance with the usual practice in the export of plant and machinery, the General Conditions limit the Vendor's liability to the obligations defined in the section on Guarantee.

The Working Party unanimously agreed, however, that limitation of the Vendor's liability could not be upheld if the Vendor had committed **gross misconduct**. (in French: faute lourde). But while expressing agreement on the principle, it noted that application would be difficult mainly because the concept of gross misconduct was not absolutely identical in the law of the different continental

countries and was unknown in British law.¹⁾ In order to avoid any difference of interpretation and make it possible for British courts to apply the provisions adopted in paragraphs 9.16 and 9.17, the Working Party thought it essential to give a definition of gross misconduct – as it may be conceived in an essentially technical industry in a constant state of evolution – which could be applied under British law.

Paragraph 10.1

23. As an indication, e.g. for the benefit of arbitrators who may have to give a ruling in concrete cases, of the type of circumstances to be considered as cases of relief, the Working Party felt it might be helpful to include in the General Conditions a specimen list of events such as particularly affect contracts for the supply of plant and machinery, which might warrant delaying the performance of the obligations under the contract or even justify termination of the contract.

The Yugoslav expert would have preferred a more general wording mentioning merely the kind of circumstances to be considered as cases of relief. But he finally agreed to the version adopted by the majority of members of the Working Party, subject to the proviso that the texts adopted, while giving specific examples of the possible cases of relief in transactions relating to plant and machinery, should, for

1) The expression "British law", though not altogether correct, is used because the differences between English and Scots law do not affect this Commentary.

the purposes of definition of reliefs, keep to the main characteristics of force majeure as defined by him. In other words, for an event to be regarded as a case of relief, it must intervene after the formation of the contract, impede its performance, and be beyond the control of the parties.

24. In the list of examples to illustrate the abstract definition of cases of relief, industrial disputes are distinguished from the other circumstances enumerated. The wording adopted takes account of British legal theory which is averse from singling out ordinary industrial disputes as beyond the control of the parties, on the grounds that in principle the employer can always avoid an industrial dispute, e.g. by raising wages. Hence the text of paragraph 10.1 is so worded that the clause specifying that the circumstances enumerated shall be considered as cases of relief only when they are beyond the control of the parties does not apply to industrial disputes. The Working Party felt it

necessary to point out that this did not mean that where an industrial dispute was brought about by the fault or deliberate intention of one of the parties, it should be considered as a case of relief. Nevertheless, the text as thus worded to take account of peculiarities of British law was not acceptable to the experts of Turkey and Yugoslavia, who made express reservations regarding the distinction made between industrial disputes and other circumstances which could be considered as cases of relief. They argued that this distinction was quite at variance with the principle established and currently applied in business in most continental countries. Industrial disputes could not be regarded as possible cases of relief unless they both prevented the performance of the contract and were beyond the control of the parties.

25. The Belgian, French and Swedish experts proposed that the necessity for scrapping important machine parts be included among the examples of circumstances which could be considered as cases of relief. They pointed out that in certain instances, e.g. in the case of cast iron structural parts, modern technical methods were not sufficiently perfected to ensure that the manufacture of such parts would prove satisfactory at the first attempt, so that relief should be allowed in such circumstances. The Working Party considered however that if this example were included in the list of circumstances which could be

- considered as cases of relief, it might be used as a pretext by incompetent constructors to avoid the consequences of their mistakes. It was therefore decided not to include it in the list. The Working Party agreed however that the scrapping of an important part during manufacture was not thereby to be deemed to be excluded from the circumstances that might give rise to a claim for relief.
26. The Swedish expert requested the addition to the list of examples of a situation peculiar to Sweden, and one liable to cause a shortage of labour. In Sweden during the post-war years, there had been large scale migrations of staff from one industry to another in which the working conditions had become distinctly better. The trouble could not be dealt with by calling in foreign workers owing to the strict control of immigration by the Swedish Government. While it appreciated the special difficulties experienced by Sweden in that

respect, the Working Party felt that precisely because of the exceptional nature of the circumstance, it would be out of place to mention it expressly among the examples of possible cases of relief. But it decided to mention this special point in the present Commentary so as to draw the attention of the competent bodies in Sweden to the advisability of suggesting to their members the possibility when applying the General Conditions of adding a clause expressly covering the point.

Paragraph 10.2

27. At the request of the Yugoslav expert, the Working Party specified that where one of the parties did not fulfil his obligations under this clause, he should bear the losses resulting from his failure.
28. The words "without delay" were used by the Working Party to give the parties sufficient time to decide whether the circumstances were calculated to constitute a case of relief, and at the same time to ensure that they did not delay in giving notice that those circumstances had arisen, once it became obvious that they would impede or prevent the performance of the contract.
Paragraphs 10.4 and 10.5
29. The problem of apportioning the expenses incurred in respect of the contract in the event of its being terminated gave rise to much discussion.

Some of the experts, e.g. the Swedish and Swiss experts, quoting the example of contracts prevented from being carried out by the last war, considered that it was virtually impossible to lay down general principles as to how the expenses should be divided in every particular case. In their opinion it should be decided by agreement between the parties, or failing agreement, it should be left for the arbitrator to decide on the basis of equity. Other experts, e.g. those of Italy, the United Kingdom, Turkey and Yugoslavia, were of the opinion that it would not be justifiable to give the arbitrator discretionary powers in the matter, and that while it would be well in the first instance to leave it to the parties to agree on a friendly basis as to how the expenses incurred should be divided in the event of a contract being terminated, it was desirable to lay down the principle that if the parties failed to agree, the party which was prevented from performing its obligations should bear the whole of the

expenses actually incurred. This would at the same time leave an important task for the arbitrator, who would have to decide which party had been prevented from carrying out its obligations. If he should reach the conclusion, as frequently happened owing to the complex economic structure of the world to-day, that circumstances had prevented both parties, he would also have to decide as to the division of the expenses. In that case he would have to be guided by considerations of equity. The other experts, while intimating that they had no objection to the proposal put forward by the Swedish and Swiss experts, finally supported the majority proposal. The Belgian expert expressed a decided preference for the Swedish and Swiss experts' proposal, but had no rooted objection to the course finally adopted by the Working Party. The Swedish and Swiss experts on the other hand made express reservations in respect of paragraphs 10.4 and 10.5 as adopted by the Working Party.

Paragraph 12.1

30. This clause was inserted at the request of the Netherlands and United Kingdom experts, who regarded it as desirable for the purposes of the law of their countries, in order to ensure that termination did not imply annulment of the contract once its performance had begun.

Paragraph 13.2

31. The Yugoslav expert requested that the question of determining which law should be applicable be left in all cases to the parties; but the proposal was not accepted by the Working Party.

Supplementary Clauses on Price Revision

32. The Turkish and Yugoslav experts regretted that the majority of members of the Working Party had been opposed to the insertion of a provision stipulating that if the parties wished to bring advance payments under this clause, they should make an express stipulation to that effect. They considered that logically the price revision clause should not apply to advance payments, and that this was why the parties included an express stipulation in the frequent cases in which they wished the clause to apply. The United Kingdom expert intimated that he was prepared to accept such a provision, although he saw no point in it. On the other

hand, the experts of all the other countries were definitely opposed to it. The Swiss expert in particular stressed the advantages of the system adopted by the Working Party on the basis of the price revision formula. He thought that the system of price based on effective cost was far preferable to the system based on payment dates.

33. The United Kingdom expert intimated in connexion with price revision that vendors in the United Kingdom would in all probability keep to the clauses they used at present when they needed such a provision.

BEMÆRKNINGER TIL

**Addendum to General Conditions for the
Supply of Plant and Machinery for Export
(Document No. 188)**

Idet man henviser til bemærkningerne umiddelbart forud for gen-
givelsen af de nordiske leverings- og monteringsbetingelser, skal
det her anføres, at disse har undgået medtagelse af tillæg til ud-
fyldning af de punkter, der er overladt til parternes frie valg i
ECE-betingelserne, ved at indføre en bestemt regel på de pågæl-
dende punkter.

De nordiske »Almindelige Leveringsbetingelser« indeholder end-
videre bl.a. mindre ændringer og bestemte fortolkninger af bestem-
melserne i Dokument nr. 188 § 5, stk. 5, § 9, stk. 1, § 9 generelt og
§ 10, stk. 1, 5 og 6.

De nordiske jern- og metalindustrier har derfor i 1959 udfærdiget ovennævnte addendum på engelsk, fransk og tysk med hen-
blik på at gøre det muligt for nordiske eksportører at overføre
ovennævnte af disse industrier akcepterede særlige bestemmelser til
Dokument nr. 188 ved at anvende dette dokument sammen med
addendum i eksporten til lande uden for Norden (bortset fra de
i bemærkningerne til 188-betingelserne omhandlede østlande).

Addendum to **GENERAL CONDITIONS** for the supply of Plant and Machinery for export

prepared under the auspices of the
United Nations Economic Commission for Europe
Geneva, March 1953

This Addendum which has been issued by the Federations of the Mechanical Engineering Industries in Denmark, Finland, Norway and Sweden (Denmark: Sammernslutningen af Arbejdsgivere Indenfor Jern- og Metalindustrien i Danmark; Finland: Suomen Metalliteollisuusyhdistys—Finlands Metallindustriförening; Norway: Mekaniske Verksteders Landsforening; Sweden: Sveriges Metallförbund) in December, 1959, contains the information called for in the Appendix and certain supplementary conditions of agreement between the parties to the Contract.

ADD TO CLAUSE 5

Clause 5.5

Minor defects which the Vendor is required to make good under the provisions of Clause 5.6 do not constitute a basis for requirement of new tests.

Clause 8.7

Paragraph D of the Appendix

The maximum amount which the Vendor shall be entitled to recover on terminating the Contract in accordance with Clause 8.7 may not exceed the price of the unpaid part of the Plant. (Paragraph D of the Appendix.)

ADD TO CLAUSE 7

Clause 7.3

Paragraphs A and B of the Appendix.

The reduction mentioned in Clause 7.3 (Paragraph A of the Appendix) shall amount to 0.5 per cent per week provided that that part of the price to which the reduction applies does not exceed Sw. crowns 600,000, Danish or Norw. crowns 700,000 or Finnish Marks 25,000,000. If the price in question exceeds these figures, the reduction applicable to the amount by which the price exceeds Sw. crowns 500,000, Danish or Norw. crowns 700,000 or Finnish Marks 25,000,000 shall be limited to 0.25 per cent per week. The maximum percentage, named in paragraph B of the

ADD TO CLAUSE 9

Clause 9.1

If not otherwise stated, the delivery comprises only such devices for protection against the risk of danger in the use of the goods as are normally in use in the Vendor's country. Any responsibility that may arise on account of other protective devices being prescribed in the Purchaser's country are exclusively carried by the Purchaser.

Clause 9.2 and 7

Paragraph G of the Appendix

Appendix which the total reduction may not exceed, shall be 7.5 per cent.

Clause 7.5

Paragraph C of the Appendix

In cases such as those referred to in Clause 7.5 the parties shall endeavour to agree upon the settlement of claims. The maximum compensation for non-delivery (Paragraph C of the Appendix) shall be determined according to the circumstances prevailing in each case but shall not exceed 7.5 per cent of the price of such portion of the Plant as could not in consequence of the Vendor's failure be put to the use intended.

Clause 7.7

Paragraph D of the Appendix

In cases such as those referred to in Clause 7.7, the parties shall endeavour to agree upon the settlement of claims. The maximum compensation which can be claimed by the Vendor in the event of the Purchaser failing to accept delivery shall be determined according to the circumstances prevailing in each case but shall not exceed the price attributable to that portion of the Plant which the Purchaser has failed to accept delivery of.

ADD TO CLAUSE 8

Clause 8.7

Paragraph E of the Appendix

The rate of interest on overdue payments referred to in Clause 8.7 (Paragraph E of the Appendix) shall be 2 per cent above the highest official discount rate prevailing in the Vendor's country but in any case not less than 6 per cent.

Clause 8.7

Paragraph F of the Appendix

The period of delay in payment after which the Vendor shall be entitled to terminate the Contract, as provided for in Clause 8.7, is three months (Paragraph F of the Appendix).

The Guarantee Period referred to in Clause 9.2 and 7 (Paragraph G of the Appendix) shall be 12 months unless otherwise specified in the Contract.

Clause 9.5

Paragraph H of the Appendix

Extension of the Guarantee Period in accordance with Clause 6 (Paragraph H of the Appendix) shall not exceed 3 months.

Clause 9.6

Paragraph I of the Appendix

The daily use of the plant referred to in Clause 9.6 (Paragraph I of the Appendix) shall amount to 8 hours per day. More intensive usage of the plant shall entail a corresponding shortening of the Guarantee Period, unless otherwise agreed in the Contract.

Clause 9

General Remark

Notwithstanding the stipulations of Clause 9, the validity of the Vendor's Guarantee shall not exceed 2 years for any part of the Plant, reckoned from the original date of commencement of the Guarantee Period.

ADD TO CLAUSE 10

Clause 10.1

As further cases of relief, additional to those quoted in Clause 10.1, may also be included rejection of large workpieces due to scrap as well as delays or defects in subcontractors' deliveries by reason of such circumstances as are mentioned in paragraph 1.

Clause 10.5

The stipulations of paragraph 6 are not applicable.

Clause 10.6

The word "expenses" in Clause 10.6 shall under no circumstances be construed to mean claims in respect of indirect expenses.

BEMÆRKNINGER TIL

**General Conditions for the Supply and Erection
of Plant and Machinery for Import and Export
Document No. 188 A**

Disse leverings- og monteringsbetingelser er anvendelige, når samme virksomhed påtager sig *ikke blot leverancen af maskiner og materiel, men også montagen* heraf på monteringsstedet. Ved anvendelsen af dette dokument er leverandøren derfor ikke blot – som efter Dokument nr. 188 – ansvarlig for leverancen, men også for montagen.

Dokumentet findes – foruden på de tre officielle sprog – oversat til hollandsk, italiensk, portugisisk og tysk.

Den foreliggende tekst er udfærdiget i 1957.

188A

**GENERAL CONDITIONS
FOR THE SUPPLY AND ERECTION OF PLANT AND MACHINERY
FOR IMPORT AND EXPORT No. 188A (*)**

Prepared under the auspices of the

UNITED NATIONS ECONOMIC COMMISSION FOR EUROPE

Geneva, March 1957

1. PREAMBLE

1.1 These general conditions shall apply, save as varied by express agreement accepted in writing by both parties.

2. FORMATION OF CONTRACT

2.1 The Contract shall be deemed to have been entered into when, upon receipt of an order, the Contractor has sent an acceptance in writing within the time-limit (if any) fixed by the Purchaser.

2.2 If the Contractor, in drawing up his tender, has fixed a time-limit for acceptance, the Contract shall be deemed to have been entered into when the Purchaser has sent an acceptance in writing before the expiration of such time-limit, provided that there shall be no binding Contract unless the acceptance reaches the Contractor not later than one week after the expiration of such time-limit.

3. DRAWINGS AND DESCRIPTIVE DOCUMENTS

3.1 The weights, dimensions, capacities, prices, performance ratings and other data included in catalogues, prospectuses, circulars, advertisements, illustrated matter and price lists constitute an approximate guide. These data shall not be binding save to the extent that they are by reference expressly included in the Contract.

3.2 Any drawings or technical documents intended for use in the construction or erection of the Works¹⁾ or of part thereof and submitted to the Purchaser prior or subsequent to the formation of the Contract remain the exclusive property of the Contractor. They may not, without the Contractor's consent, be utilized by the Purchaser or copied, reproduced, transmitted or communicated to a third party. Provided, however, that the said plans and documents shall be the property of the Purchaser:

- (a) if it is expressly so agreed, or
- (b) if they are referable to a separate preliminary development contract on which no actual construction was to be performed and in which the property of the Contractor in the said plans and documents was not reserved.

3.3 Any drawings or technical documents intended for use in the construction or erection of the Works or of part thereof and submitted to the Contractor by the Purchaser prior or subsequent to the formation of the Contract remain the exclusive property of the Purchaser. They may not, without his consent, be utilized by the Contractor or copied, reproduced, transmitted or communicated to a third party.

3.4 The Contractor shall, if required by the Purchaser, furnish free of charge to the Purchaser at the commencement of the Guarantee Period, as defined in Clause 23, information and drawings other than manufacturing drawings of the Works in sufficient detail to enable the Purchaser to carry out the operation and maintenance (including running repairs) of all parts of the Works and (except where under the Contract the Contractor is responsible for commissioning the Works) the commissioning thereof. Such information and drawings shall be the property of the Purchaser and the restrictions on their use set out in Paragraph 2 hereof shall not apply thereto. Provided that if the Contractor so stipulates, they shall remain confidential.

4. PACKING.

4.1 Unless otherwise specified:

- (a) prices shown in price lists and catalogues shall be deemed to apply to unpacked Plant;
- (b) prices quoted in tenders and in the Contract shall include the cost of packing or protection required under normal transport conditions to prevent damage to or deterioration of the Plant before it reaches its destination as stated in the Contract.

5. LOCAL LAWS AND REGULATIONS

5.1 The Purchaser shall, at the request of the Contractor and to the best of his ability, assist the Contractor to obtain the necessary information concerning the local laws and regulations applicable to the Works and to taxes and dues connected therewith.

(*) These Conditions may be used, at the option of the parties, as an alternative to the General Conditions for the Supply and Erection of Plant and Machinery for Import and Export prepared at Geneva, in March 1957 (No. 574 A). The English, French and Russian texts are equally authentic.

The observations of the experts who drew up these General Conditions, together with a description of the procedure followed, are embodied in the "COMMENTARY ON THE GENERAL CONDITIONS FOR THE SUPPLY OF PLANT AND MACHINERY FOR EXPORT No. 188" (Document E/ECE/169), published by the Economic Commission for Europe. It can be obtained direct from the Sales Section of the European Office of the United Nations, Geneva, Switzerland, or through United Nations Sales Agents.

- 1) In these General Conditions "Plant" means all machinery, apparatus, materials and articles to be supplied by the Contractor under the Contract and "the Works" means all Plant to be supplied and work to be done by the Contractor under the Contract.

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5.2 If, by reason of any change in such laws and regulations occurring after the date of the tender, the cost of erection is increased or reduced, the amount of such increase or reduction shall be added to or deducted from the price, as the case may be.

6. WORKING CONDITIONS

6.1 The price shall be on the understanding that the following conditions are fulfilled, except so far as the Purchaser has informed the Contractor to the contrary:

- (a) the Works shall not be carried out in unhealthy or dangerous surroundings;
- (b) the Contractor's employees shall be able to obtain suitable and convenient board and lodging in the neighbourhood of the site and shall have access to adequate medical services;
- (c) such equipment, consumable stores, water and power as are specified in the Contract shall be available to the Contractor on the site in good time, and, unless otherwise agreed, free of charge to the Contractor;
- (d) the Purchaser shall provide the Contractor (free of charge, unless otherwise agreed) with closed or guarded premises on or near the site as a protection against theft and deterioration of the Plant to be erected, of the tools and equipment required therefor, and of the clothing of the Contractor's employees;
- (e) the Contractor shall not be required to undertake any works of construction or demolition or to take any other unusual measures to enable the Plant to be brought from the point where it has been unloaded to the point on the site where it is to be erected, unless the Contractor has agreed to deliver the Plant to the last mentioned point.

Any departure from the conditions mentioned in this paragraph shall attract an extra charge.

6.2 If the circumstances resulting from such departure are such that it would be unreasonable to require the Contractor to proceed with the Works, the Contractor may, without prejudice to his rights under the Contract, refuse to do so.

7. ERECTION ON A TIME BASIS AND LUMP-SUM ERECTION

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

- (a) all travelling expenses incurred by the Contractor in respect of his employees and the transport of their equipment and personal effects (within reasonable limits) in accordance with the specified method and class of travel where these are specified in the Contract;
- (b) the living expenses, including any appropriate allowances, of the Contractor's employees for each day's absence from their homes, including non-working days and holidays;

- (c) the time worked, which shall be calculated by reference to the number of hours certified as worked in the time-sheets signed by the Purchaser. Overtime and work on Sundays, holidays and at night will be charged at the special rates mentioned in the Contract. Save as otherwise provided, the hourly rates cover the wear and tear and depreciation of the Contractor's tools and light equipment;
 - (d) time necessarily spent on:
 - (i) preparation and formalities incidental to the outward and homeward journeys;
 - (ii) the outward and homeward journeys;
 - (iii) daily travel morning and evening between lodgings and the site if it exceeds half an hour and there are no suitable lodgings closer to the site;
 - (iv) waiting when work is prevented by circumstances for which the Contractor is not responsible under the Contract;
 - (e) any expenses incurred by the Contractor in accordance with the Contract in connexion with the provision of equipment by him, including where appropriate a charge for the use of the Contractor's own heavy equipment;
 - (f) any taxes or dues levied on the invoice and paid by the Contractor in the country where erection takes place.
- 7.2 When erection is carried out for a lump sum, the quoted price includes all the items above mentioned. Provided that if the erection is prolonged for any cause for which the Purchaser or any of his contractors other than the Contractor is responsible and if as a result the work of the Contractor's employees is suspended or added to, a charge will be made for any idle time, any extra work, any extra living expenses of the Contractor's employees and the cost of any extra journey.

8. INSPECTION AND TESTS OF THE PLANT

Inspection

- 8.1 If expressly agreed in the Contract, the Purchaser shall be entitled to have the quality of the materials used and the parts of the Plant, both during manufacture and when completed, inspected and checked by his authorized representatives. Such inspection and checking shall be carried out at the place of manufacture during normal working hours after agreement with the Contractor as to date and time.
- 8.2 If as a result of such inspection and checking the Purchaser shall be of the opinion that any materials or parts are defective or not in accordance with the Contract, he shall state in writing his objections and the reason therefor.

Tests

8.3 Tests provided for in the Contract other than taking over tests will be carried out, unless otherwise agreed, at the Contractor's works and during normal working hours. If the technical requirements of the tests are not specified in the Contract, the tests will be carried out in accordance with the general practice obtaining in the appropriate branch of the industry in the country where the Plant is manufactured.

8.4 The Contractor shall give to the Purchaser sufficient notice of the tests to permit the Purchaser's representatives to attend. If the Purchaser is not represented at the tests, the test report shall be communicated by the Contractor to the Purchaser and shall be accepted as accurate by the Purchaser.

8.5 If on any test (other than a taking over test as provided for in Clause 2.1) the Plant shall be found to be defective or not in accordance with the Contract, the Contractor shall with all speed make good the defect or ensure that the Plant complies with the Contract. Thereafter, if the Purchaser so requires, the test shall be repeated.

8.6 Unless otherwise agreed, the Contractor shall bear all the expenses of tests carried out in his works, except the personal expenses of the Purchaser's representatives.

9. PASSING OF RISK

9.1 Save as provided in paragraph 10.1, the time at which the risk shall pass shall be fixed in accordance with the International Rules for the Interpretation of Trade Terms (Incoterms) of the International Chamber of Commerce in force at the date of the formation of the Contract.

Where no indication is given in the Contract of the form of sale, the Plant shall be deemed to be sold "ex works".

9.2 In the case of a sale "ex works", the Contractor must give notice in writing to the Purchaser of the date on which the Purchaser must take delivery of the Plant. The notice of the Contractor must be given in sufficient time to allow the Purchaser to take such measures as are normally necessary for the purpose of taking delivery.

10. DELAYED ACCEPTANCE OF DELIVERY

10.1 If the Purchaser fails to accept delivery of the Plant on due date, he shall nevertheless make any payment conditional on delivery as if the Plant had been delivered. The Contractor shall arrange for the storage of the Plant at the risk and cost of the Purchaser. If required by the Purchaser, the Contractor shall insure the Plant at the cost of the Purchaser. Provided that if the delay in accepting delivery is due to one of the circumstances mentioned in Clause 25 and the Contractor is in a position to store it in his premises without prejudice to his business, the cost of storing the Plant shall not be borne by the Purchaser.

10.2 Unless the failure of the Purchaser is due to any of the circumstances mentioned in Clause 25, the Contractor may require the Purchaser by notice in writing to accept delivery within a reasonable time.

If the Purchaser fails for any reason whatever to do so within such time, the Contractor shall be entitled by notice in writing to the Purchaser, and without requiring the consent of any Court, to terminate the Contract in respect of such portion of the Plant as is by reason of the failure of the Purchaser aforesaid not delivered and thereupon to recover from the Purchaser any loss suffered by reason of such failure up to an amount not exceeding the sum named in Paragraph A of the Appendix or, if no sum be named, that part of the price payable under the Contract which is properly attributable to such portion of the Plant.

11. PAYMENT

11.1 Payment shall be made in the manner and at the time or times agreed by the parties.

11.2 Any advance payments made by the Purchaser are payments on account and do not constitute a deposit, the abandonment of which would entitle either party to terminate the Contract.

11.3 If delivery has been made before payment of the whole sum payable under Contract, Plant delivered shall, to the extent permitted by the law of the country where the Plant is situated after delivery, remain the property of the Contractor until such payment has been effected. If such law does not permit the Contractor to retain the property in the Plant, the Contractor shall be entitled to the benefit of such other rights in respect thereof as such law permits him to retain. The Purchaser shall give the Contractor every assistance in taking any measures required to protect the Contractor's right of property or such other rights as aforesaid.

11.4 A payment conditional on the fulfilment of an obligation by the Contractor shall not be due until such obligation has been fulfilled, unless the failure of the Contractor is due to an act or omission of the Purchaser.

11.5 If the Purchaser delays in making any payment, the Contractor may postpone the fulfilment of his own obligations until such payment is made, unless the failure of the Purchaser is due to an act or omission of the Contractor.

11.6 If delay by the Purchaser in making any payment is due to one of the circumstances mentioned in Clause 25, the Contractor shall not be entitled to any interest on the sum due.

11.7 Save as aforesaid, if the Purchaser delays in making any payment, the Contractor shall on giving to the Purchaser within a reasonable time notice in writing be entitled to the payment of interest on the sum due at the rate fixed in Paragraph B of the Appendix from the date on which such sum became due. If at the end of the Period fixed in Paragraph C of the Appendix, the Purchaser shall still have failed to pay the sum due, the Contractor shall be entitled by notice in writing to the Purchaser, and without requiring the consent of any Court, to terminate the Contract and thereupon to recover from the Purchaser the amount of his loss up to the sum mentioned in Paragraph A of the Appendix.

12. PREPARATORY WORK

12.1 The Contractor shall in good time provide drawings showing the manner in which the Plant is to be affixed together with all information relating, unless otherwise agreed, only to the Works, required for preparing suitable foundations, for providing suitable access for the Plant and any necessary equipment to the point on the site where the Plant is to be erected and for making all necessary connexions to the Plant (whether such connexions are to be made by the Contractor under the Contract or not).

12.2 The preparatory work shall be executed by the Purchaser in accordance with the drawings and information provided by the Contractor and mentioned in paragraph 1 hereof. It shall be completed in good time and the foundations shall be capable of taking the Plant at the proper time. Where the Purchaser is responsible for transporting the Plant, it shall be on the site in good time.

12.3 Any expenses resulting from an error or omission in the drawings or information mentioned in paragraph 1 hereof which appears before taking over shall be borne by the Contractor. Any such error or omission which appears after taking over shall be deemed faulty design for purposes of Clause 23.

13. LIAISON AGENTS

13.1 The Contractor and Purchaser shall each designate in writing a competent representative to be his channel of communication with the other party on the day-to-day execution of the Works on the site.

13.2 Each such representative shall be present on or near the site during working hours.

14. ADDITIONAL LABOUR

14.1 If the Contractor so requires in good time the Purchaser shall make available to the Contractor free of charge such skilled and unskilled labour as is provided for in the Contract and such further reasonable amount of unskilled labour as may be found to be necessary even if not provided for in the Contract.

15. SAFETY REGULATIONS

15.1 The Purchaser shall notify the Contractor in full of the safety regulations which the Purchaser imposes on his own employees and the Contractor shall secure the observance by his employees of such safety regulations.

15.2 If breaches of these regulations come to the notice of the Purchaser, he must inform the Contractor in writing forthwith, and may forbid persons guilty of such breaches entry to the site.

15.3 The Contractor shall inform the Purchaser in full of any special dangers which the execution of the Works may entail.

16. OVERTIME

16.1 Any overtime and the conditions thereof shall, within the limits of the laws and regulations of the Contractor's country and of the country where erection is carried out, be as agreed between the parties.

17. WORK OUTSIDE THE CONTRACT

17.1 The Purchaser shall not be entitled to use the Contractor's employees on any work unconnected with the subject-matter of the Contract without the previous consent of the Contractor. Where the Contractor so consents, he shall not be under any liability in respect of such work, and the Purchaser shall be responsible for the safety of the Contractor's employees while employed on such work.

18. CONTRACTOR'S RIGHT OF INSPECTION

18.1 Until the Works are taken over and during any work resulting from the operation of the guarantee the Contractor shall have the right at any time during the hours of work on the site to inspect the Works at his own expense. In proceeding to the site, the inspectors shall observe the regulations as to movement in force at the Purchaser's premises.

19. INSTRUCTION OF THE PURCHASER'S EMPLOYEES

19.1 In appropriate cases the Contract may provide on the terms and conditions therein set out for instruction to be given by the Contractor to the Purchaser's employees who will run the Plant.

20. TIME FOR COMPLETION

20.1 Unless otherwise agreed the completion period shall run from the latest of the following dates:

- (a) the date of the formation of the Contract as defined in Clause 2;
- (b) the date on which the Contractor receives notice of the issue of a valid import licence where such is necessary for the execution of the Contract;
- (c) the date of receipt by the Contractor of such payment in advance of manufacture as is stipulated in the Contract.

20.2 Should delay in completion be caused by any of the circumstances mentioned in Clause 25 or by an act or omission of the Purchaser and whether such cause occur before or after the time or extended time for completion, there shall be granted subject to the provisions of paragraph 5 hereof such extension of the completion period as is reasonable having regard to all the circumstances of the case.

20.3 If a fixed time for completion is provided for in the Contract, and the Contractor fails to complete the Works within such time or any extension thereof granted under paragraph 2 hereof, the Purchaser shall be entitled, on giving to the Contractor within a reasonable time notice in writing, to claim a reduction of the Price Payable under the Contract, unless it can be reasonably concluded from the circumstances of the particular case that the Purchaser has suffered no loss. Such reduction shall equal the percentage named in Paragraph D of the Appendix of that part of the price payable under the Contract which is properly attributable to such portion of the Works as cannot in consequence of the said failure be put to the use intended for each complete week of delay commencing on the due date of completion but shall not exceed

the maximum percentage named in paragraph E of the Appendix. Such reduction shall be allowed when a payment becomes due on or after completion. Save as provided in paragraph 5 hereof, such reduction of price shall be to the exclusion of any other remedy of the Purchaser in respect of the Contractor's failure to complete as aforesaid.

20.4 If the time for completion mentioned in the Contract is an estimate only, either party may after the expiration of two thirds of such estimated time require the other party in writing to agree a fixed time.

Where no time for completion is mentioned in the Contract, this course shall be open to either party after the expiration of nine months from the formation of the Contract.

If in either case the parties fail to agree, either party may have recourse to arbitration, in accordance with the provisions of Clause 28, to determine a reasonable time for completion and the time so determined shall be deemed to be the fixed time for completion provided for in the Contract and paragraph 3 hereof shall apply accordingly.

20.5 If any portion of the Works in respect of which the Purchaser has become entitled to the maximum reduction provided for by paragraph 3 hereof, or in respect of which he would have been so entitled had he given the notice referred to thereon, remains uncompleted, the Purchaser may by notice in writing to the Contractor require him to complete and by such last mentioned notice fix a final time for completion which shall be reasonable taking into account such delay as has already occurred. If for any cause other than one for which the Purchaser or some other Contractor employed by him is responsible, the Contractor fails to complete within such time, the Purchaser shall be entitled by notice in writing to the Contractor, and without requiring the consent of any Court, to terminate the Contract in respect of such portion of the Works and thereupon to recover from the Contractor any loss suffered by the Purchaser by reason of the failure of the Contractor as aforesaid up to an amount not exceeding the sum named in paragraph F of the Appendix, or, if no sum be named, that part of the price payable under the Contract which is properly attributable to such portion of the Works as could not in consequence of the Contractor's failure be put to the use intended.

21. TAKING-OVER TESTS

21.1 Unless otherwise agreed, taking-over tests shall be carried out. If such tests are to be carried out, the Contractor shall notify the Purchaser in writing when the Works will be ready, and such notification shall be in sufficient time to enable the Purchaser to make any necessary arrangements. The tests shall take place in the presence of both parties. The technical requirements shall be as specified in the Contract or, if not so specified, in accordance with the general practice existing in the appropriate branch of the industry in the country where the Plant is manufactured.

21.2 If as a result of such tests the Works are found to be defective or not in accordance with the Contract, the Contractor shall with all speed and at his own expense make good the defect or ensure that the Works comply with the contract, and thereafter, if the Purchaser so requires, the test shall be repeated at the expense of the Contractor.

21.3 Subject to the provisions of paragraph 2 hereof the Purchaser shall free of charge provide any power, lubricants, water, fuel and materials of all kinds reasonably required for final adjustments and for taking-over tests. He shall also install free of charge any apparatus necessary for the above mentioned operations.

22. TAKING OVER

22.1 As soon as the Works have been completed in accordance with the Contract and have passed all the taking-over tests to be made on completion of erection, the Purchaser shall be deemed to have taken over the Works and the Guarantee Period shall start to run. The Purchaser shall thereupon issue to the Contractor a certificate, called a "Taking-over Certificate", in which he shall certify the date on which the Works have been completed and have passed the tests.

22.2 If the Purchaser is unwilling to have the taking-over tests carried out, the Works shall be deemed to have been taken over and the Guarantee Period shall start to run on a written notice to that effect being given by the Contractor.

22.3 If by reason of difficulties encountered by the Purchaser (whether or not covered by Clause 25) it becomes impossible to proceed to the taking-over tests, these shall be postponed for a period not exceeding six months, or such other period as the parties agree, and the following provisions shall apply:

- (a) The Purchaser shall make payments as if the taking-over had taken place, provided that, in the case of a difficulty due to any of the circumstances falling within Paragraph 25.1, the Purchaser shall not, unless otherwise agreed, be required to pay at the due time of taking-over the cost of uncompleted work or, before the expiration of the Guarantee Period fixed in accordance with sub-paragraph (d) hereof, any sum retained by way of guarantee.
- (b) At the appropriate time, the Purchaser shall give notice in writing to the Contractor stating the earliest date on which the tests can be carried out and requesting him to fix a new date for the tests. Such new date shall be within the period stated in paragraph G of the Appendix after the date mentioned in such notice.
- (c) The Contractor may, at the cost of the Purchaser, examine the Works before making the tests and make good any defect or deterioration therein that may have developed, or loss thereof that may have occurred, after the date when the Works were first ready for testing in accordance with the Contract.
- (d) The Guarantee Period shall run from the date when the postponed tests have been successfully carried out.

- (e) If the Purchaser so requires, the Contractor shall, subject to the provisions of the Contract in respect of the passing of risk, protect and preserve the Works until the tests are carried out or for one month from the time when the Works were first ready for testing in accordance with the

Contract, whichever is the shorter period. The Contractor shall be entitled to recover from the Purchaser the costs of any measures actually taken by the Contractor to protect and preserve the Works. Unless otherwise agreed, the liability of the Contractor for protecting and preserving the Works shall cease on the expiry of such month.

If by reason of other commitments the Contractor is unable to leave his employees on the site, he shall give the Purchaser any directions required to enable the Purchaser to make satisfactory arrangements for protecting and preserving the Works.

(h) If at the end of six months or such other period as the parties may have agreed the tests have not taken place the provisions of paragraph 2 shall apply unless the provisions of Clause 25 are applicable.

23. GUARANTEE

23.1 Subject as hereinafter set out, the Contractor undertakes to remedy any defect resulting from faulty design, materials or workmanship.

23.2 This liability is limited to defects which appear during the period (called "the Guarantee Period") specified in paragraph H of the Appendix and commencing on taking over.

23.3 In respect of such parts (whether of the Contractor's own manufacture or not) of the Works as are expressly mentioned in the Contract, the Guarantee Period shall be such other period (if any) as is specified in respect of each of such parts.

23.4 The daily use of the works and the amount by which the Guarantee Period shall be reduced if the Works are used more intensively are stated in paragraph J of the Appendix.

23.5 A fresh Guarantee Period equal to that stated in Paragraph H of the Appendix shall apply, under the same terms and conditions as those applicable to the original Works, to parts supplied in replacement of the defective parts or to parts renewed in pursuance of this Clause. This provision shall not apply to the remaining parts of the Works, the Guarantee Period of which shall be extended only by a period equal to the period during which the Works are out of action as a result of a defect covered by this Clause.

23.6 In order to be able to avail himself of his rights under this Clause the Purchaser shall notify the Contractor in writing without delay of any defects that have appeared and shall give him every opportunity of inspecting and remedying them.

23.7 On receipt of such notification the Contractor shall remedy the defect forthwith, save as mentioned in paragraph 8 hereof, at his own expense. Save where the nature of the defect is such that it is appropriate to effect repairs on site, the Purchaser shall return to the Contractor any part in which a defect covered by this clause has appeared, for repair or replacement by the Contractor, and in such case the delivery to the Purchaser of such part properly repaired or a part in replacement thereof shall be deemed to be a fulfilment by the Contractor of his obligations under this paragraph in respect of such defective part.

23.8 Unless otherwise agreed, the Purchaser shall bear the cost and risk of transport of defective parts and of repaired parts or parts supplied in replacement of such defective parts between the place where the Works are situated and one of the following points:

(i) the Contractor's works if the Contract is "ex works" or F.O.R.;

(ii) the port from which the Contractor dispatched the Plant if the Contract is F.O.B., F.A.S., C.I.F., or C & F.;

(iii) in all other cases the frontier of the country from which the Contractor dispatched the Plant.

23.9 Where, in pursuance of paragraph 7 hereof, repairs are required to be effected on site, the incidence of any travelling or living expenses of the Contractor's employees and the costs and risks of transporting any necessary material or equipment shall be settled, in default of agreement between the parties, in such manner as the arbitrator shall determine to be fair and reasonable.

23.10 Defective parts replaced in accordance with this Clause shall be placed at the disposal of the Contractor.

23.11 If the Contractor refuses to fulfil his obligations under this Clause or fails to proceed with due diligence after being required so to do, the Purchaser may proceed to do the necessary work at the Contractor's risk and expense, provided that he does so in a reasonable manner.

23.12 The Contractor's liability does not apply to defects arising out of materials provided, or out of a design stipulated, by the Purchaser.

23.13 The Contractor's liability shall apply only to defects that appear under the conditions of operation provided for by the Contract and under proper use. It does not cover defects arising after taking over. In particular it does not cover defects arising from the Purchaser's faulty maintenance or from alterations carried out without the Contractor's consent in writing, or from repairs carried out improperly by the Purchaser, nor does it cover normal deterioration.

23.14 After taking over and save as in this Clause expressed, the Contractor shall be under no liability even in respect of defects due to causes existing before taking over. It is expressly agreed that the Purchaser shall have no claim in respect of personal injury or of damage to property not the subject-matter of the Contract arising after taking over nor for loss of profit unless it is shown from the circumstances of the case that the Contractor has been guilty of gross misconduct.

23.15 "Gross misconduct" does not comprise any and every lack of proper care or skill, but means an act or omission on the part of the Contractor implying either a failure to pay due regard to serious consequences which a conscientious Contractor would normally foresee as likely to ensue, or a deliberate disregard of any consequences of such act or omission.

24. LIABILITY FOR PERSONAL INJURY AND DAMAGE TO PROPERTY

24.1 In the event of personal injury or damage to property occurring before all the Works have been taken over, the liabilities shall be apportioned as follows:

- (a) (i) The Contractor shall at his own expense make good any loss or damage to the Plant or Works occurring before the risk therein has passed and arising from any cause whatsoever other than an act or omission of the Purchaser;
 - (ii) the Contractor shall at his own expense make good any loss or damage to the Plant or Works occurring after the risk therein has passed, if such loss or damage is caused by an act or omission of the Contractor;
 - (iii) if any portion of the Plant or Works is lost or damaged from a cause for which the Contractor is not responsible by virtue of sub-paragraphs (a) (i) or (a) (ii) hereof, the loss or damage shall, if required by the Purchaser, be made good by the Contractor at the expense of the Purchaser.
- (b) In respect of damage to the Purchaser's property other than the Works, the Contractor shall indemnify the Purchaser to the extent that such damage was caused by the Contractor, or by the failure of equipment or tools provided by the Contractor for the purpose of the erection, if the circumstances show that the Contractor failed to use proper skill and care.
- (c) (i) In respect of personal injury, the respective liabilities of the Purchaser and of the Contractor towards the injured person shall be governed by the law of the country where the injury occurred;
 - (ii) if the injured person brings a claim against the Purchaser, the Contractor shall indemnify the Purchaser against such claim to the extent that the injury was due to any of the causes mentioned in subparagraph (b) hereof;
 - (iii) if the injured person brings a claim against the Contractor, the Purchaser shall, to the extent permitted by the law of the country where the injury occurred, indemnify the Contractor against such claim save to the extent that, by the operation of subparagraph (c) (ii) hereof, the Contractor would have been liable to indemnify the Purchaser had the claim been brought against the Purchaser.
- (d) In respect of damage to property of third parties, the provisions of subparagraph (c) hereof shall apply mutatis mutandis.
 - (e) The provisions of this paragraph shall apply to the acts or omissions of the respective servants of the parties as they apply to the acts or omissions of the parties themselves, provided always that as respects acts or omissions of the additional labour provided by the Purchaser in accordance

with Paragraph 14.1 the Contractor shall be liable for the consequences of such orders and instructions as have been incorrectly given, inadequately expressed or given to a person not purporting to possess the necessary qualifications.

24.2 In order to avail himself of his rights under sub-paragraphs (c) and (d) of Paragraph 24.1 the party against whom a claim is made must notify the other of such claim and must permit the other, if the other so wishes, to conduct all negotiations for the settlement of such claim and to act in his stead or, to the extent permitted by the law of the country where the action is brought, to join in such litigation.

24.3 Any limitation of the indemnities payable by either party by virtue of this clause shall be as stated in Paragraph I of the Appendix.

24.4 The provisions of this Clause shall apply equally while the Contractor is on the site in fulfilment of an obligation under Clause 23.

25. RELIEFS

25.1 The following shall be considered as cases of relief if they intervene after the formation of the Contract and impede its performance: industrial disputes and any other circumstances (e.g. fire, mobilization, requisition, embargo, currency restrictions, insurrection, shortage of transport, general shortage of materials and restrictions in the use of power) when such other circumstances are beyond the control of the parties.

25.2 The Party wishing to claim relief by reason of any of the said circumstances shall notify the other party in writing without delay on the intervention and on the cessation thereof.

25.3 The effects of the said circumstances, so far as they affect the timely performance of their obligations by the parties, are defined in Clauses 10, 11, 20 and 22. Save as provided in Paragraphs 10.2, 11.7 and 20.5, if, by reason of any of the said circumstances, the performance of the Contract within a reasonable time becomes impossible, either Party shall be entitled to terminate the Contract by notice in writing to the other party without requiring the consent of any Court.

25.4 If the Contract is terminated in accordance with Paragraph 3 hereof, the division of the expenses incurred in respect of the Contract shall be determined by agreement between the parties.

25.5 In default of agreement it shall be determined by the arbitrator which Party has been prevented from performing his obligations and that Party shall refund to the other the amount of the said expenses incurred by the other less any amount to be credited in accordance with Paragraph 7 hereof, or where the amount to be so credited exceeds the amount of such expenses, shall be entitled to recover the excess.

If the arbitrator determines that both parties have been prevented from performing their obligations, he shall apportion the said expenses between the parties in such manner as to him seems fair and reasonable, having regard to all the circumstances of the case.

25.6 For the purposes of this Clause "expenses" means actual out-of-pocket expenses reasonably incurred after both parties shall have mitigated their losses as far as possible. Provided that as respects Plant delivered to the Purchaser the Contractor's expenses shall be deemed to be that part of the price payable under the Contract which is properly attributable thereto, due account being taken of any work done in the erection of such Plant.

25.7 There shall be credited to the Purchaser against the Contractor's expenses all sums paid or payable under the Contract by the Purchaser to the Contractor.

There shall be credited to the Contractor against the Purchaser's expenses that part of the price payable under the Contract which is properly attributable to Plant delivered to the Purchaser or, in the case of an incomplete unit, the value of such Plant having regard to its incomplete state. In either case due account shall be taken of any work done in the erection of such Plant.

26. LIMITATION OF DAMAGES

26.1 Where either Party is liable in damages to the other, these shall not exceed the damage which the party in default could reasonably have foreseen at the time of the formation of the Contract.

26.2 The Party who sets up a breach of Contract shall be under a duty to take all necessary measures to mitigate the loss which has occurred provided that he can do so without unreasonable inconvenience or cost. Should he fail to do so, the party guilty of the breach may claim a reduction in the damages.

27. RIGHTS AT TERMINATION

27.1 Termination of the Contract, from whatever cause arising, shall be without prejudice to the rights of the parties accrued under the Contract up to the time of termination.

28. ARBITRATION AND LAW APPLICABLE

28.1 Any dispute arising out of the Contract shall be finally settled, in accordance with the Rules of Conciliation and Arbitration of the International Chamber of Commerce, by one or more arbitrators designated in conformity with those Rules.

28.2 Unless otherwise agreed, the Contract shall, so far as is permissible under the law of the country where the Works are carried out, be governed by the law of the Contractor's country.

28.3 If the parties expressly so agree, but not otherwise, the arbitrators shall, in giving their ruling, act as amiables compoiteurs.

APPENDIX

(To be completed by parties to the Contract)

	Clause		
A.	Maximum amount recoverable on termination by Contractor for failure to take delivery or make payment	10.2 & 11.7	(in the agreed currency) per cent per annum
B.	Rate of interest on overdue payments	11.7	
C.	Period of delay in payment authorizing termination by Contractor	11.7	months
D.	Percentage to be deducted for each week's delay	20.3	%
E.	Maximum percentage which the deductions above may not exceed	20.3	%
F.	Maximum amount recoverable for non-completion	20.5	(in the agreed currency)
G.	Maximum postponement of taking over tests by Contractor	22.3	weeks
H.	Guarantee Period for original Works and parts replaced or renewed	23.2 & 23.5	months
I.	Maximum indemnities for personal injury or damage	24.3	(in the agreed currency) hours/day
J.	(1) Daily use of Plant (2) Reduction of Guarantee Period for more intensive use	23.4	23.4

BEMÆRKNINGER TIL

**Additional Clauses for Supervision of
Erection of Plant and Machinery Abroad
Document No. 188 B**

Disse tillægsbestemmelser er ikke selvstændigt anvendelige, men kan benyttes i forbindelse med Dokument nr. 188, når køberen af maskiner og materiel selv påtager sig montagen, men anmoder sælgeren om at lade en eller flere teknikere overvåge (»supervise«) monteringsarbejdet.

Dokumentet findes kun på de tre officielle sprog.
Den foreliggende tekst er udfærdiget i 1964.

188 B

ADDITIONAL CLAUSES FOR SUPERVISION OF ERECTION OF PLANT AND MACHINERY ABROAD No. 188 B *

*prepared under the auspices
of the*

UNITED NATIONS ECONOMIC COMMISSION FOR EUROPE

Geneva, April 1964

1. PREAMBLE

These Additional Clauses shall be read in conjunction with General Conditions for supply of plant and machinery for export No. 188, of which clauses 1, 2, 8, 10, 11, 12 and 13 cover relations between the parties as regards the supervision of erection.

2. SCOPE OF THE CONTRACT

- 2.1 Erection will be carried out by the Purchaser, who shall, at his own expense, provide the skilled and unskilled labour, all equipment and everything necessary for the erection of the Plant.
- 2.2 The Vendor shall provide the services of one or more competent engineers
 - (a) to give to the Purchaser or his representative mentioned in paragraph 6.1 of these Additional Clauses the necessary instructions for the erection of the Plant by the Purchaser and, if provided in the contract, for its commissioning by him; and

(b) to supervise the manner in which the Vendor's instructions have been carried out.

2.3 The number and qualifications of the Vendor's staff, and the estimated duration of erection, shall be as specified in the Contract.

2.4 The date on which the Vendor's staff should arrive on site shall be as provided in the Contract; if not so provided, the Purchaser shall give the Vendor not less than one month's notice requiring such arrival.

3. LOCAL LAWS AND REGULATIONS

3.1 The Purchaser shall give to the Vendor in due time any information concerning local laws and regulations which is necessary for the proper execution of the Contract.

4. CHARGES PAYABLE BY THE PURCHASER

4.1 Supervision of erection is carried out on a time basis. The following items shall be separately charged:

- (a) The travelling expenses incurred by the Vendor in respect of his employees and the transport of their instruments and personal effects (within reasonable limits) in accordance with the specified method and class of travel where these are specified in the Contract;
- (b) the living expenses, including any appropriate allowance, of the Vendor's employees for each day's absence from their homes including non-working days and holidays;

*) These Additional Clauses may be used, at the option of the parties, as an alternative to the Additional Clauses for Supervision of Erection of Plant and Machinery Abroad No. 574 B.
The French, English and Russian texts are equally authentic.

UNITED NATIONS PUBLICATION
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Price: \$ 0.10; - / S.Fr.

- (c) time worked at the agreed rate, it being understood that overtime and work on holidays and at night will be charged at the special rates mentioned in the Contract;
- (d) time necessarily spent on:
 - (i) preparation and formalities incidental to the outward and homeward journeys;
 - (ii) the outward and homeward journeys;
 - (iii) daily travel morning and evening between lodgings and the site if it exceeds half an hour and there are no suitable lodgings closer to the site;
 - (iv) waiting when work is prevented by circumstances for which the Vendor is not responsible under the Contract;
 - (e) any taxes or dues levied on the invoice and paid by the Vendor in the country where erection takes place.

5. WORKING CONDITIONS

- 5.1 The price agreed for the supervision of erection shall be on the understanding that the following conditions are fulfilled, except so far as the Purchaser has informed the Vendor to the contrary:
 - (a) the erection shall not be carried out in unhealthy or dangerous surroundings;
 - (b) the Vendor's employees shall be able to obtain suitable and convenient board and lodging in the neighbourhood of the site and shall have access to adequate medical services.

Any departure from the conditions mentioned in this paragraph shall attract an extra charge.

6. LIAISON AGENT

- 6.1 The Purchaser shall designate in writing a competent representative to be his channel of communication with the Vendor's staff.

7. SAFETY REGULATIONS

7.1 The Purchaser shall notify the Vendor in full of the safety regulations which the Purchaser imposes on his own employees and the Vendor shall secure the observance of such safety regulations by his own employees.

7.2 If breaches of these regulations by the Vendor's staff come to the notice of the Purchaser, he must inform the Vendor in writing forthwith.

7.3 The Vendor shall inform the Purchaser in full of any special dangers which the execution of the erection may entail.

8. OVERTIME

8.1 Any overtime and the conditions thereof shall, within the limits of the laws and regulations of the Vendor's country and of the country where erection is carried out, be as agreed between the parties.

9. WORK OUTSIDE THE CONTRACT

9.1 The Purchaser shall not be entitled to use the Vendor's employees on any work unconnected with the subject matter of the Contract without the previous consent of the Vendor. Where the Vendor so consents, he shall not be under any liability in respect of such work, and the Purchaser shall be responsible for the safety of the Vendor's employees while employed on such work.

10. INSTRUCTION OF THE PURCHASER'S EMPLOYEES

10.1 In appropriate cases the Contract may provide on the terms and conditions herein set out for instruction to be given by the Vendor to the Purchaser's employees who will run the Plant.

11. INTERRUPTION OF WORK

11.1 If the work is interrupted for a cause for which the Vendor is not responsible:

- (a) the Purchaser is entitled to send home the Vendor's staff, but in this case the Purchaser shall pay the expenses resulting therefrom;
- (b) the Vendor is entitled to recall his staff at the expense of the Purchaser if the interruption of erection exceeds the period fixed in paragraph J of the Appendix.

(c) If the Vendor's staff is sent home or recalled, the contract is not terminated and its performance is merely suspended until the Purchaser has required the return of the Vendor's staff to the site by giving at least one month's notice or as may be agreed.

12. VENDOR'S LIABILITY

12.1 If it is shown that the Vendor or his staff have failed, otherwise than by reason of the circumstances mentioned in paragraph 10.1 of the General Conditions No. 188, to observe their obligations in accordance with clause 2 of these Additional Clauses, or that they have failed to use proper skill, care and diligence in carrying out the said obligations, and that the cost of erection to the Purchaser has thereby been increased, the Purchaser shall be entitled to claim repayment of the extra cost provided that he shall without delay have given written notice to the Vendor of his intention to make such a claim.

12.2 In the event of personal injury or damage to property occurring during erection and before supervision thereof and of commissioning of the Plant (where the contract provides for supervision of commissioning) has been completed, the liabilities shall be apportioned as follows:

- (a) The Vendor shall at his own expense make good any damage to the Plant or to any other property of the Purchaser to the extent that such damage was caused by a failure on the part of the Vendor or on that of his staff to use proper skill and care in fulfilling their functions as defined in paragraph 2.2 of these Additional Clauses.

- (b) (i) In respect of personal injury, or of damage to the property of a third party, the respective liabilities of the Purchaser and of the Vendor towards the person injured or to the third party whose property has been damaged shall be governed by the law of the country where the injury or damage took place;
- (ii) if the injured person or the said third party brings a claim against the Purchaser, the Vendor shall indemnify the Purchaser against such claim to the extent that the injury or damage was due to a failure of the Vendor or his staff as mentioned in sub-paragraph (a) hereof;
- (iii) if the injured person or said third party brings a claim against the Vendor, the Purchaser shall, to the extent permitted by the law of the country where the injury or damage occurred, indemnify the Vendor against such a claim save to the extent that, by the operation of sub-paragraph (b) (ii) hereof, the Vendor would have been liable to indemnify the Purchaser had the claim been brought against the Purchaser.
- 12.3 In order to avail himself of his rights under sub-paragraph (b) of paragraph 12.2 of these Additional Clauses the party against whom a claim is made must notify the other of such claim and must permit the other, if the other so wishes, to conduct all negotiations for the settlement of such claim and to act in his stead or, to the extent permitted by the law of the country where the action is brought, to join in such litigation.
- 12.4 Any limitation of the indemnities payable by either party by virtue of this clause shall be as stated in paragraph K of the Appendix.
- 12.5 Save as provided in this clause the Purchaser shall have no claim against the Vendor in respect of personal injury or damage to property or any losses, damages or expenses suffered by the Purchaser resulting from the erection operations or any delay therein unless it is shown from the circumstances of the case that the Vendor has been guilty of "gross misconduct" as defined in paragraph 9, 17 of General Conditions No. 188.

APPENDIX (to be completed by parties to the Contract)	Paragraph of Additional Clauses
J. Duration of interruption in erection at the expiry of which the Vendor is authorized to recall his supervising engineers	11.1 months
K. Maximum indemnities payable by the parties	12.4 (in the agreed currency)

BEMÆRKNINGER TIL

**General Conditions for the Erection
of Plant and Machinery Abroad
Document No. 188 D**

Disse monteringsbetingelser er beregnet på de situationer, hvor maskiner og materiel er indkøbt hos *én* virksomhed, f.eks. ved anvendelse af Dokument nr. 188, men hvor køberen giver *en anden* virksomhed (en uden for parterne i kontraktsforholdet vedrørende selve leverancen stående »tredjemand«) som hverv at udføre monteringen – også kaldet »Pure Erection«.

Dokumentet er udfærdiget af ECE's sekretariat under dettes eneansvar i 1963 og foreligger på engelsk, fransk og russisk.

188 D

GENERAL CONDITIONS FOR THE ERECTION OF PLANT AND MACHINERY ABROAD, No. 188 D *

prepared by

THE SECRETARIAT OF THE UNITED NATIONS
ECONOMIC COMMISSION FOR EUROPE

Geneva, August 1963

1. PREAMBLE

1.1 These general conditions shall apply if the parties refer to them in their contract, save as varied by express agreement accepted in writing by both parties.

1.2 In these general conditions the expression "erection of plant and machinery abroad" relates to the following cases:

- (a) the case of contract whereby an undertaking or consortium of undertakings (referred to in these general conditions as the "client"), having entered into a comprehensive agreement for the supply and erection of plant and machinery, sub-contracts the erection or part of the erection to another undertaking (referred to in these general conditions as the "erector");
- (b) the case of a contract by which a works owner (referred to in these general conditions as the "client") wishes to have plant and machinery which he has bought elsewhere erected by an erector;

(c) the case of a contract whereby an erection undertaking contracts to erect plant and machinery manufactured by the client himself.

1.3 These general conditions shall not apply to erection contracts other than those referred to in paragraph 2 hereof or to operations connected with the erection contract, such as surveying contracts or contracts for the management or supervision of the work.

2. FORMATION OF CONTRACT

2.1 The contract shall be deemed to have been entered into when, upon receipt of a firm offer from one of the parties, the other party has sent an acceptance in writing within the time limit (if any) fixed by the first party.

3. DRAWINGS AND DESCRIPTIVE DOCUMENTS

3.1 The client shall furnish free of charge to the erector, before the commencement of the work, any information, plans or drawings required for erection. Such plans, drawings and documents may not be reproduced or copied, nor may they be transmitted or communicated to third parties.

3.2 If the information, plans or drawings required for the erection have not been furnished to the erector, or, if they do not contain the necessary details, the erector shall himself prepare such plans or drawings and shall submit them to the client for approval. The plans and drawings so approved shall become the specifications for the erection of the plant.

* These general conditions are applicable at the option of the parties on the same basis as the General Conditions for the erection of plant and machinery abroad No. 574 D

The French, English and Russian texts are equally authentic

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4. LOCAL LAWS AND REGULATIONS

4.1 Unless the erector is an undertaking established in the country in which the erection is to take place, the client shall inform the erector fully, and not later than at the time of the conclusion of the contract, of the local laws and regulations applicable to the erection and to the taxes and dues chargeable in connexion therewith.

4.2 If, in consequence of any change in the said laws and regulations which occur after the date of the formation of the contract, the cost of the erection is increased or reduced, the amount of the increase or reduction shall be added to or deducted from the price, as the case may be.

5. WORKING CONDITIONS

5.1 Unless the client has informed the erector to the contrary, the price for the erection shall be deemed to have been agreed upon on the assumption that the following conditions are fulfilled:

- (a) the erection will not be carried out in unhealthy or dangerous sites;
- (b) the erector's employees will be able to obtain suitable and convenient board and lodging in the neighbourhood of the site and have access to adequate medical services;
- (c) such equipment, consumable stores, water and power as are specified in the contract will be available to the erector on the site in good time and, except as otherwise agreed, free of charge to the erector;
- (d) the client will provide the erector (free of charge, unless otherwise agreed) with closed or guarded premises on or near the site as a protection against the theft and deterioration of the plant to be erected, of the tools and equipment required therefor, and of the clothing of the erector's employees;
- (e) the erector will not be required to undertake any construction or demolition work, or to take any other unusual measures for moving the plant from the point of unloading to the point on the site where it is to be erected.

Any departure from the conditions mentioned in this paragraph shall attract an extra charge.

6. ERECTION ON A TIME BASIS AND LUMP-SUM ERECTION

6.1 If the erection is carried out on a time basis, the following items shall be charged separately:

- (a) all travelling expenses incurred by the erector in respect of his employees and the transport of their equipment and personal effects (within reasonable limits) in accordance with the specified method and class of travel where these are specified in the contract;
- (b) the living expenses, including any appropriate allowances, of the erector's employees for each day's absence from their homes, including non-working days and holidays;
- (c) the time worked, which shall be calculated by reference to the number of hours certified as worked in the time-sheets signed by the client. Overtime and work on Sundays, holidays and at night will be charged at the special rates mentioned in the contract. Save as otherwise provided, the hourly rates cover the wear and tear and depreciation of the erector's tools and light equipment;
- (d) time necessarily spent on:
 - (i) preparation and formalities incidental to the outward and homeward journeys;
 - (ii) the outward and homeward journeys;
 - (iii) daily travel morning and evening between lodgings and the site if it exceeds half an hour and there are no suitable lodgings closer to the site;
 - (iv) waiting when work is prevented by circumstances for which the erector is not responsible under the contract;

- (e) any expenses incurred by the erector in accordance with the contract, in connexion with the provision of equipment by him, including where appropriate a charge for the use of the erector's own heavy equipment;
 - (f) any taxes or dues levied on the invoice and paid by the erector in the country where erection takes place.
- 6.2 If the erection is carried out for a lump sum, the quoted price includes all the items above mentioned. Nevertheless, if the erection is prolonged for any cause for which the client or any of his contractors other than the erector is responsible and if as a result the work of the erector's employees is suspended or added to, a charge will be made for any idle time, any extra work, any extra living expenses of the erector's employees and the cost of any extra journey.
7. PREPARATORY WORK
- 7.1 The plant must be on the site in good time. The client must provide, in good time, suitable access to the site for the plant and all necessary equipment and furnish the erector with all information required for making all necessary connexions to the plant.
 - 7.2 If the client is responsible for all preparatory work, it must be completed in good time.
 - 7.3 If the erector is responsible for the foundations work, the client shall furnish him in good time with all necessary information - relating, unless otherwise agreed, only to the work - for preparing suitable foundations. Any expenses resulting from an error or omission in the information furnished by the client shall be borne by the client.

8. LIAISON AGENTS

8.1 The erector and the client shall each designate in writing a competent representative to be his channel of communication with the other party on the day-to-day execution of the work on the site.

8.2 Each such representative shall be present on or near the site during working hours.

9. ADDITIONAL LABOUR

9.1 If the erector so requires in good time, the client shall make available to the erector free of charge such skilled and unskilled labour as is provided for in the contract and, within reasonable limits, any additional unskilled labour required, even if not provided for in the contract.

10. SAFETY REGULATIONS

10.1 The client shall notify the erector in full of the safety regulations which the client imposes on his own employees and the erector shall secure the observance by his employees of such safety regulations.

10.2 If breaches of these regulations come to the notice of the client, he shall inform the erector in writing forthwith, and may forbid persons guilty of such breaches entry to the site.

10.3 Each party shall inform the other in full of any special dangers which the execution of the work may entail.

11. OVERTIME

11.1 Any overtime and the conditions thereof shall, within the limits of the laws and regulations of the erector's country and of the country in which the erection is carried out, be as agreed between the parties.

12. WORK OUTSIDE THE CONTRACT

12.1 The client shall not be entitled to use the erector's employees on any work unconnected with the subject-matter of the contract without the previous consent of the erector. If the erector so consents, he shall not be under any liability in respect of such work, and the client shall be responsible for the safety of the erector's employees while employed on such work.

13. RIGHT OF INSPECTION

13.1 Until the work is taken over and during any work resulting from the operation of the guarantee, the erector shall have the right at any time during the hours of work on the site to inspect the work at his own expense. In proceeding to the site, the inspectors shall observe the regulations as to movement in force on the client's premises.

13.2 Any person duly authorized by the client shall also have the right to inspect the work during working hours, provided that such inspection shall entail no expense for the erector.

14. DELIVERY AND COMPLETION

14.1 Unless otherwise agreed, the completion period shall run from the most recent of the following dates :

- (a) the date of the formation of the contract as defined in clause 2;
 - (b) the date on which the erector receives notice of the grant of an authorization for the entry of his personnel, if such authorization is required in the country of erection;
 - (c) the date on which the erector receives notice of the grant of an authorization for the import of equipment necessary for the erection;
 - (d) the date of the receipt by the erector of such payment in advance of erection as is stipulated in the contract.
- 14.2 Should delay in completion be caused by any of the circumstances mentioned in clause 20 or by an act or omission on the part of the client and whether such cause occur before or after the time or extended time for completion, there shall be granted, subject to the provisions of paragraph 5 hereof, such extension of the completion period as is reasonable having regard to all the circumstances of the case.

14.3 If a fixed time for completion is provided for in the contract, and the erector fails to complete the work within such time or any extension thereof granted under paragraph 2 hereof, the client shall be entitled, on giving to the erector within a reasonable time notice in writing, to claim a reduction in the price payable under the contract, unless it can be reasonably concluded from the circumstances of the particular case that the client has suffered no loss. Such reduction shall be equal to the percentage, specified in paragraph A of the Appendix, of the price payable under the contract for the erection of such part of the works as could not be put to the use intended owing to delay in completion. It shall be calculated for each complete week of delay commencing on the due date of completion but shall not exceed the sum named in paragraph B of the Appendix or, if no sum is specified, 75 per cent of the price payable under the contract for the erection of such part of the plant as cannot be used as intended owing to delay in completion. Such reduction shall be allowed when a payment becomes due on or after completion. Save as provided in paragraph 5 hereof, the said reduction shall be to the exclusion of any other remedy of the client in respect of the erector's failure to complete as aforesaid.

14.4 If the time for completion mentioned in the contract is an estimate only, either party may after the expiration of two-thirds of such estimated time require the other party in writing to agree a fixed time.

If the parties fail to agree, either party may have recourse to arbitration, in accordance with the provisions of clause 23, to determine a reasonable time for completion and the time so determined shall be deemed to be the fixed time for completion provided for in the contract and paragraph 3 hereof shall apply accordingly.

14.5 If any portion of the work in respect of which the client has become entitled to the maximum reduction provided for in paragraph 3 hereof, or in respect of which he would have been so entitled had he given the notice referred to therein, remains uncompleted, the client may by notice in writing to the erector require him to complete and by such last-mentioned notice fix a final time for completion which shall be reasonable taking into account such delay as has already occurred. If for any cause other than one for which the client or some other supplier, contractor, builder or erector employed by him is responsible, the erector fails to complete within such time, the client shall be entitled by notice in writing to the erector, and without requiring the consent of any court, to terminate the contract in respect of such portion of the work and thereupon to recover from the erector any loss suffered by the client by reason of the failure of the erector as aforesaid up to an amount not exceeding the sum named in paragraph C of the Appendix or, if no sum is specified, up to 75 per cent of the price payable under the contract for the erection of such part of the plant as cannot be used as intended owing to delay in completion.

15. PAYMENT

15.1 Payment shall be made in the manner and at the time or times agreed by the parties.

15.2 Payments made on account by the client shall be applied against the price of the work ordered and shall not constitute deposits the renunciation of which would entitle the parties to terminate the contract.

15.3 A payment conditional on the fulfilment of an obligation by the erector shall not be due until such obligation has been fulfilled, unless the failure of the erector is due to an act or omission on the part of the client.

15.4 If the client delays in making any payment, the erector may postpone the fulfilment of his own obligations until such payment is made, unless the failure of the client is due to an act or omission of the erector.

15.5 If the client's delay in making any payment is due to one of the circumstances mentioned in clause 20, the erector shall not be entitled to any interest on the sum due.

15.6 Save as aforesaid, if the client delays in making any payment, the erector shall on giving to the client within a reasonable time notice in writing be entitled to the payment of interest on the sum due at the rate fixed in paragraph D of the Appendix from the date on which such sum became due. If at the end of the period fixed in paragraph E of the Appendix the client has not paid the sum due, the erector shall be entitled by notice in writing to the client, and without requiring the consent of any court, to terminate the contract and thereupon to recover from the client the amount of his loss up to the sum mentioned in paragraph F of the Appendix.

16. ACCEPTANCE OF ERECTION

16.1 The erector shall notify the client in writing when the work will be ready for acceptance and such notification shall be given in sufficient time to enable the client to make any necessary arrangements. The date of the acceptance shall be fixed by agreement between the erector and the client. The tests shall take place in the presence of both parties.

16.2 If expressly agreed in the contract, the acceptance will include tests which may be carried out separately or at the same time as tests for taking over the plant as a whole.

16.3 If in the course of the acceptance or of the taking-over tests it is found that the work is defective as a result of defective mounting, assembly or connexion of the plant supplied to the erector, the erector shall with all speed and at his own expense make good the defects and thereafter, if the client so requires, the acceptance and/or the tests shall be repeated at the expense of the erector.

17. TAKING-OVER OF THE ERECTION

17.1 As soon as the work has been completed in accordance with the contract and has been accepted without any defect for which the erector is responsible having been found, the client shall be deemed to have taken over the work so far as the erector is concerned and the guarantee period shall start to run. The client shall thereupon issue a certificate (herein called a "taking-over certificate") in which he shall certify the date on which the work was completed and passed the tests.

17.2 If the client does not take the steps necessary for the acceptance, the work shall be deemed to have been taken over and the guarantee period shall start to run on a written notice to that effect being given by the erector.

17.3 If by reason of difficulties encountered by the client (whether or not covered by clause 20) it becomes impossible to proceed to the acceptance, it shall be postponed for a period not exceeding six months, or such other period as the parties agree.

18. GUARANTEE

18.1 The erector undertakes to remedy at his expense and with all speed, subject to the provisions set out below, any defect in the mounting, assembly, or connexion of plant furnished to him. If, owing to such defects, parts used in the erection are rendered defective, the erector shall also reimburse the client's expenses in respect of the replacement or repair of the defective parts, up to the sum named in paragraph G of the Appendix or, if no sum is specified, up to the agreed price of the erection.

- 18.2 The erector's undertaking under paragraph 18.1 is limited to defects which appear during the period (hereinafter called "the guarantee period") specified in paragraph H of the Appendix and commencing on taking over.
- 18.3 In order to be able to avail himself of his rights under this clause the client shall notify the erector in writing without delay of any defects that have appeared and shall give him every opportunity of inspecting and remedying them.
- 18.4 If the erector refuses to fulfil his obligations under this clause or fails to proceed with due diligence after being required so to do, the client may proceed to do the necessary work at the erector's risk and expense, provided that he does so in a reasonable manner.
- 18.5 The erector's liability does not cover defects arising either out of plant erected, or out of a design imposed or modified by the client.
- 18.6 After taking over and save as in this clause expressed, the erector shall be under no liability even in respect of defects due to causes existing before taking over. It is expressly agreed that the client shall have no claim in respect of personal injury or of damage to property not the subject matter of the contract arising after taking over nor for loss of profit unless it is shown from the circumstances of the case that the erector has been guilty of gross misconduct.
- 18.7 "Gross misconduct" does not comprise any and every lack of proper care or skill, but means an act or omission on the part of the erector implying either a failure to pay due regard to serious consequences which a conscientious erector would normally foresee as likely to ensue, or a deliberate disregard of any consequences of such act or omission.

19. LIABILITY FOR PERSONAL INJURY AND DAMAGE TO PROPERTY

19.1 In the event of personal injury or damage to property occurring before all the work has been taken over, the erector's liabilities shall be determined as follows:

- (a) The erector shall at his own expense make good any loss or damage to the erected plant during the execution of the work if such loss or damage is caused by an act or omission of the erector;
- (b) In respect of damage to the client's property other than the erected plant, the erector shall indemnify the client to the extent that such damage was caused by the erector or by the failure of equipment or tools provided by the erector for the purposes of erection. If the circumstances show that the erector failed to use proper skill and care.
- (c) (i) In respect of personal injury, the respective liabilities of the client and of the erector towards the injured person shall be governed by the law of the country where the injury occurred;
 - (ii) If the injured person brings a claim against the client, the erector shall indemnify the client against such claim to the extent that the injury was due to any of the causes mentioned in subparagraph (b) hereof;
- (iii) If the injured person brings a claim against the erector, the client shall, to the extent permitted by the law of the country where the injury occurred, indemnify the erector against such claim save to the extent that, by the operation of sub-paragraph (c) (ii) hereof, the erector would have been liable to indemnify the client had the claim been brought against the client.
- (d) In respect of damage to property of third parties, the provisions of sub-paragraph (c) hereof shall apply mutatis mutandis.
- (e) The provisions of this paragraph concerning the liability of the parties to the contract shall also apply to their respective employees. However, in the case of additional labour furnished by the client under paragraph 9.1, the erector shall be liable in respect of his orders and instructions if they were incorrect, badly expressed or given to a person deemed to be unqualified.

- 19.2 In order to avail himself of his rights under sub-paragraphs (c) and (d) of paragraph 19.1 the party against whom a claim is made must notify the other of such claim and must permit the other, if the other so wishes, to conduct all negotiations for the settlement of such claim and to act in his stead or, to the extent permitted by the law of the country where the action is brought, to join in such litigation.
- 19.3 Any limitation of the indemnities payable by either party by virtue of this clause shall be as stated in paragraph I of the Appendix.
- 19.4 The provisions of this clause shall apply equally while the erector is on the site in fulfilment of an obligation under clause 18.
20. RELIEFS
- 20.1 The following shall be considered as causes of relief if they supervene after the formation of the contract and impede its performance : industrial disputes and any other circumstances (e.g. fire, mobilization, requisition, embargo, currency restrictions, restrictions on the grant of an entry permit for indispensable personnel of the erector, insurrection, shortage of transport, general shortage of materials and restrictions in the use of power) which are beyond the control of the parties.
- 20.2 The party wishing to claim relief by reason of any of the said circumstances shall notify the other party in writing without delay of the occurrence and of the cessation of these circumstances.
- 20.3 The effects of the said circumstances, so far as they affect the timely performance of their obligations by the parties, are defined in clauses 14 and 15. Save as provided in paragraphs 14.5 and 15.6, if, by reason of any of the said circumstances, the performance of the contract within a reasonable time becomes impossible, either party shall be entitled to terminate the contract by notice in writing to the other party without requiring the consent of any court.

20.4 If the contract is terminated in accordance with paragraph 3 hereof, the division of the expenses incurred in respect of the contract shall be determined by agreement between the parties.

20.5 In default of agreement the arbitrator shall apportion the said expenses between the parties in such manner as to him seems fair and reasonable, having regard to all the circumstances of the case.

21. LIMITATION OF DAMAGES

21.1 Where either party is liable in damages to the other, these shall not exceed the damage which the party in default could reasonably have foreseen at the time of the formation of the contract.

21.2 The party who sets up a breach of contract shall be under a duty to take all necessary measures to mitigate the loss which has occurred provided that he can do so without unreasonable inconvenience or cost. Should he fail to do so, the party guilty of the breach may claim a reduction in the damages.

22. RIGHTS AT TERMINATION

22.1 Termination of the contract, from whatever cause arising, shall be without prejudice to the rights of the parties accrued under the contract up to the time of termination.

23. ARBITRATION AND LAW APPLICABLE

23.1 Any dispute arising out of the contract shall be finally settled, in accordance with the Rules of Conciliation and Arbitration of the International Chamber of Commerce, by one or more arbitrators designated in conformity with those Rules.

23.2 Unless otherwise agreed, the contract shall be governed by the law of the country where the erection is carried out.

23.3 If the parties expressly so agree, but not otherwise, the arbitrators shall, in giving their ruling, act as "amiables compositeurs".

APPENDIX		
(to be completed by the parties to the contract)		
A. Percentage of reduction for each week's delay	14.3	(in the agreed currency)
B. Maximum amount of above reduction	14.3	(in the agreed currency)
C. Maximum amount recoverable for non-completion	14.5	(in the agreed currency)
D. Rate of interest on overdue payments	15.6	• • per cent per annum
E. Period of delay in payment authorizing termination by erector	15.6	• • months
F. Maximum amount recoverable on termination by erector for failure to make payment	15.6	(in the agreed currency)
G. Maximum indemnities payable by erector for repair or replacement of defective parts	18.1	(in the agreed currency)
H. Guarantee period for erection	18.2	• • months
I. Maximum indemnities for personal injury or damage	19.3	(in the agreed currency)

BEMÆRKNINGER

vedrørende alle 574-Betingelser

De leveringsbetingelser, der bærer kodenummeret 574 (alene eller med tilføjet bogstav), bør specielt anvendes i handelen med de østeuropæiske lande (excl. Jugoslavien) og Den kinesiske Folke-republik.

574-betingelserne adskiller sig hovedsageligt fra 188-betingelserne derved,

at de ikke opregner, hvad der falder ind under force majeure, se kapitlet: »Reliefs« (de østeuropæiske lande og Den kinesiske Folke-republik anerkender ikke strejke som »force majeure«) og

at de ikke henviser retstvister i anledning af kontrakten til Det internationale Handelskammers Regler om Forligsmaægling og Vold-gift, se kapitlet: »Arbitration and Law Applicable«.

I sidstnævnte forbindelse bør det erindres, at de ovennævnte lande i almindelighed akcepterer nedenstående organer som voldgifts-retter:

U.S.S.R.: Stockholms Handelskammer

Kina: Berns Handelskammer

De øvrige lande: Zürichs Handelskammer.

Under hensyn til at de respektive 188- og 574-betingelser stort set er identiske, har man kun gengivet »General Conditions for the Supply of Plant and Machinery for Export«, Dokument nr. 574, men ikke de øvrige 574-betingelser, der imidlertid alle kan rekvi-teres hos Industriraadet.

574

GENERAL CONDITIONS FOR THE SUPPLY OF PLANT AND MACHINERY FOR EXPORT *

Prepared under the auspices of the

UNITED NATIONS ECONOMIC COMMISSION FOR EUROPE

Geneva, December 1955

1. PREAMBLE

1.1. These General Conditions shall apply, save as varied by express agreement accepted in writing by both parties.

2. FORMATION OF CONTRACT

2.1. The Contract shall be deemed to have been entered into when, upon receipt of an order, the Vendor has sent an acceptance in writing within the time-limit (if any) fixed by the Purchaser.

2.2. If the Vendor, in drawing up his tender, has fixed a time-limit for acceptance, the Contract shall be deemed to have been entered into when the Purchaser has sent an acceptance in writing before the expiration of such time-limit, provided that there shall be no binding Contract unless the acceptance reaches the Vendor not later than one week after the expiration of such time-limit.

3. DRAWINGS AND DESCRIPTIVE DOCUMENTS

3.1. The weights, dimensions, capacities, prices, performance ratings and other data included in catalogues, prospectuses, circulars, advertisements, illustrated matter and price lists constitute an approximate guide. These data shall not be binding save to the extent that they are by reference expressly included in the Contract.

3.2. Any drawings or technical documents intended for use in the construction of the Plant or of part thereof and submitted to the Purchaser prior or subsequent to the formation of the Contract remain the exclusive property of the Vendor. They may not, without the Vendor's consent, be utilised by the Purchaser or copied, reproduced, transmitted or communicated to a third party. Provided, however, that the said plans and documents shall be the property of the Purchaser :

- (a) if it is expressly so agreed, or
- (b) if they are referable to a separate preliminary Development Contract on which no actual construction was to be performed and in which the property of the Vendor in the said plans and documents was not reserved.

3.3. Any drawings or technical documents intended for use in the construction of the Plant or of parts thereof and submitted to the Vendor by the Purchaser prior or subsequent to the formation of the Contract remain the exclusive property of the Purchaser. They may not, without his consent, be utilised by the Vendor or copied, reproduced, transmitted or communicated to a third party.

3.4. The Vendor shall, if required by the Purchaser, furnish free of charge to the Purchaser at the commencement of the Guarantee Period, as defined in Clause 9, information and drawings other than manufacturing drawings of the Plant in sufficient detail to enable the Purchaser to carry out the erection, commissioning, operation and maintenance (including running repairs) of all parts of the Plant. Such information and drawings shall be the property of the Purchaser and the restrictions on their use set out in paragraph 2 hereof shall not apply thereto. Provided that if the Vendor so stipulates, they shall remain confidential.

4. PACKING

4.1. Unless otherwise specified :

- (a) prices shown in price-lists and catalogues shall be deemed to apply to unpacked Plant;
- (b) prices quoted in tenders and in the contract shall include the cost of packing or protection required under normal transport conditions to prevent damage to or deterioration of the Plant before it reaches its destination as stated in the Contract.

* These Conditions may be used, at the option of the parties, as an alternative to the General Conditions for the Supply of Plant and Machinery for Export prepared under the auspices of the United Nations Economic Commission for Europe, at Geneva, in March 1953 (General Conditions No. 188).

The English, French and Russian texts are equally authentic.
The observations of the experts who drew up these General Conditions, together with a description of the procedure followed, are embodied in the «COMMENTARY ON THE GENERAL CONDITIONS FOR THE SUPPLY OF PLANT AND MACHINERY FOR EXPORT No. 574» (document E/ ECE/ 220) published by the Economic Commission for Europe. It can be obtained direct from the Sales Section of the European Office of the United Nations, Geneva, Switzerland, or through United Nations Sales Agents.

5. INSPECTION AND TESTS

Inspection

5.1. If expressly agreed in the Contract, the Purchaser shall be entitled to have the quality of the materials used and the parts of the Plant, both during manufacture and when completed, inspected and checked by his authorised representatives. Such inspection and checking shall be carried out at the place of manufacture during normal working hours after agreement with the Vendor as to date and time.

5.2. If as a result of such inspection and checking the Purchaser shall be of the opinion that any materials or parts are defective or not in accordance with the Contract, he shall state in writing his objections and the reasons therefor.

Tests

5.3. Acceptance tests will be carried out and, unless otherwise agreed, will be made at the Vendor's works and during normal hours. If the technical requirements of the tests are not specified in the Contract, the tests will be carried out in accordance with the general practice obtaining in the appropriate branch of the industry in the country where the Plant is manufactured.

5.4. The Vendor shall give to the Purchaser sufficient notice of the tests to permit the Purchaser's representatives to attend. If the Purchaser is not represented at the tests, the test report shall be communicated by the Vendor to the Purchaser and shall be accepted as accurate by the Purchaser.

5.5. If on any test (other than a test on site, where tests on site are provided for in the Contract) the Plant shall be found to be defective or not in accordance with the Contract, the Vendor shall with all speed and at his own expense (including any transport expenses) make good the defect or ensure that the Plant complies with the Contract. Thereafter, if the Purchaser so requires, the test shall be repeated.

5.6. Unless otherwise agreed, the Vendor shall bear all the expenses of tests carried out in his works, except the personal expenses of the Purchaser's representatives.

5.7. If the Contract provides for tests on site, the terms and conditions governing such tests shall be such as may be specially agreed between the parties.

6. PASSING OF RISK

6.1. Where no indication is given in the Contract of the form of sale, the Plant shall be deemed to be sold "ex works".

6.2. Save as provided in paragraph 7.6, the moment when the risks pass shall, unless the parties shall have otherwise agreed, be determined as follows:

(a) On a sale "ex works", the risk shall pass from the Vendor to the Purchaser when the Plant has been placed at the disposal of the Purchaser in accordance with the Contract, provided that the Vendor gives to the Purchaser notice in writing of the date on and after which the Purchaser may take delivery of the Plant. The notice of the Vendor must be given in sufficient time to allow the Purchaser to take such measures as are normally necessary for the purpose of taking delivery.

(b) On a sale FOB or CIF, the risk shall pass from the Vendor to the Purchaser when the Plant has effectively passed the ship's rail at the agreed port of shipment.

(c) On a sale "free at frontier", the risks shall pass from the Vendor to the Purchaser when the Customs formalities have been concluded at the frontier of the country from which the Plant is exported.

(d) In any of the cases mentioned in paragraphs (b) and (c) hereof, the Vendor shall give to the Purchaser sufficiently early advice of the dispatch of the plant to enable the Purchaser to take any necessary measures.

6.3. On any other form of sale, the time when the risks pass shall be determined in accordance with the agreement of the parties.

7. DELIVERY

7.1. Unless otherwise agreed, the delivery period shall run from the latest of the following dates :

- (a) the date of the formation of the Contract as defined in Clause 2;
- (b) the date on which the Vendor receives notice of the issue of a valid import licence where such is necessary for the execution of the Contract;
- (c) the date of the receipt by the Vendor of such payment in advance of manufacture as is stipulated in the Contract.

7.2. Should delay in delivery be caused by any of the circumstances mentioned in Clause 10 or by an act or omission of the Purchaser and whether such cause occur before or after the time or extended time for delivery, there shall be granted subject to the provisions of paragraph 5 hereof such extension of the delivery period as is reasonable, having regard to all the circumstances of the case.

7.3. If a fixed time for delivery is provided for in the Contract and the Vendor fails to deliver within such time or any extension thereof granted under paragraph 2 hereof, the Purchaser shall be entitled, on giving to the Vendor within a reasonable time notice in writing, to claim a reduction of the price payable under the Contract, unless it can be reasonably concluded from the circumstances of the particular case that the Purchaser has suffered no loss. Such reduction shall equal the percentage named in paragraph A of the Appendix of that part of the price payable under the Contract which is properly attributable to such portion of the Plant as cannot in consequence of the said failure be put to the use intended for each complete week of delay commencing on the due date of delivery, but shall not exceed the maximum percentage named in paragraph B of the Appendix. Such reduction shall be allowed when a payment becomes due on or after delivery. Save as provided in paragraph 5 hereof, such reduction of price shall be to the exclusion of any other remedy of the Purchaser in respect of the Vendor's failure to deliver as aforesaid.

7.4. If the time for delivery mentioned in the Contract is an estimate only, either party may after the expiration of two thirds of such estimated time require the other party in writing to agree a fixed time.

Where no time for delivery is mentioned in the Contract, this course shall be open to either party after the expiration of six months from the formation of the Contract.

If in either case the parties fail to agree, either party may have recourse to arbitration in accordance with the provisions of Clause 13, to determine a reasonable time for delivery and the time so determined shall be deemed to be the fixed time for delivery provided for in the Contract and paragraph 3 hereof shall apply accordingly.

7.5. If any portion of the Plant in respect of which the Purchaser has become entitled to the maximum reduction provided for by paragraph 3 hereof, or in respect of which he would have been so entitled had he given the notice referred to therein, remains undelivered, the Purchaser may by notice in writing to the Vendor require him to deliver and by such last mentioned notice fix a final time for delivery which shall be reasonable taking into account such delay as has already occurred. If for any reason whatever the Vendor fails within such time to do everything that he must do to effect delivery, the Purchaser shall be entitled by notice in writing to the Vendor, and without requiring the consent of any Court, to terminate the Contract in respect of such portion of the Plant and thereupon to recover from the Vendor any loss suffered by the Purchaser by reason of the failure of the Vendor as aforesaid up to an amount not exceeding the sum named in paragraph C of the Appendix or, if no sum be named, that part of the price payable under the Contract which is properly attributable to such portion of the Plant as could not in consequence of the Vendor's failure be put to the use intended.

7.6. If the Purchaser fails to accept delivery on due date, he shall nevertheless make any payment conditional on delivery as if the plant had been delivered. The Vendor shall arrange for the storage of the Plant at the risk and cost of the Purchaser. If required by the Purchaser, the Vendor shall insure the Plant at the cost of the Purchaser. Provided that if the delay in accepting delivery is due to one of the circumstances mentioned in Clause 10 and the Vendor is in a position to store it in his premises without prejudice to his business, the cost of storing the Plant shall not be borne by the Purchaser.

7.7. Unless the failure of the Purchaser is due to any of the circumstances mentioned in Clause 10, the Vendor may require the Purchaser by notice in writing to accept delivery within a reasonable time.

If the Purchaser fails for any reason whatever to do so within such time, the Vendor shall be entitled by notice in writing to the Purchaser, and without requiring the consent of any Court, to terminate the Contract in respect of such portion of the Plant as is by reason of the failure of the Purchaser aforesaid not delivered and thereupon to recover from the Purchaser any loss, suffered by reason of such failure up to an amount not exceeding the sum named in paragraph D of the Appendix or, if no sum be named, that part of the price payable under the Contract which is properly attributable to such portion of the Plant.

8. PAYMENT

- 8.1. Payment shall be made in the manner and at the time or times agreed by the parties.
- 8.2. Any advance payments made by the Purchaser are payments on account and do not constitute a deposit, the abandonment of which would entitle either party to terminate the Contract.

8.3. If delivery has been made before payment of the whole sum payable under the Contract, Plant delivered shall, to the extent permitted by the law of the country where the Plant is situated after delivery, remain the property of the Vendor until such payment has been effected. If such law does not permit the Vendor to retain the property in the Plant, the Vendor shall be entitled to the benefit of such other rights in respect thereof as such law permits him to retain. The Purchaser shall give the Vendor every assistance in taking any measures required to protect the Vendor's right of property or such other rights as aforesaid.

8.4. A payment conditional on the fulfilment of an obligation by the Vendor shall not be due until such obligation has been fulfilled, unless the failure of the Vendor is due to an act or omission of the Purchaser.

8.5. If the Purchaser delays in making any payment, the Vendor may postpone the fulfilment of his own obligations until such payment is made, unless the failure of the Purchaser is due to an act or omission of the Vendor.

8.6. If delay by the Purchaser in making any payment is due to one of the circumstances mentioned in Clause 10, the Vendor shall not be entitled to any interest on the sum due.

8.7. Save as aforesaid, if the Purchaser delays in making any payment, the Vendor shall on giving to the Purchaser within a reasonable time notice in writing be entitled to the payment of interest on the sum due at the rate fixed in Paragraph E of the Appendix from the date on which such sum became due. If at the end of the period fixed in Paragraph F of the Appendix, the Purchaser shall still have failed to pay the sum due, the Vendor shall be entitled by notice in writing to the Purchaser, and without requiring the consent of any Court, to terminate the Contract and thereupon to recover from the Purchaser the amount of his loss up to the sum mentioned in paragraph D of the Appendix.

9. GUARANTEE

9.1. Subject as hereinafter set out, the Vendor undertakes to remedy any defect resulting from faulty design, materials or workmanship.

9.2. This liability is limited to defects which appear during the period (hereinafter called •the Guarantee Period•) specified in Paragraph G of the Appendix.

9.3. In fixing this period due account has been taken of the time normally required for transport as contemplated in the Contract.

9.4. In respect of such parts (whether of the Vendor's own manufacture or not) of the Plant as are expressly mentioned in the Contract, the Guarantee Period shall be such other period (if any) as is specified in respect of each of such parts.

- 9.5. The Guarantee Period shall start from the date on which the Purchaser receives notification in writing from the Vendor that the Plant is ready for dispatch from the works. If dispatch is delayed, the Guarantee Period shall be extended by a period equivalent to the amount of the delay so as to permit the Purchaser the full benefit of the time given for trying out the Plant. Provided however that if such delay is due to a cause beyond the control of the Vendor such extension shall not exceed the number of months stated in paragraph II of the Appendix. And provided also that, if the parties so agree, the Guarantee Period shall start from the date of delivery.
- 9.6. The parties, having taken into account the nature of the Plant, may provide in the Contract for a reduction of the Guarantee Period if the use of the Plant is abnormally intensive.
- 9.7. A fresh Guarantee Period equal to that stated in paragraph G of the Appendix shall apply, under the same terms and conditions as those applicable to the original Plant, to parts supplied in replacement of defective parts or to parts renewed in pursuance of this Clause. This provision shall not apply to the remaining parts of the Plant, the Guarantee Period of which shall be extended only by a period equal to the period during which the Plant is out of action as a result of a defect covered by this Clause.
- 9.8. In order to avail himself of his rights under this Clause the Purchaser shall notify the Vendor in writing without delay of any defects that have appeared and shall give him every opportunity of inspecting and remedying them.
- 9.9. On receipt of such notification the Vendor shall remedy the defect forthwith and, save as mentioned in paragraph 10 hereof, at his own expense. Save where the nature of the defect is such that it is appropriate to effect repairs on site, the Purchaser shall return to the Vendor any part in which a defect covered by this Clause has appeared, for repair or replacement by the Vendor, and in such case the delivery to the Purchaser of such part properly repaired or a part in replacement thereof shall be deemed to be a fulfilment by the Vendor of his obligations under this paragraph in respect of such defective part.
- 9.10. Unless otherwise agreed, the Purchaser shall bear the cost and risk of transport of defective parts and of repaired parts or parts supplied in replacement of such defective parts between the place where the Plant is situated and one of the following points :
- (i) the Vendor's works if f.o.b. Contract is "ex works" or F.O.R.;
 - (ii) the port from which the Vendor dispatched the Plant if the Contract is F.O.B., F.A.S., C.I.F. or C. & F.;
 - (iii) in all other cases the frontier of the country from which the Vendor dispatched the Plant.
- 9.11. Where, in pursuance of paragraph 9 hereof, repairs are required to be effected on site, the conditions covering the attendance of the Vendor's representatives on site shall be such as may be specially agreed between the parties.

9.12. Defective parts replaced in accordance with this Clause shall be placed at the disposal of the Vendor.

9.13. If the Vendor refuses to fulfil his obligations under this Clause or fails to proceed with due diligence after being required so to do, the Purchaser may proceed to do the necessary work at the Vendor's risk and expense, provided that he does so in a reasonable manner.

9.14. The Vendor's liability does not apply to defects arising out of materials provided, or out of a design stipulated, by the Purchaser.

9.15. The Vendor's liability shall apply only to defects that appear under the conditions of operation provided for by the Contract and under proper use. It does not cover defects due to causes arising after the risk in the Plant has passed in accordance with Clause 6. In particular it does not cover defects arising from the Purchaser's faulty maintenance or erection, or from alterations carried out without the Vendor's consent in writing, or from repairs carried out improperly by the Purchaser, nor does it cover normal deterioration.

9.16. Save as in this Clause expressed, the Vendor shall be under no liability in respect of defects after the risk in the Plant has passed in accordance with Clause 6, even if such defects are due to causes existing before the risk so passed. It is expressly agreed that the Purchaser shall have no claim in respect of personal injury or of damage to property not the subject matter of the Contract or of loss of profit unless it is shown from the circumstances of the case that the Vendor has been guilty of gross misconduct.

9.17. «Gross misconduct» does not comprise any and every lack of proper care or skill, but means an act or omission on the part of the Vendor implying either a failure to pay due regard to serious consequences which a conscientious Contractor would normally foresee as likely to ensue, or a deliberate disregard of any consequences of such act or omission.

10. RELIEFS

10.1. Any circumstances beyond the control of the parties intervening after the formation of the contract and impeding its reasonable performance shall be considered as cases of relief. For the purposes of this clause circumstances not due to the fault of the party invoking them shall be deemed to be beyond the control of the parties.

10.2. The party wishing to claim relief by reason of any of the said circumstances shall notify the other party in writing without delay on the intervention and on the cessation thereof.

10.3. The effects of the said circumstances, so far as they affect the timely performance of their obligations by the parties, are defined in Clauses 7 and 8. Save as provided in paragraphs 7.5, 7.7 and 8.7, if, by reason of any of the said circumstances, the performance of the Contract within a reasonable time becomes impossible, either party shall be entitled to terminate the Contract by notice in writing to the other party without requiring the consent of any Court.

10.4. If the Contract is terminated in accordance with paragraph 3 hereof, the division of the expenses incurred in respect of the Contract shall be determined by agreement between the parties.

10.5. In default of agreement it shall be determined by the arbitrator which party has been prevented from performing his obligations and that party shall refund to the other the amount of the said expenses incurred by the other less any amount to be credited in accordance with Paragraph 7 hereof, or where the amount to be so credited exceeds the amount of such expenses, shall be entitled to recover the excess.

If the arbitrator determines that both parties have been prevented from performing their obligations, he shall apportion the said expenses between the parties in such manner as to him seems fair and reasonable, having regard to all the circumstances of the case.

10.6. For the purposes of this clause "expenses" means actual out-of-pocket expenses reasonably incurred after both parties shall have mitigated their losses as far as possible. Provided that respects Plant delivered to the Purchaser the Vendor's expenses shall be deemed to be that part of the price payable under the Contract which is properly attributable thereto.

10.7. There shall be credited to the Purchaser against the Vendor's expenses all sums paid or payable under the Contract by the Purchaser to the Vendor.

There shall be credited to the Vendor against the Purchaser's expenses that part of the price payable under the Contract which is properly attributable to Plant delivered to the Purchaser or, in the case of an incomplete unit, the value of such plant having regard to its incomplete state.

11. LIMITATION OF DAMAGES

11.1. Where either party is liable in damages to the other, these shall not exceed the damage which the party in default could reasonably have foreseen at the time of the formation of the Contract.

11.2. The party who sets up a breach of the Contract shall be under a duty to take all necessary measures to mitigate the loss which has occurred provided that he can do so without unreasonable inconvenience or cost. Should he fail to do so, the Party guilty of the breach may claim a reduction in the damages.

12. RIGHTS AT TERMINATION

12.1. Termination of the Contract, from whatever cause arising, shall be without prejudice to the rights of the parties accrued under the Contract up to the time of termination.

13. ARBITRATION AND LAW APPLICABLE

13.1. Any dispute arising out of or in connection with the Contract shall be finally settled by arbitration without recourse to the Courts. The procedure shall be such as may be agreed between the parties.

13.2. Unless otherwise agreed, the Contract shall be governed by the law of the Vendor's country.

APPENDIX

(To be completed by parties to the Contract)

C L A U S E	
A. Percentage to be deducted for each week's delay	7.3 per cent
B. Maximum percentage which the deductions above may not exceed	7.3 per cent
C. Maximum amount recoverable for non-delivery	7.5(in the agreed currency)
D. Maximum amount recoverable on termination by Vendor for failure to take delivery or make payment	7.7(in the agreed currency) and 8.7
E. Rate of interest on overdue payments	8.7 per cent per annum
F. Period of delay in payment authorizing termination by Vendor	8.7 months
G. Guarantee Period for original Plant and parts replaced or renewed	9.2 months and 9.7 months
H. Maximum extension of Guarantee Period	9.5 months

BEMÆRKNINGER TIL

**Commentary on the General Conditions for the
Supply of Plant and Machinery for Export
(No. 574)**

Disse officielle kommentarer til Dokument nr. 574 er udarbejdet af det samme »Ad Hoc Working Party on Contract Practices in Engineering«, der skabte selve dokumentet.

Kommentarerne indeholder et indledningsafsnit om arbejdsgruppens mødesamlinger, hvilke lande og internationale organisationer, der deltog i arbejdet, deltagernes eventuelle erhvervsmæssige tilknytning, leveringsbetingelsernes formål og deres forhold til handelskutymper og -praksis.

Endvidere indeholder disse kommentarer oplysninger om, hvilke bestemmelser der er uændrede fra Dokument nr. 188, og hvilke bestemmelser der er reviderede.

I særlig tilknytning til enkelte af de reviderede paragraffer om-tales det særlige spørgsmål om afholdelse af transportomkostninger, når afhjælpning af mangler skal finde sted efter sådannes konstatering ved en afprøvning, et særligt indgået kompromis med henblik på formuleringen af bestemmelsen om force majeure og endelig en bemærkning om påtænkt senere revision af voldgiftsklausulen i lyset af ECE's Working Party on Arbitration's fortsatte bestræbelser på udarbejdelse af et sæt voldgiftsregler.

**COMMENTARY ON THE GENERAL CONDITIONS
FOR THE SUPPLY OF PLANT AND MACHINERY
FOR EXPORT No. 574**



UNITED NATIONS

Geneva, December 1955

COMMENTARY ON THE GENERAL CONDITIONS FOR
THE SUPPLY OF PLANT AND MACHINERY FOR EXPORT No. 574

ECONOMIC COMMISSION FOR EUROPE
INDUSTRY AND MATERIALS COMMITTEE

by the Experts of the ad hoc
Working Party on Contract Practices in
Engineering

Copies of this document can be obtained from the Sales Section, European Office of the United Nations, Palais des Nations, Geneva, Switzerland, at the price of \$0.10 (US), 9d. (Stg), or Swiss francs 0.40.

1. The General Conditions for the Supply of Plant and Machinery for Export No. 186 were drafted by an ad hoc Working Party of the Economic Commission for Europe. The Working Party held six sessions: 5 - 7 March 1951, 24 - 26 September 1951, 14 - 19 January 1952, 19 - 24 May 1952, 8 - 13 December 1952 and 2 - 4 February 1953. The sessions were attended by experts from Belgium, France, the Western Zones of Germany, Italy, the Netherlands, Sweden, Switzerland, Turkey, the United Kingdom and Yugoslavia. Experts from the International Institute for the Unification of Private Law and the International Chamber of Commerce also attended. The experts from the various countries were all appointed by their governments. The national delegations included representatives either of groups of importers or of groups of exporters, or, in most instances, of both.
2. After the first sessions, representatives of Bulgaria, Czechoslovakia, Denmark, Hungary, Norway, Poland, Romania, the Union of Soviet Socialist

Republics and the Eastern Zone of Germany began to take part in the Working Party's activities. Experts from these countries examined the general conditions drafted earlier, and, in agreement with the exports of the countries listed in paragraph 1, decided to make some changes in those conditions with a view to making them more widely acceptable. At the ninth, tenth and eleventh sessions, held on

4 - 8 October 1954, 7 - 12 February 1955 and 28 November - 3 December 1955 respectively, new texts were drafted for paragraphs 5.5, 6.1, 6.2, 6.3, 9.5,

9.6, 10.1, 10.5, 10.6, 10.7 and 13.1. Paragraph 13.3 and paragraph 1 of the Appendix were deleted. These general conditions, numbered No. 574 and consisting of the earlier clauses left unamended and the new texts of the paragraphs listed above, may be used, at the option of the parties, as an alternative to

the General Conditions for the Supply of Plant and Machinery for Export prepared under the auspices of the United Nations Economic Commission for Europe, at Geneva, in March 1953 (General Conditions No. 18).

3. The General Conditions for the Supply of Plant and Machinery for Export No. 574 were drafted in order to unify trading practices in this important field of international trade. From the point of view of plant and machinery importers and exporters alike, such unification appeared essential, facilitating the conduct and conclusion of negotiations for both parties by giving them a single text to refer to instead of the innumerable general conditions of sale.

used by the industry, which differ greatly from country to country and even within a single country. By standardizing the conditions offered by the various national industries, uniform general conditions will also make it easier for importers to compare the various tenders they receive and to appraise them solely on their essential elements - that is to say quality, price and delivery dates. In addition, the fact that the General Conditions were prepared under the auspices of the Economic Commission for Europe means that they are bound to carry considerable moral weight.

4. In drafting uniform general conditions of sale for plant and machinery, the Working Party had of course to make a choice among the various approaches so far adopted in the general conditions applied by the various national industries. This meant close study of a series of problems involved in the drafting of general conditions of sale, while continuing to hold a just balance between

manufacturers' and importers' interests. The fact that general conditions which international trade is free to adopt or reject are obviously only likely to be generally used if they really take into account the various interests involved, made the Working Party particularly anxious to find the most equitable solution. In addition, it endeavoured to keep as close as possible to current trading practice.

5. Since the General Conditions are intended to be applied under different national systems of law, the Working Party consistently tried to formulate clauses compatible with all the legal systems represented.
6. The attempt to hold the scales even between the different interests involved and to take the various legal systems into account sometimes led the experts to formulate provisions which match certain national practices but appear unnecessary or peculiar from the point of view of other legal systems. In other cases the compromise reached failed to satisfy all the experts present, and some of them made reservations with regard to the decisions taken by the majority. These reservations, together with an explanation of the means adopted to take into

account certain national laws or certain national trading practices, are quoted below. (1)

7. Paragraph 5.5

The transport expenses mentioned in the second parenthesis of this paragraph relate in particular to transport between the Vendor's works and the testing centre when tests are carried out elsewhere than at the Vendor's works, together with any transport of parts required for repeat tests.

8. Paragraph 10.1

Some delegations have indicated that they would prefer not to have a list of cases of relief; the delegations of Belgium, Denmark, France, the Western Zones of Germany, Italy, the Netherlands, Norway, Sweden and Turkey, although strongly attached to the principle of enumerating the most common contingencies expressly mentioned in the text of the General Conditions No. 188, have accepted, in a spirit of conciliation, a purely abstract definition of cases of relief;

they, together with the United Kingdom delegation, wish to make it clear, however, that in so doing they do not intend to rule out circumstances mentioned in the above text.

9. Paragraph 13.1

The Working Party proposes to reconsider this question when sufficient progress has been made by the ad hoc Working Party on Arbitration set up under the auspices of the Committee on the Development of Trade of the Economic Commission for Europe.

(1) (Note by the Secretariat) With regard to paragraphs 2.1, 5.1, 5.3, 5.4, 7.3, 7.4, 7.5, 8.3, 8.4, 8.5, 8.7, 9.1, 9.9, 9.10, 9.11, 9.13, 9.16, 9.17, 10.2, 12.1, and 13.2 and the Supplementary Clause on Price Revision, see paragraphs 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 20, 21, 22, 27, 28, 30, 31, 32 and 33 of the Commentary on the General Conditions for the Supply of Plant and Machinery for Export No. 188 (E/ECE/169). It must be remembered, however, that since document E/ECE/169 was drawn up before the experts of Bulgaria, Czechoslovakia, Denmark, Hungary, Norway, Poland, Romania, the Union of Soviet Socialist Republics and the Eastern Zone of Germany took part in drafting the General Conditions for the Supply of Plant and Machinery for Export, the opinions or reservations contained in document E/ECE/169 must not be ascribed to the experts of those countries.

BEMÆRKNINGER TIL
General Conditions of Sale for the Import and Export of
Durable Consumer Goods and of other Engineering Stock
Articles
Document No. 730

Disse leveringsbetingelser er specielt udfærdiget med henblik på den internationale handel med varige konsumgoder og andre seriefremstillede lagervarer – industrielt fremstillede – der sædvanligvis sælges gennem mellemmænd (importører, grossister, agenter m.fl.) og ikke direkte til forbrugere.

Leveringsbetingelserne omfatter navnlig husholdningsmaskiner og -apparater (domestic appliances), isenkramvarer, radio- og fjernsynsapparater, værktøj, mindre motorer og værktøjsmaskiner.

Dokumentet er – som også anført angående dokument nr. 188 – ikke bundet til bestemte varekategorier, men anvendeligt på sådanne produkter, som parterne finder egnede. I denne forbindelse bør det overvejes, om mere forenklede leveringsbetingelser ikke måtte være bedre egnede. Der er således af ORGALIME, den europæiske jern- og metalindustris fællesorganisation, udgivet leveringsbetingelser for halvfabrikata og komponenter, der indgår i andre varer: »General Conditions for the Import and Export of semi-processed Goods and Components for Incorporation in other Goods«, der er optrykt som bilag 2 i Industriraadets pjece »Om Underleverandør-Systemet« (pag. 60-62). De nordiske jern- og metalindustrier er endvidere næsten færdige med at udfærdige almindelige leveringsbetingelser for sør, nitter, skruer, bolte og lignende industrielle smådele (undertiden omtalt som »Pins and Needles«).

Forfatterne af dokument nr. 730 er efter dokumentets udgivelse

blev opmærksomme på en uklarhed i § 6, stk. 4, hvorfor det ved anvendelsen af dokumentet tilrådes til denne bestemmelse at føje følgende sætning:

»If the Purchaser does not terminate the Contract he shall not unless otherwise agreed be entitled to any damages in respect of the said failure.«

Iøvrigt henvises vedrørende dette spørgsmål til de senere givne officielle kommentarer til nævnte bestemmelse.

Med henblik på garantibestemmelsen i § 9 skal det bemærkes, at garantiens varighed i den ovennævnte handelsform frembyder et vanskeligt problem, idet køberen ønsker en så lang garanti som muligt (regnet fra salget til den endelige forbruger), medens producenten ikke har kontrol over produktet længere, end til det forlader fabrikken og ikke har indflydelse på distributionstidens længde, hvorfor han alene ønsker at garantere produktet i en periode regnet fra første levering.

§ 9 har søgt at finde et rimeligt kompromis mellem disse synspunkter.

Voldgiftsbestemmelsen i § 11 fastlægger ikke voldgiftsinstansen, hvorfor det tilrådes at udfylde appendix G for nedennævnte lande med nedennævnte instanser:

U.S.S.R.: Stockholms Handelskammer

Kina: Berns Handelskammer

De østeuropæiske lande (bortset fra Jugoslavien): Zürichs Handelskammer.

Alle andre lande: Det internationale Handelskammer (det vil for disses vedkommende være hensigtsmæssigt at indføje en direkte vedtagelse af Det Internationale Handelskammers »Regler om Forligsmægling og Voldgift«, jfr. herved Industriraadets brochure med nævnte titel).

Dokument nr. 730 findes – foruden på de tre officielle sprog – oversat til italiensk, medens oversættelser til hollandsk, portugisisk og tysk er under udarbejdelse.

Den foreliggende tekst er udfærdiget i 1961.

730

GENERAL CONDITIONS OF SALE FOR THE IMPORT AND EXPORT OF DURABLE CONSUMER GOODS AND OF OTHER ENGINEERING STOCK ARTICLES*

Prepared under the auspices of the

UNITED NATIONS ECONOMIC COMMISSION FOR EUROPE

Geneva, March 1961

1. PREAMBLE

1.1 These General Conditions shall apply if both parties refer to them, save as varied by express agreement confirmed in writing by both parties.

2. FORMATION OF CONTRACT

2.1 The contract shall be deemed to have been entered into, when, upon receipt of an order, the Vendor has sent an acceptance in writing within the time-limit (if any) fixed by the Purchaser.

2.2 Where the Vendor, in drawing up his tender, has fixed a time-limit for acceptance, the contract shall be deemed to have been entered into when the Purchaser has sent an acceptance in writing before the expiration of such time-limit.

2.3 Where an export or import licence, a foreign exchange control authorization or similar authorization is required for the performance of the contract, the party responsible for obtaining the licence or authorization shall act with due diligence to obtain it in good time. If on the expiration of the period specified in paragraph A of the appendix from the date of the formation of the contract, or where no such period is specified then on the expiration of three months, the requisite licence or authorization cannot be obtained, either party shall be entitled to regard the contract as never having been formed provided that such party informs the other party of his decision without delay.

3. DESCRIPTIVE DOCUMENTS AND INSTRUCTION LEAFLETS RELATING TO USE AND MAINTENANCE

3.1 The weights, dimensions, capacities, prices, performance ratings and other data included in catalogues, prospectuses, circulars, advertisements, illustrated matter and price lists shall not be binding save to the extent that they are by reference expressly included in the contract.

3.2 The Vendor shall furnish free of charge to the Purchaser, not later than the commencement of the Guarantee Period, his instruction leaflets relating to the use and maintenance of the goods.

4. PACKING

4.1 Unless otherwise specified:

(a) prices shown in price-lists and catalogues shall be deemed to apply to unpacked goods;

* The English, French and Russian texts are equally authentic.

The observations of the experts who drew up these General Conditions, together with a description of the procedure followed, are embodied in the "Commentary on the General Conditions of sale for the import and export of durable consumer goods and of other engineering stock articles, No. 73/1" (Document E/CE/426) published by the Economic Commission for Europe. It can be obtained direct from the Sales Section of the European Office of the United Nations, Geneva, Switzerland, or through United Nations Sales Agents.

UNITED NATIONS PUBLICATION
Sales Number: G. III.F/Minn. 12
Price: \$0.10; 9d.; Frs. 0.40

- (b) prices quoted in tenders and in the contract shall include the cost of packing or protection required under normal transport conditions to prevent damage to or deterioration of the goods before they reach their destination as stated in the contract.

5. PASSING OF THE RISK

5.1 Where no indication is given in the contract of the form of sale, the goods shall be deemed to be sold "ex works".

5.2 Save as provided in paragraph 6.5, and unless the parties have otherwise agreed, the moment when the risk passes shall be determined as follows:

- (a) On a sale "ex works", the risk shall pass from the Vendor to the Purchaser when the goods have been placed at the disposal of the Purchaser in accordance with the contract, provided that the Vendor gives to the Purchaser notice in writing of the date on and after which the Purchaser may take delivery of the goods. The notice of the Vendor must be given in sufficient time to allow the Purchaser to take such measures as are normally necessary for the purpose of taking delivery;
- (b) On a sale wagon, lorry, barge (agreed point of departure) or on a sale "carriage paid up to --", the risk shall pass from the Vendor to the Purchaser when the carrier takes over the loaded vehicle or craft;
- (c) On a sale FOB or CIF, the risk shall pass from the Vendor to the Purchaser when the goods have effectively passed the ship's rail at the agreed port of shipment;
- (d) On a sale "delivered at frontier" (without any other precision) or "delivered at frontier of exporting country", the risk shall pass from the Vendor to the Purchaser when the customs formalities have been concluded at the frontier of the country from which the goods are exported;
- (e) On a sale "delivered (agreed frontier post of importing country) or (agreed point in the interior of the importing country)" the risk shall pass from the Vendor to the Purchaser when the Purchaser is required to take delivery of the goods upon their arrival at the agreed destination point;
- (f) In any of the cases mentioned in paragraphs (b), (c), (d) and (e) hereof, the Vendor shall give to the Purchaser sufficiently early advice of the dispatch of the goods to enable the Purchaser to take any necessary measures.

5.3 On any other form of sale, the time when the risk passes shall be determined in accordance with the agreement of the parties.

6. DELIVERY

6.1 Unless otherwise agreed, the delivery period shall run from the latest of the following dates:

- (a) the date of the formation of the contract;
- (b) the date of the receipt by the Vendor of such payment in advance of delivery as is stipulated in the contract.

6.2 On expiry of the delivery period provided for in the contract, the Vendor shall be entitled to the period of grace specified in paragraph B of the Appendix, or where no such period is specified, to a period of grace of one month from the expiry of the delivery period provided for in the contract.

6.3 Should delay in delivery be caused by any of the circumstances mentioned in Clause 10 or by an act or omission of the Purchaser, there shall be granted such extension of the delivery period as is reasonable, having regard to all the circumstances of the case. This provision shall not apply where the delay in delivery occurs after the expiry of the period of grace referred to in paragraph 6.2, unless such delay is due to an act or omission of the Purchaser.

6.4 Should the Vendor fail to deliver the goods after the period of grace mentioned in paragraph 6.2, the Purchaser shall be entitled to terminate the contract by notice in writing to the Vendor, both in respect of all goods undelivered, and in respect of goods which though delivered cannot be properly used without the undelivered goods. Where the Purchaser so terminates the contract he shall be entitled, to the exclusion of any other remedy for delay in delivery, to recover any payment which he has made both in respect of all goods undelivered and in respect of goods which although delivered cannot be properly used without the undelivered goods, to reject the goods delivered which are unusable and to recover any expenses properly incurred in performing the contract.

6.5 Where the Purchaser does not take the goods at the place and time provided for by the contract for any reason other than an act or omission of the Vendor, he shall nevertheless make any payments provided for in the contract as if the goods had been delivered. In such a case, once the goods have been appropriated to

the contract, the Vendor shall arrange for their storage at the risk and cost of the Purchaser. The Vendor shall further be entitled, to the exclusion of any other remedy for the Purchaser's failure to take the goods, to recover any expenses properly incurred in performing the contract and not covered by payments received.

7. PAYMENT

7.1 Payment shall be made in the manner and at the time or times agreed by the parties. In the absence of agreement to the contrary, express or implied, payment shall be due in the case of a sale "ex works" thirty days after notification from the Vendor to the Purchaser that the goods have been placed at his disposal, and in any other case thirty days after notification from the Vendor to the Purchaser that the goods have been dispatched.

7.2 Where the Purchaser delays in making any payment and the delay is not due to an act or omission of the Vendor, the Vendor may:

- (a) postpone the fulfilment of his own obligations until such payment is made; and
- (b) recover, after written notice sent in good time to the Purchaser, interest on the sum due, from the time fixed for payment, at the rate of 6% unless otherwise provided.

7.3 Where at the end of the period specified in paragraph C of the Appendix, or where no such period is fixed, then after the expiry of one month from the date on which payment became due, the Purchaser shall still have failed to pay the sum due, the Vendor shall be entitled by notice in writing, and to the exclusion of any other remedy against the Purchaser by reason of the latter's delay, to terminate the contract, without prejudice to his right to recover any payment due in respect of delivered goods and all expenses properly incurred by the Vendor in performing the contract.

8. THE PURCHASER'S RIGHT OF REJECTION

8.1 During the period specified in paragraph D of the Appendix, or where no such period is specified, then within such reasonable period as will allow inspection, the Purchaser shall be entitled to reject Goods which do not conform with the contract (excluding any defect caused after the passage of risk), provided that before the Purchaser can exercise his right of rejection the Vendor shall have an opportunity to make good any default at his expense within a reasonable period.

8.2 The Purchaser's right of rejection shall also apply to goods which, although delivered and accepted, cannot be properly used without the goods mentioned in paragraph 8.1.

8.3 The Vendor shall be entitled to have rejected goods returned to him at his risk and expense.

9. GUARANTEE

9.1 Subject as hereinafter set out, the Vendor undertakes to remedy any defect resulting from faulty design, materials or workmanship.

9.2 This liability is limited to defects which appear during the period (called "the guarantee period") commencing on the passage of risk and continuing for the period specified in paragraph E or F of the Appendix whichever shall first expire. In the absence of express specification in the Appendix the periods shall be twelve months in the case of paragraph E, and six months in the case of paragraph F.

9.3 In respect of such parts of the goods as are expressly mentioned in the contract, the guarantee period shall be such other period (if any) as is specified in respect of each of such parts.

9.4 The parties may specify in the contract that the Vendor assumes no liability other than that for gross misconduct as defined in paragraph 9.11.

9.5 Where the Purchaser wishes to avail himself of the guarantee, he shall notify the Vendor in writing without delay of any defect that has appeared. On receipt of such notification the Vendor shall if the defect is one that is covered by this clause at his option:

- (a) repair the defective goods in situ; or
- (b) have the defective goods or parts returned to him for repair; or
- (c) replace the defective goods; or
- (d) replace the defective parts in order to enable the Purchaser to carry out the necessary repairs at the Vendor's expense.

9.6 Where the Vendor has returned to him defective goods or parts for replacement or repair, unless otherwise agreed, the Purchaser shall bear the cost and risk of carriage. Unless otherwise agreed, the return to the Purchaser of goods or parts sent by way of replacement or of repaired goods or parts shall take place at the cost and risk of the Vendor.

9.7 Defective goods or parts replaced in accordance with this clause shall be placed at the disposal of the Vendor.

9.8 Where the Vendor fails to fulfil his obligations under this clause within a reasonable period after receipt of notification under paragraph 9.5, the Purchaser may proceed to have the defect remedied at the Vendor's expense, provided that he does so in a reasonable manner.

9.9 The Vendor's liability shall apply only to defects that appear under the conditions of operation provided for by the contract and under proper use. In particular it does not cover defects arising from faulty installation, maintenance or repairs, carried out by a person other than the Vendor or his agent, or from alterations carried out without the Vendor's consent in writing, nor does it cover normal deterioration.

9.10. Subject to the provisions of clause 8 and save as in this clause expressed, the Vendor shall be under no liability in respect of defects after the risk in the goods has passed even if such defects are due to causes existing before the risk passed. It is expressly agreed that the Purchaser shall have no claim in respect of personal injury or of damage to property not the subject matter of the contract or of loss of profit unless it is shown from the circumstances of the case that the Vendor has been guilty of gross misconduct.

9.11. "Gross misconduct" does not comprise any and every lack of proper care or skill, but means an act or omission on the part of the Vendor implying either a failure to pay due regard to serious consequences which a conscientious contractor would normally foresee as likely to ensue, or a deliberate disregard of any consequences of such act or omission.

10. RELIEFS

10.1 Any circumstances beyond the control of the parties intervening after the formation of the contract and impeding its reasonable performance shall be considered as cases of relief. For the purposes of this clause circumstances not due to the default of the party invoking them shall be deemed to be beyond the control of the parties.

10.2 The party wishing to claim relief by reason of any of the said circumstances shall notify the other party in writing without delay on the intervention and on the cessation thereof.

10.3 Where by reason of any of the circumstances referred to in paragraph 10.1 the performance of the contract within a reasonable time becomes impossible, either party shall be entitled to terminate the contract by notice in writing to the other party and in that event there shall be such restitution (if any) whether by way of repayment of money, return of goods, or otherwise as shall be just and as the circumstances referred to in paragraph 10.1 may permit.

11. ARBITRATION AND APPLICABLE LAW

11.1 Any dispute arising out of or in connexion with the contract, which the parties have been unable to settle by agreement shall be settled finally out of court by arbitration by the arbitral body specified in paragraph G of the Appendix.

11.2 Unless otherwise agreed, the contract shall be governed by the law of the Vendor's country.

APPENDIX

(To be completed by parties to the contract)

	Paragraphs of General Conditions
A.	Period after which the parties are entitled to consider the contract as never having been formed if the necessary licence or authorization cannot be obtained
B.	Length of the period of grace for delivery
C.	Period of delay in payment authorizing termination by the Vendor
D.	Period for exercise of the Purchaser's right of rejection
E.	Guarantee period starting on passing of the risk
F.	Guarantee period from sale of goods to first end user
G.	Designation of arbitral body specified by the parties for the purpose of settling disputes arising out of or in connexion with the contract

BEMÆRKNINGER TIL

**Commentary on General Conditions of Sale for the Import
and Export of Durable Consumer Goods and of other
Engineering Stock Articles
(No. 730)**

Disse officielle kommentarer til Dokument nr. 730 er udarbejdet af det samme »Ad Hoc Working Party on Contract Practices in Engineering«, der skabte selve dokumentet.

Kommentarerne indeholder et indlednings afsnit om arbejdsudvalgets mødesamlinger, hvilke lande og internationale organisationer, der deltog i arbejdet, deltagernes eventuelle erhvervsmæssige tilknytning, leveringsbetingelsernes formål og deres forhold til handelskutymper og -praksis.

I særlig tilknytning til de enkelte paragraffer findes endvidere oplysninger om særlige forbehold, enkelte regeringsrepræsentanter har taget, og særlige kompromisløsninger, man har fundet frem til for i videst muligt omfang at kunne dække nationale lovgivningers særegenheder.



**COMMENTARY ON THE GENERAL CONDITIONS
OF SALE FOR THE IMPORT AND EXPORT OF DURABLE
CONSUMER GOODS AND OF OTHER ENGINEERING
STOCK ARTICLES No. 730**

UNITED NATIONS

Geneva, April 1962



COMMENTARY ON THE GENERAL CONDITIONS
OF SALE FOR THE IMPORT AND EXPORT OF DURABLE
CONSUMER GOODS AND OF OTHER ENGINEERING
STOCK ARTICLES No. 730

by the Experts
of the ad hoc Working Party
on Contract Practices in Engineering

UNITED NATIONS
ECONOMIC COMMISSION FOR EUROPE
INDUSTRY AND MATERIALS COMMITTEE
GENEVA

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I. PRELIMINARY REMARKS

1. The General Conditions of sale for the import and export of durable consumer goods and of other engineering stock articles No. 730 were drafted by the Ad Hoc Working Party on contract practices in engineering of the Economic Commission for Europe. Two sessions of the Ad Hoc Working Party were devoted to the drawing up of the General Conditions, namely its fifteenth session held from 24 to 28 October 1960, and its sixteenth session held from 27 to 30 March 1961. The sessions were attended by experts from Belgium, Czechoslovakia, Denmark (sixteenth session), the Federal Republic of Germany, Finland (fifteenth session), France, Italy, the Netherlands, Poland, Sweden (sixteenth session), the United Kingdom and the USSR. The experts from the various countries were all appointed by their Governments. The national delegations included representatives either of importers or of exporters or, in most instances, of both.
2. The General Conditions of sale for the import and export of durable consumer goods and of other engineering stock articles No. 730 were drafted in order to unify trading practices in this field of international trade and constitute the fifth set of General Conditions that have been drawn up for the Engineering Trade by the Ad Hoc Working Party on contract practices in

engineering*. From the point of view of importers and exporters alike such unification appeared essential, facilitating the conduct and conclusion of negotiations for both parties by giving them a single text to refer to, in place of the innumerable general conditions of sale now used by the industry, which differ greatly from country to country and even within a single country. By standardizing the conditions offered by the various national industries, uniform general conditions will also make it easier for importers to compare the various tenders they receive and to appraise them solely on their essential elements, that is to say quality, price and delivery dates. In addition, the fact that the general conditions were prepared under the auspices of the Economic Commission for Europe means that they are bound to carry considerable weight.

3. In drafting uniform general conditions, the Ad Hoc Working Party had of course to make a choice among the various approaches so far adopted in the general conditions applied by the various national industries. This meant close study of a series of problems involved in the drafting of general conditions of sale, while continuing to hold a just balance between manufacturers' and importers' interest. The fact that general conditions which international trade is free to adopt or reject are obviously only likely to be generally used if they really

*See: General Conditions for the Supply of Plant and Machinery for Export No. 188; General Conditions for the Supply of Plant and Machinery for Export No. 574; General Conditions for the Supply and Erection of Plant and Machinery for Import and Export, No. 188A; General Conditions for the Supply and Erection of Plant and Machinery for Import and Export, No. 574A.

take into account the various interests involved, made the Ad Hoc Working Party particularly anxious to find the most equitable solution. In addition, it endeavoured to keep as close as possible to current trading practice.

4. Since the general conditions are intended to be applied under different national systems of law, the Ad Hoc Working Party consistently tried to formulate clauses compatible with all the legal systems represented.
5. The attempt to hold the scales even between the different interests involved and to take the various legal systems into account, sometimes led the experts to formulate provisions which match certain national practices, but appear unnecessary or peculiar from the point of view of other legal systems. In other cases, the compromise reached failed to satisfy all the experts present, and some of them made reservations with regard to the decisions taken by the majority. These reservations, together with an explanation of the means adopted to take into account certain national laws or certain national trading practices, are the subject of the commentary which follows.

II. COMMENTARY

Clause 5 - Passing of the risk

6. As in the other general conditions of sale drawn up at ICE, the above clause sets out the time when risk is to pass. The expert from Italy suggested that he would have liked to have had inserted in the above clause a provision covering the question of the insurance of the goods at the cost of the purchaser from the passage of the risk when payment is made after the passing of the risk. In such a case the vendor should be entitled to insure the goods at the cost of the purchaser.
7. Since the other experts felt that such a provision would not always be compatible with the terms of sale chosen by the parties nor in accordance with the general practice, the expert from Italy suggested alternatively that the above provision might be inserted in the General Conditions in a modified form whereby the parties to a contract should be entitled to provide in their contract that the vendor would insure the goods at the cost of the purchaser from the passage of the risk when payment is to be made after the passing of the risk. This alternative suggestion equally was not accepted by the Ad Hoc Working Party. While it was not opposed on principle to it, the Ad Hoc Working Party nevertheless felt that in view of the great complexity involved in insurance transactions as well as of the fact that normally the goods carried in international transport are insured often under a general policy from warehouse to warehouse, it may be difficult to deal with this matter in a comprehensive way in a clause limited to the period after the passing of the risk.

Clause 6 - Delivery

8. The period of grace of one month on expiry of the delivery period, where no period of grace is specified in the Appendix, mentioned in paragraph 6.2 was a compromise between experts who would have preferred to see a longer period of time and those who would have preferred to have had a shorter period.

9. With regard to paragraph 6.4, the Ad Hoc Working Party wished to put on record the fact that the words "notice in writing" covered also telegraphic communications.

10. As regards the substance of paragraph 6.4, the Working Party pointed out that this provision is intended, to the exclusion of any other solution not expressly stipulated by the parties, to leave the purchaser the option of either maintaining the contract without being entitled to any compensation or of terminating the contract with the consequences provided for in the second sentence of paragraph 6.4. If the exporters or importers of some countries should prefer the text of paragraph 6.4 to be redrafted so as to make this point clear, the following sentence could be added at the end of paragraph 6.4, pursuant to paragraph 1.1 of the General Conditions:

"If the purchaser does not terminate the contract, he shall not unless otherwise agreed be entitled to any damages in respect of the said failure".

Clause 7 - Payment

11. A number of experts favoured the insertion of a provision in the above clause which would have led the vendor to retain the property in the goods until payment, mainly in view of the fact that in a number of countries a clause of this sort would protect the vendor, especially in cases of bankruptcy. The Ad Hoc Working Party, however, as a whole felt that such a clause would not be useful in view of the fact that it would be of no effect under many systems of law, and that it would be particularly difficult for such a clause to operate in practice with regard to goods such as stock articles which by their nature are likely to be resold.

Clause 8 - The purchaser's right of rejection

12. With regard to paragraph 8.1, the Working Party underlined the fact that in making good any default, the vendor should have as wide a discretion as possible and should not necessarily be bound to exercise one of the four alternatives to be found in paragraph 9.5 dealing with the guarantee.

Clause 9 - Guarantee

13. The expert from Czechoslovakia suggested that the above clause should contain a provision excluding its application in the case of the sale of goods for which no guarantee was usual. The other experts pointed out that in such cases the parties to a contract could entirely exclude the clause on guarantee by making use of the provisions to be found in Clause 1 of the General Conditions.

14. The attention of the Working Party was drawn to the fact that in certain trades there was a usage whereby, instead of granting a guarantee to the purchaser for the goods sold he was granted compensation which could take the form of a pecuniary compensation, additional goods or spare parts. Although no clause on this matter was felt to be necessary in the General Conditions, nevertheless it was pointed out in the course of discussion that it might in practice be sometimes useful for the parties to insert such a provision in their contract.
15. With regard to paragraph 9.1, the expert from Italy raised the question whether in the French text the word "conception" should not be replaced by the word "construction". This suggestion was supported by a number of experts who felt that judging the concept of a defect resulting from faulty design ("conception") might lead to confusion, since generally it would cover fairly well-known articles. It was, however, pointed out that it seemed difficult generally to exclude defects from faulty design ("conception") especially as in practice the case would probably only arise with regard to new types of engineering products.
16. With regard to paragraph 9.6, the Working Party originally drafted a provision whereby where the vendor has returned to him defective goods or parts for replacement or repair,

unless otherwise agreed, he bore the cost and risk of carriage, and whereby, unless otherwise agreed, the return to the purchaser of goods or parts of goods sent by way of replacement or of repaired goods or parts was to take place under the same conditions as the original delivery of the goods. Upon further consideration of the matter, the experts felt that the solution was one which did not sufficiently take into account existing practice. Moreover although certain experts would have preferred to have seen inserted in the General Conditions a provision whereby the purchaser should be liable for the cost and risk of carriage both ways where the vendor has returned to him defective goods or parts for replacement or repair, the Ad Hoc Working Party finally decided in a spirit of compromise upon the text which will be found in the General Conditions and which provides that unless otherwise agreed, the return to the vendor of defective goods or parts for replacement or repair is at the purchaser's cost and risk, whereas the return to the purchaser of goods or parts sent by way of replacement or of repaired goods or parts is at the vendor's cost and risk.

Clause 10 - Reliefs

17. With regard to paragraph 10.1, the experts from Belgium, France and Italy accepted in a spirit of compromise this paragraph which reproduces paragraph 10.1 of the General Conditions for the Supply of Plant and Machinery for Export No. 574. However, the experts in question desired to put on record the fact that the acceptance of this paragraph should

not be considered as a renunciation on their part of the use of the definition of reliefs contained in paragraph 10.1 of the General Conditions for the Supply of Plant and Machinery for Export No. 188 where examples of reliefs will be found.

Margins of tolerance

18. Although the Ad Hoc Working Party originally favoured the insertion in the General Conditions of a clause allowing a margin of tolerance in the case of goods sold by weight or quantity in which it is customary to have such a margin of tolerance, on giving further consideration to the matter, the Ad Hoc Working Party was of the opinion that such a clause would be somewhat out of place in the General Conditions. There parties sold goods by weight or quantity and where it would be technically impossible to deliver an exact quantity or weight of goods, such a tolerance would in any case be allowed without there being an express provision to this effect. It was pointed out, in addition, that the number of cases for which a provision of margin of tolerance would apply would be rather small in practice. The purchaser's responsibility in case of the breach of third parties' rights

liability to third parties (e.g. in cases of passing off or breaches of industrial party rights and illicit competition etc.) when the wrappers or packing prepared in pursuance of the purchaser's instructions resulted in a breach of a third party's rights. The other experts present, however, decided that such a provision would be out of place in the General Conditions.

Price revision

20. Although a clause on price revision will be found in the other General Conditions for the engineering trade that have been drawn up by the Ad hoc Working Party, it was felt that such a clause would not be necessary in the case of the General Conditions of sale for the import and export of durable consumer goods and of other engineering stock articles No. 730.
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BEMÆRKNINGER TIL

**Almindelige leveringsbetingelser for leverancer af maskiner
og andet mekanisk og elektrisk udstyr mellem Danmark,
Finland, Norge og Sverige samt inden for disse lande**

OG

**Almindelige betingelser for levering og montering af maskiner
og andet mekanisk og elektrisk udstyr mellem Danmark,
Finland, Norge og Sverige samt inden for disse lande**

De nordiske jern- og metalindustrier indså hurtigt, at det ikke alene ville være hensigtsmæssigt at foretage en oversættelse til de nordiske sprog af Dokumenterne nr. 188 og 188 A, men at det til en vis grad måtte være muligt at simplificere dem under hensyn til den delvis fællesnordiske formueretlige lovgivning, og endog forbedre dem ved at undgå blankobestemmelser til udfyldning i et tillæg.

Hertil kommer, at der i de nordiske lande var opstået behov for almindelige leveringsbetingelser på dette område, hvor de skandinaviske købelove ikke er særligt velegnede og havde givet anledning til en lang række individuelle generelle leveringsvilkår.

De nordiske jern- og metalindustrier og Industriraadet nåede efter en række forhandlinger i 1957 frem til »Almindelige Leveringsbetingelser« og i 1961 til »Almindelige Betingelser for Levering og Montering«, der med ovennævnte begrundelse både er anvendelige i internordisk samhandel og i den nationale handel i det nævnte område.

Begge disse sæt leveringsbetingelser adskiller sig iøvrigt fra de internationale leveringsbetingelser ved ikke at medtage tillægsklausulen om prisjustering, idet det har været den almindelige opfattelse, at der i de nordiske lande opereres med kortere leverings-

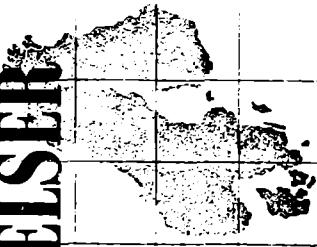
tider, og at man bedre har været i stand til at bedømme pris- og lønudviklingen. Under de vilkår, der hersker i dag, er denne opfattelse næppe generelt holdbar, hvorfor virksomheder, der ønsker optaget en prisjusteringsklausul, henvises til den i Dokument nr. 188 vedføjede »Supplementary Clause«, der findes oversat til dansk og optrykt som bilag i Industriraadets pjece »Om Underleverandør-Systemet« (pag. 57-59).

»Almindelige Leveringsbetingelser« og »Almindelige Betingelser for Levering og Montering« er udgivet på hvert af de nordiske sprog.

ALMINDELIGE LEVERINGSBETINGELSER

for leverancer af maskiner og andet mekanisk og elektrisk udstyr mellem Danmark, Finland, Norge og Sverige samt inden for disse lande.

Udgivet 1957 af Sammenslutningen af Arbejdsgivere indenfor Jern- og Metalindustrien i Danmark, Suomen Metalliteollisuusyhdistys—Finlands Metallindustriförening f.y..r.f., Finland, Mekaniske Verksteders Landsforening, Norge, samt Sveriges Mekaniförbund, Sverige.



Indledning

1. Nedanstående almindelige leveringsbetingelser findes anvendelse i det omfang, de ikke fraviges ved skriftlig aftale mellem parterne.

Sælgeren skal give køberen sådant varsel om leveringsprøverne,

at køberens repræsentant kan overvære disse. Hvis køberen ikke er repræsenteret ved leveringsprøverne, skal sælgeren overgive prøvetokkaten til køberen, som ikke kan anfægt dets rigtighed.

9. Såfremt leverancen ved leveringsprøven findes mangelfuld eller ikke i overensstemmelse med aftalen, skal sælgeren så hurtigt som muligt afhjælpe manglen eller sørge for, at leverancen bringes i overensstemmelse med aftalen. På køberens forlangende skal ny leveringsprøve derefter udføres; hvis mangelen er ubetydelig, kan ny leveringsprøve dog ikke forlanges.

10. Medmindre andet er aftalt, bører sælgeren alle med leverings-prøver på hans virksomhed forbundne omkostninger med undtagelse af køberens udgifter ved at lade sig repræsentere.

Leveringstiden

11. Medmindre andet er aftalt, skal leveringstiden regnes fra det seneste af følgende tidspunkter:

4. Alle tegninger og tekniske dokumenter til brug ved fremstillingen af leverancen eller dele deraf, som af køberen overlades til sælgeren for eller efter aftalen indgåelse, forbliver køberens ejendom. De må ikke uden dennes tilladelse anvendes af sælgeren eller kopieres, reproduceres, overges til eller på anden måde bringes til tredjemandens kundskab.

5. På køberens forlangende skal sælgeren ved den i punkt 22 angivne garantiperiodes begyndelse vederlagsfrit forsyne ham med oplysninger og tegninger, med undtagelse af arbejdstegninger til leverancen, der er tilstrækkeligt udførlige til at sætte køberen i stand til at opstille, igangsatte, drive og vedligeholde (herunder foretage labende reparationer af) alle dele af leverancen. Ejendomretteten til sådanne oplysninger og tegninger overgår til køberen. De i punkt 3 nævnte indskrænkninger i anvendelsen af tegninger og tekniske dokumenter til brug ved fremstillingen af leverancen eller dele deraf finder ikke anvendelse på de i nærværende punkt nævnte oplysninger og tegninger. Dog kan sælgeren forlange, at de forbliver fortrolige.

Emballage

6. Medmindre andet fastsættes, anses a) de i prislisten og kataloger anførte priser at gælde exclusive emballage;

b) de i tilbud og aftaler anførte priser at omfatte udgifterne til sådan emballage eller anden beskyttelse, som under normale transportforhold kræves for at forhindre beskadigelse eller forringelse af leverancen, indtil den kommer frem til det i aftalen angivne bestemmelsersted.

Leveringspriser

7. Medmindre der er truffet anden aftale, skal aftalte leveringspriser udøres i sælgerens virksomhed og inden for normal arbejdstid. Sælgent tekniske krav til prøverne ikke er angivet i aftalen, skal disse udføres i overensstemmelse med sædvanlige i den pågældende industri i det land, hvori leverancen fremstilles.

- a) den dag, da aftalen indgås;
- b) den dag, da sælgeren modtager meddelelse om, at gyldig importbevilling er udstedt, for så vidt aftaleens opfyldelse er betinget af sådan bevilling;
- c) den dag, da sælgeren modtager en i aftalen vedtaget betaling, der skal erläggdes inden fremstillingens påbegyndelse.

12. Hvis forsinkelse med levering skyldes nogen i punkt 32 nævnt omstændigheder eller købers handling eller undladelse, forlænges leveringtiden i det omfang, hvori det efter omstændighederne skønnes rimeligt. Bortset fra det i punkt 15 omhandlede tilfælde finder denne bestemmelse anvendelse, unanset om årsagen til forsinkelsen indbefatter for eller efter udlobet af den aftalte leveringstid.

13. Hvis sælgeren ikke levererinden for leveringstiden eller inden for en med hjemmel i punkt 12 forlænget leveringstid, kan køberen, når han inden for en rimelig frist skriftligt underretter sælgeren derom, kræve afslag i den aftalte købesum, med mindre det under hensyn til omstændighederne i det pågældende tilfælde med rimelighed kan antages, at køberen ikke har lidt noget tab. Afslaget udgør 0,5 % ugentlig af den del af den aftalte købesum, som dækker den del af leverancen, der på grund af den omhandlede forsinkelse ikke kan tages i brug som forudsat i aftalen. Overstiger det beløb, på grundlag af hvilket afslaget skal beregnes, 700 000 danske kroner, ansættes afslaget på den del af beløbet, der overstiger 700 000 danske kroner, til 0,25 % ugentlig. Afslaget beregnes for hver hele uge, forsinkelsen varer, regnet fra den dag, da leverancen skulle være leveret, men kan ikke overstige 7,5 % af den del af købesummen, som dækker den del af leverancen, der ikke kan tages i brug som forudsat i aftalen. Afslaget skal reguleres for hver hele uge, hvis forsinkelsen ved eller efter leveringen. Bortset fra bestemmelserne i punkt 15 udelukker et sådant afslag i købesummen køberen fra ret til nogen anden godtgørelse i anledning af den ovennævnte forsinkelse fra sælgerens side.

14. Er den i aftalen vedtagne leveringstid kun angivet omrentligt, er hver af parterne efter to trejede af den sådtes ansatte tids forløb berettiget til skriftligt at forlænge vedtagelse af en bestemt leveringstid.

Indeholder aftalen ingen bestemmelse om leveringstid, er hver af parterne berettiget til efter seks månaders forløb fra aftalens indgåelse at anvende ovennævnte fremlæggsnåde.

En sådette fastsat leveringstid er at anse for en i aftalen vedtagt leveringstid, som punkt 13 finder anvendelse på.

15. Hvis nogen del af leverancen, for hvilken køberen er berettiget til det i punkt 13 omhandlede maksimale afgang, eller til hvilket han ville have været berettiget, såfremt han havde givet sælgeren den der nævnte skriftlige underretning, stadig ikke leveres, er køberen berettiget til ved skriftlig underretning til sælgeren at kræve levering og at fastsætte en endelig frist herfor, som skal være rimelig under hensyn til den allerede indtrufne forsinkelse. Såfremt sælgeren, unsethørsagen, undlader at træffe alle de nødvendige foranstaltninger, der påhviler ham for at sikre levering inden for den fastsatte frist, er køberen berettiget til ved skriftlig meddelelse til sælgeren at hæve aftalen for den ikke leverede del af leverancen op til sælgerens at kræve erstatning for skade, somer påført ham ved sælgerens forsomme. Erstatningen fastsættes under hensyn til omstændighederne i det enkelte tilfælde, men kan ikke overstige 7,5% af værdien af den del af leverancen, der ikke kan tages i brug som forudsat i aftalen.
16. Undlader køberen at modtage leveringsstændige leverancer på den aftalte dag, er han desuagtet berettiget til at erlægge enhver af levering betinget betaling, som om levering havde fundet sted. Sælgeren skal sørge for, at leverancen opbevares for køberens regning og risiko. På køberens anmodning skal sælgeren forsikre leverancen for køberens regning.
17. Medmindre køberens i punkt 16 angivne undladelse skyldes noget i punkt 32 nævnt forhold, er sælgeren berettiget til skriftligt at opfordre køberen til at modtage leveringsstændige leverancer inden for en rimelig tid.
- Undlader køberen at gøre dette inden for et sådant tidsrum, er sælgeren, unsethørsagen, berettiget til ved skriftlig meddelelse til køberen at hæve aftalen for den del af den leveringsstændige leverancer inden for en rimelig tid.
18. Medmindre andet er aftalt, erlægges betaling kontant med en tredjedel ved aftalens indgåelse, en tredjedel, når den væsentlige del af leverancen anmeldes, at være rede til levering, og restbeluet ved leverancens levering.

Betaling

25. Medmindre andet er aftalt, foregår transport af mangelfulde, reparerede og udskiftede dele mellem monteringsstedet og et af nedenstående steder for køberens regning og risiko:
- sælgerens fabrik, såfremt aftalen er "al fabrik" eller "frit på baneveogn";
 - den havn, hvorfra sælgeren har afsendt leverancen, såfremt aften er sob, fas, cif eller c. & f.;
 - i alle andre tilfælde grænsen til det land, hvorfra sælgeren har afsendt leverancen.
26. Mangelfulde dele, der udskiftes i henhold til punkt 21, skal stilles til sælgerens disposition.
27. Såfremt sælgeren négier at opfylde sine forpligtelser ifølge punkt 24, eller trods derom fremsat anmodning undlader med behørig hurtighed at træffe nødvendige foranstaltninger hertil, er køberen berettiget til at lade nødvendige reparationer udføres for sælgerens regning og risiko, forudsat at han gør dette på en fornuftig og rimelig måde.
28. Sælgerens ansvar omfatter ikke mangler, som viser sig ved materiale, der er leveret af køberen, eller ved en af denne forlangt konstruktion.
29. Sælgerens ansvar omfatter kun mangler, som opstår under de i aftalen forudsatte funktionsvilkår og ved rigtig anvendelse. Det omfatter ikke mangler, der skyldes mangelfuld vedligeholdelse eller urigtig montering fra køberens side, ændringer foretaget uden sælgerens skriftlige samtykke, fejl ved nogen af køberen udført reparation, eller normalt slid eller forringelse.
30. Med undtagelse af bestemmelserne i punkt 21 har sælgeren, efter at risikoen for leverancen er gået over til køberen, intet ansvar for mangler, selv om de skyldes årsager, der foreligger for risikoen overgang. Det vedtages udtrykkeligt, at sælgeren ikke er forpligtet til at yde køberen nogen erstatning for personskade eller skade på ejendom, som ikke omfattes af aftalen, eller for tabt fortjeneste, medmindre det af sælgers omstændigheder fremgår, at sælgeren ved en handling eller undlade, har gjort sig skyldig i grov lugtsomhed ved at undlade at tage tilboretlig hensyn til sådanne alvorlige folger, som en samvittighedsfuld sælger normalt burde have kunneth forudse, eller ved bevidst at have set bort fra sådanne folger.
31. Unnet bestemmelserne i punkterne 21 – 30 gælder sælgerens garantiforpligtelser ikke for nogen del af leverancen ud over to år fra den oprindelige garantiperiodes begyndelse.

19. Det leverede forbliver sægerens ejendom, indtil betaling er erlagt fuldt ud. Veksel eller gældsbewis anses ikke som betaling, for fuld indfrielse heraf har fundet sted.

20. Sægteren køberen ikke betaling i rette tid, er sægteren berettiget til, efter skriftlig inden rimelig tid at have underrettet køberen derom, at beregne sig morarente fra forfallsdagen med 2 % over den i sægterens land officielt fastsatte højest diskonto, sammenlagt dog mindst 6 %. Såfremt køberen, på grund af andre end de i punkt 32 nævnte forhold, i løbet af tre måneder stadig ikke har erlagt det forfaldne belob, er sægteren berettiget til ved skriftlig meddelelse til køberen at have aftalen og af køberen at kræve erstarning for det tab, sægteren har lidt. Erstarningen kan ikke overstige værdien af den ikke betalte del af leverancen.

Garantri

21. Sægteren forpligter sig til i overensstemmelse med punkterne 22 – 31 at afhjælpe alle mangler, som skyldes konstruktion, fremstilling eller materiale.

22. Sægterens ansvar omfatter kun mangler, som viser sig inden et år, regnet fra den dag da leverancen anmeldes at være rede til afsendelse. Forsinkes afsendelsen, forlenges garantiperioden tilsvarende, således at køberen kan udnytte den til approvning af leverancen beregnete tid fuldt ud. Skyldes sådan forsinkelse forhold, sægteren ikke er herre over, må forlængelsen ikke overstige tre måneder.

23. For dele af leverancen, der er udskiflet eller repareret ifølge punkt 21, garanterer sægteren på samme vilkår og under samme forudsætninger, som gælder for den oprindelige leverance, i et tidsrum af et år. Denne bestemmelse findes ikke anvendelses på leverancens øvrige dele, for hvilke garantiperioden kun forlænges med det tidsrum, leverancen ikke har kunnet anvendes som følge af de i punkt 21 nævnte mangler.

24. Når sægteren fra køberen har modtaget skriftlig meddelelse om nogen i punkt 21 nævnt mangel, skal sægteren straks alhælpe manglen og — med undtagelse af det i punkt 25 nævnte tilfælde — for egen regning. Er mangelen af en sådan art, at det ikke er hensigtsmæssigt at udføre reparationen på monteringsstedet, skal køberen returnere de dele, som har nogen af de i punkt 21 nævnte mangler, for at sægteren kan reparere eller udskifte dem. Overgivelse til køberen af således forsværligt reparerede eller udskiftede dele er at anse som opfyldelse af sægterens forpligtelser ifølge nærværende punkt for så vidt angår dele behæftede med mangler.

Ansvaret for mægtere

32. Følgende omstændigheder medfører ansvarsfrihed, når de indtræffer efter aftalens indgåelse og forhindrer dens opfyldelse: arbejdskonflikt og enhver anden omstændighed, såsom brand, krig, mobiliserering eller uforudsete militærindkaldelser af tilsvarende omfang, rekruttering, beskjærgelse, valutarestriktioner, optor og uretfælder, mangel på transportmidler, almindelig værknaphed, kasseaktion af større arbejder, restriktioner af drivkraft og mangler ved leverancer fra underleverandør eller forsinkelse med sådanne leverancer, som skyldes nogen af de i dette punkt nævnte omstændigheder, soner parterne ikke har været hørt over.

33. Det påhviler den part, der ønsker at påberøre sig nogen i punkt 32 omhandlet omstændighed, uforhøvet skriftligt at underrette den anden part om dens opstår og opbør.

34. Enhver af parterne er berettiget til ved skriftlig meddelelse til den anden part at have afgalet, når dens opfyldelse inden for en rimelig tid bliver umulig på grund af nogen i punkt 32 nævnt omstændighed. Denne bestemmelse medfører ingen indskrænkning i, hvad der er fastsat i punkterne 15, 17 og 20.

Ansvaret for leverancen

35. Sæfrent den ene part skal betale erstarning til den anden, skal erstarningen kun dække sådan skade, som den skyldige part med rimelighed kunne have forudsat ved aftalens indgåelse, og indirekte skade kun under de i punkt 30 nævnte omstændigheder.

36. Den part, der påberører sig mislygholdelse af aftalen, er forpligtet til at træffe alle nødvendige foranstaltninger til begrænsning af opstående skade, i det omfang han kan gøre det uden urimelig omkostning eller ulempe. Undlader han dette, kan den anden part kravé afslag i erstarningssummen.

Voldgift

37. Twistigheder i anledning af aftalen og til denne fojede bestemmelser, samt twistigheder vedrørende deri omfattende og deraf flydende retsforhold med hvideraf følger, kan ikke underkastes domstolenes prøvelse, men skal afgøres ved voldgift og i overensstemmelse med loven i sægterens land.

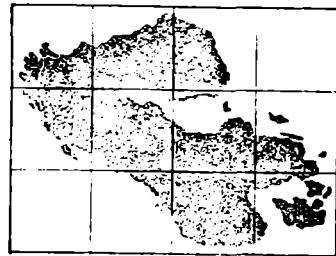
ALMINDELIGE BETINGELSER

for levering og montering af maskiner og andet mekanisk og elektrisk udstyr mellem Danmark,

Finland, Norge og Sverige samt inden for disse lande.

Udgivet 1961 af Sammenslutningen af Arbejdsgivere indenfor Jern- og Metalindustrien i Danmark, Suomen Metallitöölisusyhdyskunta — Finlands Metallindustrirförening r. y., r.f., Finland, Mekaniske Verksteder Landsforening, Norge, samt Sveriges Mekaniförbund, Sverige.

I disse almindelige leveringsbetingelser betyder "materiellet" alt maskineri, apparatur, materiale og genstande, som skal leveres af leverandøren i henhold til aftalen, og "leverancen" betyder materiellet og det arbejde, som skal udføres af leverandøren i henhold til aftalen.



Indledning

1. Nedanstående almindelige leveringsbetingelser finder anvendelse i det omfang, de ikke fraviges ved skriftlig aftale mellem parterne.

Tegninger og beskrivelser

2. Alle oplysninger om vægt, dimensioner, kapacitet, pris, tekniske og andre data anført i kataloger, prospekter, cirkulærer, annoncer, billeddokumenter og prislisten er omintentlige. Sådanne oplysninger er kun bindende i det omfang, aftalen udtrykkeligt henviser til dem.

3. Alle tegninger og tekniske dokumenter til brug ved udførelsen af leveranden eller dele deraf, som overlades køberen for eller efter aftalens indgåelse, forbliver leverandørens ejendom. De må ikke uden deannes tilladelse anvendes af køberen eller kopieres, reproduceres, overgives til eller på anden måde bringes til tredjemandens kundskab.

4. Alle tegninger og tekniske dokumenter til brug ved udførelsen af leveranden eller dele deraf, som af køberen overlades til leverandøren for eller efter aftalens indgåelse, forbliver køberens ejendom. De må ikke uden dennes tilladelse anvendes af leverandøren eller ret til et særskilt honorar.

Hvis en avtale fra bestemmelserne i punkterne 9–12 skulle medføre omstændigheder, der ville gøre det urimeligt at forlange, at leverandøren skulle fortsætte med at udføre leverancen, kan han nægte

at gøre dette uden at miste sine rettigheder ifølge aftalen.

at udstyr, forbrugssartikler, vand og drivkraft, herunder trykluft og elektrisk strøm, som er specifiseret i aftalen, i god tid står til disposisjon for leverandøren på monteringsstedet.

11. Medmindre andet er aftalt, skal køberen vederlagsfrit på eller i nærheden af monteringsstedet stille til disposition for leverandøren afdæsige eller på anden måde beskyttede lokaler og lagerpladser, således at materiellet, leverandørens værkøj og udstyr samt personalets ejendele er beskyttet mod tyveri og beskadigelse.

12. Leverandøren har ikke pligt til at foretage bygnings- eller nedrivningsarbejder eller træffe nogen andre leverandørenes normalt ikke påhvelinde foranstaltninger til at flytte materiellet fra løsningsstedet til monteringsstedet, medmindre han har erklæret sig indforsat med at levere materiellet på sidstnævnte sted.

13. Afvigeler fra bestemmelserne i punkterne 9–12 giver den part, hvis pligter føres til hvis rettigheder formindskes, ret til et særskilt honorar.

Hvis en avtale fra bestemmelserne i punkterne 9–12 skulle medføre omstændigheder, der ville gøre det urimeligt at forlange, at leverandøren skulle fortsætte med at udføre leverancen, kan han nægte

at gøre dette uden at miste sine rettigheder ifølge aftalen.

rancen, der er tilstrækkeligt udførlig til at sætte køberen i stand til at igangsætte, drive og vedligeholde (ærværdi forstørrelse) løbende reparationer af) alle dele af leverancen. Ejendomsmæssen til sådanne oplysninger og tegninger overgår til køberen. De i punkt 3 nævnte indskrænkninger i anvendelsen af tegninger og tekniske dokumenter til brug ved udforelsen af leverancen eller dele deraf findes ikke anvendelse på de i nærværende punkt nævnte oplysninger og tegninger. Dog kan leverandøren forlange, at de forbliver fortrolige.

Emballage

6. Medmindre andet fastsættes, anses a) de i prislister og kataloger anførte priser at gælde exclusive emballage;
- b) de i tilbud og aftaler anførte priser at omfatte udgifterne til sådan emballage eller anden beskyttelse, som under normale transportforhold kræves for at forhindre beskadigelse eller forringelse af materiellet, indtil det kommer frem til det i aftalen angivne bestemmelsersted.

Nationale love og bratsmæssige

7. Køberen skal på leverandørens forlangende efter bedste evne bistå ham med at fremstaffe nødvendige oplysninger om nationale (lokale) love og bestemmelser, som vedrører leverancen, og om skatter og afgifter i forbindelse med denne.
8. Hvis omkostningerne ved monteringens forlængelse eller formindskes som følge af forandringer i sådanne love eller bestemmelser, der måtte finde sted efter den dag, da tilbuddet blev afgivet, skal det beløb, som repræsenterer denne difference, henholdsvis lægges til eller trækkes fra prisen.

Arbejdsforthold

9. Køberen skal sørge for, at monteringingen ikke finder sted i usunde eller farlige omgivelser, og for, at leverandørens personale kan få passende kost og logi i nærheden af monteringsstedet samt tilfredsstillende lægehjælp.
10. Uden omkostninger for leverandøren skal køberen sørge for,

leverandørens personale samt omkostninger ved transport af personalets værkøj og personlige effekter;

b) kost og logi og andre opholdsudgifter for leverandørens personale for hver dags travér fra hjemmet inklusive fridige og hellig-dage;

c) arbejdstiden, som skal beregnes efter antallet af arbejdstimer, der skal være attestert af køberen. Overarbejde betales efter særligt takt. Timedebiteringen skal også dække slitage og værdiforringelse af leverandørens værkøj og lettere udstyr;

d) tid, der nødvendigvis medgår til:

- 1) forberedelser og formuleringer i forbindelse med ud- og hjem-rejse.
 - II) ud- og hjemrejse samt andre rejser, fastsat i lov eller tarif-aftale i leverandørens hjemland.
 - III) daglig rejse morgen og aften mellem logi og monteringssted i det omfang, afstanden mellem disse steder med rimelighed kan begrunde en særlig godtgørelse herfor.
 - IV) afventning, når arbejdet forhindres af omstændigheder, som leverandøren ifølge aftalen ikke er ansvarlig for.
- e) udgifter, som leverandøren pådrager sig i henhold til aftalen ved at stille udstyr til disposition, herunder betaling for brug af hans eget tunge monteringsudstyr;
- f) skatter og afgifter, som skal erlægges af det fakturede beløb og er betalt af leverandøren i det land, hvor monteringen udføres.

15. Når monteringen udføres for en fast pris, indgår alle i punkt 14 nævnte poster deri. Følgences monteringsdienst af ørager, som køben eller en af hans andre leverandører er ansvarlig for, og indstilles eller forsinkes arbejdet med leverancen midlertidigt som følge heraf, skal køberen betale for den tid, arbejdet ligger stille, alt ekstraarbejde og alle økstra udgifter for leverandørens personale samt omkostningerne ved hver ekstra rejse.

Materielpriser

16. Medmindre det er truffet anden aftale, skal aftalte priser af materiellet udføres i leverandørens virksomhed og inden for normal

arbejdstid. Såfremt tekniske krav til prøverne ikke er angivet i aftalen, skal disse udføres i overensstemmelse med sædvane i den pågældende industri i det land, hvor materiellet fremstilles.

17. Leverandøren skal give køberen sådant varsel om de nævnte prøver, at køberens repræsentant kan overvære disse. Hvis køberen ikke er repræsenteret ved prøverne, skal leverandøren overgive prøvetokollatet til køberen, som ikke kan anfægte dets rigtighed.

18. Såfremt materiellet ved en sådan prøve findes mangelfuld eller ikke i overensstemmelse med aftalen, skal leverandøren så hurtigt som muligt afhjælpe mangelen eller sørge for, at materiellet bringes i overensstemmelse med aftalen. På køberens forlangende skal ny prøve derefter afholdes; hvis mangelen er ubetydelig, kan ny prøve dog ikke forlanges.

19. Medmindre andet er aftalt, bør leverandøren alle med de nævnte prøver på hans virksomhed forbundne omkostninger med undtagelse af køberens udgifter ved at lade sig repræsentere.

Risikoen, overgang fra og forvaring ved modtagelse af materiellet

20. Bortset fra det i punkt 21 nævnte tilfælde fastsættes tids- punktet for risikoens overgang i overensstemmelse med de af Det internationale Handelskammer udarbejdede internationale regler om fortolkning af handelsudtryk (incoterms), som er gældende på det tidspunkt, aftalen indgår.

Medmindre andet er aftalt, anses materiellet solgt "ab fabrik". Leverandøren skal give køberen skriftlig underretning om den dag, køberen skal modtage materiellet. Leverandørens underretning må gives i så god tid, at køberen får mulighed for at foretage sådanne foranstaltninger, som normalt er nødvendige for at modtage materiellet.

21. Undlader køberen at modtage materiellet på den aftalte dag, er han desvagt forpligtet til at erlägge enhver af materiellets levering betinget betaling, som om materiellet var leveret. Leverandøren skal sørge for, at materiellet opbevares for køberens regning og risiko. På køberens anmodning, skal leverandøren forsikre materiellet for køberens regning.

22. Medmindre køberens i punkt 21 angivne undladelse skydes noget i punkt 62 nævnt forhold, er leverandøren berettiget til skriffligt at opfordre køberen til at modtage leveringsfærdigt materiel inden for en rimelig tid.

funderanter og andre understøttninger, dels til etablering af bekven- adgang for materiellet og for nødvendigt udstyr til monteringsstedet. og dels til etablering af alle nødvendige forbindelser til materiellet.

27. Det forberedende arbeje skal udføres af køberen i overens- stemmelse med de tegninger og oplysninger, som i henhold til punkt 26 er fremskaffet af leverandøren. Det skal være færdigt i god tid, og fundamerne og understøttningerne skal være i stand til at modtage materiellet i rette tid. I de tilfælde, hvor køberen er ansvarlig for transporten af materiellet, skal dette i god tid være på monterings- stedet.

28. Enhver udgrift, der skydes en fejl eller mangel i de i punkt 20 nævnte tegninger eller oplysninger, som viser sig for overtagelsen, skal afholdes af leverandøren. Enhver sådan fejl eller mangel, som viser sig efter overtagelsen, skal betragtes som mangelfuld konstru- tion i henhold til punkt 47.

Kontakturnavn

29. Leverandøren og køberen skal hver skriftligt udpege en kompetent repræsentant til at være forbindelsesled mellem den anden part under det daglige arbejde på monteringsstedet.

Denne repræsentanter skal i arbejdstiden være til stede på eller i værbeden af monteringsstedet.

Ekstra arbejdskraft

30. Hvis leverandøren i god tid anmelder køberen derom, skal denne gratis stille til disposition for leverandøren sådnu faglært og ikke-faglært arbejdskraft, som er bestemt i aftalen, og endvidere et sådant rimeligt antal ikke-faglært arbejdere, som kan anses at være nødvendigt, selv om der ikke er truffet bestemmelse herom i aftale.

Sikkerhedsbestemmelser

31. Køberen skal give leverandøren fuldstændige oplysninger om de sikkerhedsbestemmelser, som køberen pålægger sit eget personale, og leverandøren skal sørge for, at disse sikkerhedsbestemmelser over- holdes af hans personale.

Undlader køberen at gøre dette inden for et sådant tidsrum, er leverandøren – uanset årsagen – berettiget til ved skriftlig meddelelse til køberen at hæve aftalen for den del af det leveringslædige materiel, som ikke er modtaget på grund af køberens undladelse, og til af køberen at kræve ersättning for skade, som er påført leverandøren ved køberens forsommelse. Ersättningen kan ikke overstige den del af køberens bestemmelser, der dækker den ikke modtagne del af materiellet.

Betaling

23. Medmindre andet er aftalt, erlägges betaling kontant med en tredjedel ved aftaleens indgåelse, en tredjedel, når den væsentlige del af materiellet anmødes til levering, og restbeløbet ved materiellets levering fra fabrik. Køberen kan ved sidste rates betaling fradrage et for monteringen beregnet beløb. Er der ikke truffet aftale herom, anses prisen for monteringen at udgøre 10 % af prisen for den samlede leverance, såfremt monteringen er inkluderet i denne. Eventuel resterende betaling erlägges ved overtagelsen.
24. Det leverede materiel forbliver – i det omfang, loven i det land, hvor monteringen finder sted, tillader det – leverandørens ejendom, indtil betaling for leverancen er erlagt fuldt ud. Veksel eller gejdsbevis anses ikke som betaling, før fuld indfrielse heraf har fundet sted.
25. Erlegger køberen ikke betaling i rette tid, er leverandøren berettiget til, eller skriftlig inden rimelig tid, at have underrettet køberen derom, at beregne sig morante fra forfalldagen med 2 % over den i leverandørens land officielt fastsatte højeste diskonto, sammenlagt dog mindst 6 %. Såfremt køberen på grund af andre end de i punkt 62 nævnte forhold, i løbet af 3 måneder stadig ikke har erlagt det forfalde beløb, er leverandøren berettiget til ved skriftlig meddelelse til køberen at hæve aftalen og af køberen at kræve ersättning for det tab, leverandøren har lidt. Ersättningen kan ikke overstige værdien af den ikke betalte del af leverancen.

Bliver køberen bekendt med, at disse bestemmelser ikke overholder, skal han straks skriftligt underrette leverandøren herom. Køberen kan forbyde personer, som er skyldige i sådanne overtrædelse, adgang til monteringsstedet.
32. Leverandøren skal give køberen fuldstændige oplysninger om enhver speciel fare, der måtte være forbundet med udførelsen af leverancen.

Overarbejde

33. Overarbejde og vikarieare herfor skal – inden for de grænser, der sættes af love og bestemmelser i leverandørens land og i det land, hvor monteringen finder sted – være i overensstemmelse med partnes aftale.
34. Køberen har ikke adgang til at beskæftige leverandørens personale med noget arbejde, der ikke vedtør aftalen, medmindre leverandøren på forhånd giver sit samtykke hertil. Giver leverandøren sådant samtykke, har han intet ansvar for dette arbejde, og køberen er ansvarlig for leverandørens personales sikkerhed under dets beskæftigelse dermed.

Leverandørens ret til kontrol

35. Indtil overtagelsen af leverancen har fundet sted og under alt arbejde, der er foranlediget af leverandørens garanti, er han berettiget til på et hvilket som helst tidspunkt under arbejdstiden på monteringsstedet at kontrollere leverancen for egen regning. Når kontrollererne begiver sig til monteringsstedet, skal de overholde gældende bestemmelser for ferdsel på køberens område.

Førberedende arbejde

26. Leverandøren skal i god tid fremskaffe tegninger, som viser, hvorledes materiellet skal montres, og endvidere alle oplysninger om selve leverancen, som er nødvendige, dels til opførelse af passende

Tiden for færdiggørelse

36. Medmindre andet er aftalt, skal tiden for færdiggørelse regnes fra det seneste af følgende tidspunkter:
 - a) den dag, da aftalen indgås;

- b) den dag, da leverandøren modtager meddelelse om, at gyldige importbevilling er udstedt, for så vidt aftalens opfyldelse er betinget af sådan bevilling;
- c) den dag, da leverandøren modtager en i aftalen vedtaget betaling, der skal erlanges inden fremstillingens påbegyndelse.
37. Hvis forsinkelse med færdiggørelsen skyldes nogen i punkt 62 nævnt omstændighed eller køberens handling eller undladelse, forlænges tiden for færdiggørelse i det omfang, hvori det efter omstændighederne skønnes rimeligt. Borret fra det i punkt 40 omhandlede tilfælde findes denne bestemmelse anvendelse, uanset om årsagen til forsinkelsen indtræffer for eller efter udløbet af den afgaende tid for færdiggørelse.
38. Hvis leverandøren ikke færdiggør leverancen inden for den tid, der er fastsat i punkt 36, eller inden for en med hjemmel i punkt 37 forlænget tid for færdiggørelse, kan køberen, når han inden for en rimelig frist skriftligt underretter leverandøren derom, kræve afslag i den aftalte købesum, medmindre det under hensyn til omstændighederne i det pågældende tilfælde med rimelighed kan antages, at køberen ikke har lidt noget tab. Afslaget udgør 0,5 % ugentlig af den del af den aftalte købesum, som dækker den del af leverancen, der på grund af den omhandlede forsinkelse ikke kan tages i brug som forudsat i aftalen. Overstiger det beløb, på grundlag af hvilket afslaget skal beregnes, 700 000 danske kroner, ansættes afslaget på den del af beløbet, der overstiger 700 000 danske kroner, til 0,25 % ugentlig. Afslaget beregnes for hver hele uge, forsinkelsen varer, regnet fra den dag, da leverancen skulle være færdiggjort, men kan ikke overstige 7,5 % af den del af købesummen, som dækker den del af leverancen, der ikke kan tages i brug som forudsat i aftalen. Afslaget skal reguleres forbundet med betaling, som skal erlägges ved eller efter overtagelsen. Borret fra bestemmelserne i punkt 40 udelukker et sidant afslag i købesummen. Køberen fra ret til nogen anden godtgørelse i anledning af den ovennævnte forsinkelse fra leverandørens side.
- Når monteringen udføres i løbende regning, skal ved anvendelsen af forrige afsnit og punkt 40 købesummen for materiellet ved beregning af forholdsmaæsigt afslag, henholdsvis erstattning anses forhjet med den procentsats, hvormed der måtte være truffet overenskomst. Er sådan overenskomst ikke truffet, beregnes det forholdsmaæsigt afslag, henholdsvis erstattningen af købesummen for materiellet.
39. Er den i aftalen vedtagne tid for færdiggørelse kun angivet omstændig, er hver af parterne efter to trejdede af den således

rens forlangende skal ny prøve derefter afholdes. Hvis mangelen er ubetydelig, kan ny prøve dog ikke forlanges.

43. Køberen skal uden omkostninger for leverandøren sørge for kraft, smøremidler, vand, brande, råvarer og materiale af enhver art, som med rimelighed kan anses påkrævet både til de endelige justeringer og til afholdelse af overtagesesproverne. Køberen skal også uden omkostninger for leverandøren installere alle de apparater, der måtte være nødvendige til disse formål.

Overtageses

44. Så snart leverancen er færdiggjort i overensstemmelse med aftalen og har gennemgået alle de overtagesesprover, der skal afholdes ved afslutningen af monteringen, anses køberen for at have overtaget leverancen, og garantiperioden begynder at løbe. Køberen skal derefter til leverandøren udstede et overtagesescertifikat, hvori han skal attestere den dag, leverancen er færdig og har gennemgået prøverne.
45. Hvis køberen ikke er villig til at lade overtagesesprøver afholde, anses køberen for at have overtaget leverancen, og garantiperioden begynder at løbe, når leverandøren har givet skriftlig meddelelse til ham herom.
46. Såfremt det på grund af vanskeligheder for køberen — og uden hensyn til om punkt 62 finder anvendelse herpå — bliver umuligt at afholde overtagesesprover, udsettes disse i et tidsrum af ikke over 6 måneder eller et andet tidsrum, som parterne måtte blive enige om, og følgende bestemmelser er gældende:
- a) Køberen skal erlägge betaling, som om overtagelse havde fundet sted; såfremt den foreligger en af punkt 62 omfattet forhindring, skal han dog ikke — medmindre andet er aftalt — ved den afgaende leveringstid være forpligtet til at betale omkostninger ved det resterende arbejde eller for den i overensstemmelse med bestemmelserne under d) nedenfor fastsatte garantiperiodes udleb noget beløb, som måtte være tilbageholdt som garanti.
- b) På et passende tidspunkt skal køberen give leverandøren skriftlig meddelelse om den tidligste dag, prøverne kan afholdes, og denne meddelelse skal tillige indeholde en anmodning til leverandøren om at fastsætte dagen for prøvernes afholdelse, der skal ligge inden for en periode, som under hensyn til alle sagen, omstændigheder må anses for rimelig.

ansatte tids forløb berettiget til skriftligt at forlange vedtagelse af en bestemt tid for færdiggørelse.

Indeholder aftalen ingen bestemmelse om tiden for færdiggørelse, er hver af parterne berettiget til efter 9 måneders forløb fra aftalen indgåelse at anvende overensnødte fremgangsmåde.

En sådeds fastsat tid for færdiggørelse er at anse for en i aftalen vedtaget færdiggørelsesstid, som punkt 38 finder anvendelse på.

40. Hvis nogen del af leverancen, for hvilken køberen er berettiget til det i punkt 38 omhandlede maksimale afslag, eller til hvilket henville have været berettiget, såfremt han havde givet leverandøren den nævnte skriftlige underrettning, stadig ikke er færdiggjort, er køberen berettiget til ved skriftlig underrettning til leverandøren at kræve færdiggørelse og at fastsætte en endelig frist herfor, som skal være rimeligt under hensyn til den allerede indtrufne forsinkelse.

Såfremt leverandøren af anden grund end en sådan, for hvilken køberen eller en af de nævnte andre leverandører har ansvaret, undlader at træffe alle de nødvendige foranstaltninger, der påhviler ham for at færdiggøre leverancen inden for den fastsatte frist, er køberen berettiget til ved skriftlig meddelelse til leverandøren at hæve aftalen for den ikke færdiggjorte del af leverancen og til af leverandøren at kræve ersatning for skade, som er påført ham ved leverandørens forsinkelse. Ersatningen fastsættes under hensyn til omsætningshederne i det enkelte tilfælde, men kan ikke overstige 7,5 % af værdien af den del af leverancen, der ikke kan tages i brug som forudsat i aftalen.

- c) Leverandøren kan for køberens regning inspicere leverancen før prøvernes afholdelse og udbedre enhver mangel, fejl eller forringelse, der måtte være opstået efter det tidspunkt, leverancen ifølge aftalen først var klar til aprovning.
- d) Garantiperioden skal begynde af lobe fra det tidspunkt, de udsatte prøver er gemmet i en sådan måde, at bestemmelserne i punkt 42 ikke hjæmmer afholdelse af nye prøver.
- e) På køberens forlangende og for hans regning er leverandøren forpligtet til at beskytte og opbevare leverancen, indtil prøverne afholdes, dog ikke længere end en måned fra det tidspunkt, leverancen først var klar til aprovning i overensstemmelse med aftalen. Medmindre andet er aftalt, opholder leverandørens ansvar for beskyttelse og opbevaring af leverancen ved udsættelsen af den nævnte måned.
- f) Leverandøren på grund af andre opgaver ude af stand til at lade sit personale blive på monteringsstedet, skal han give køberen de direktiver, der er nødvendige for at sætte ham i stand til at træffe tilfredsstillende foranstaltninger til beskyttelse og opbevaring af leverancen.
- Bestemmelserne under e) har ingen indflydelse på aftalen, regler om risikoens overgang.
- f) Såfremt prøverne ikke har fundet sted efter 6 måneders forløb eller — suftent parterne måtte være blevet enige om et andet tidsrum — efter dertes forløb, gælder bestemmelserne i punkt 45, medmindre bestemmelserne i punkt 62 findes anvendelse.

Garanti

- 47. Leverandøren forpligter sig til i overensstemmelse med punkterne 48–58 at afhjælpe alle mangler, som skyldes konstruktion, arbejde eller materiale.
- 48. Leverandørens ansvar omfatter kun mangler, som viser sig inden for garantiperioden — et år fra den dag, leverancen blev overtaget. Forsinkes overtagelsen, finder punkterne 45 og 46 anvendelse.
- 49. For dele, som er udskiftet eller repareret ifølge punkt 47, garanterer leverandøren på samme vilkår og under samme forudsætninger, som gælder for den oprindelige leverancen, i et tiderum af et år. Denne bestemmelse finder ikke anvendelse på leverancens øvrige dele, for hvilke garantiperioden kun forlænges med det tiderum, leverancen ikke har kunnet anvendes som følge af de i punkt 47 nævnte mangler.
- 50. Når leverandøren fra købene har modtaget skriftlig meddelelse om nogen i punkt 47 nævnt mangel, skal leverandøren straks

Overtagelsesprøver

- 41. Medmindre andet er aftalt, skal der afholdes overtagelsesprøver. I tilfælde af sådanne prøvers afholdelse skal leverandøren give købaren skriftlig underrettning om tidspunktet for leverancens færdiggørelse, og denne meddelelse skal være afgivet i så god tid, at købaren kan nå at gøre de nødvendige forberedelser. Prøverne skal udføres i overværse af begge parter. De tekniske krav skal være som specificeret i aftalen eller i sådannen specifikation i overensstemmelse med almindelig praksis i den pågældende industri i det land, hvor materiellet er fremstillet.
- 42. Såfremt leverancen ved sådanne overtagelsesprøver findes mangelfuld eller ikke at være kontraktmæssig, skal leverandøren for egen regning og så hurtigt som muligt afhjælpe mangelen eller sørge for, at leverancen bringes i overensstemmelse med aftalen. På køb-

- afhjælpe mangelen og — med undtagelse af det i punkt 51 nævnte tilfælde — for egen regning. Er mangelen af en sådan art, at det ikke er hensigtsmæssigt at udøvere reparationen på monteringsstedet, skal køberen returnere de dele, som har nogen af de i punkt 47 nævnte mangler, for at leverandøren kan reparere eller udskifte dem. Overgivele til køberen af således forvaltede eller udskiftede dele er at anse som opfyldelse af leverandørens forpligtelser ifølge nærværende punkt for så vidt angår dele behøftede med mangler.
51. Medmindre andet er aftalt, foregår transport af mangelfulde, reparerede og udskiftede dele mellem monteringsstedet og et af nedenstående steder for køberens regning og risiko:
- a) leverandørens fabrik, såfremt aftalen er "ab fabrik" eller "frit på bærevegn";
 - b) den havn, hvorfra leverandøren har afsendt materiellet, såfremt aftalen er fob, fas, cif eller c. & f.;
 - c) den jernbanestation, som angives i aftalen som leveringssted, når aftalen gælder "frit" eller "frank";
 - d) i alle andre tilfælde grænsen til det land, hvorfra leverandøren har afsendt materiellet.
52. Når en reparation i henhold til punkt 50 skal udføres på monteringsstedet, skal påløbende udgifter til rejsen eller kost og logi for leverandørens personale og omkostningerne ved samme risikoen for transport af nødvendigt materiel og udstyr fordeles mellem parterne på rimelig måde, iskr. dog punkterne 10 og 30, der også finder anvendelse under garantiperioden.
53. Mangefulde dele, der udskiftes i henhold til punkt 47, skal stilles til leverandørens disposition.
54. Såfremt leverandøren nægter at opfylde sine forpligtelser ifølge punkt 50 eller trods derom fremstammet anmeldning undlader med behørig hurtighed at træffe nødvendige foranstaltninger hertil, er køberen berettiget til at lade nødvendige reparationer udføres for leverandørens regning og risiko, forudsat at han gør dette på en fornuftig og rimelig måde.
55. Leverandørens ansvar omfatter ikke mangler, som viser sig ved materiale, der er leveret af køberen, eller ved en af denne forlangt konstruktion.
56. Leverandørens ansvar omfatter kun mangler, som opstår under de i aftalen forudsatte funktionsvilkår og ved rigtig anvendelse. Det omfatter ikke mangler, som skyldes årsager, der er opstået efter over-

- mangler i udstyr eller værktøj, som leverandøren har fremskaffet til brug ved monteringen, såfremt leverandøren må antages at have undladt at udvise forneden dygtighed og omhu.
- c) I) Køberens og leverandørens ansvar for skade på person over for denne afgøres efter loven i det land, hvor skaden er indtruffet.
 - II) Fremstætter den person, skaden er overgaet, krav mod køberen, er leverandøren forpligtet til at holde køberen skyldes nogen skadeplads for dette krav i det omfang, skaden skyldes nogen af de ovenfor under b) nævnte årsager.
 - III) Fremstætter den person, skaden er overgaet, krav mod leverandøren, skal køberen holde denne skadeslös, medmindre leverandøren efter bestemmelserne under II) ovenfor ville have været forpligtet til at holde køberen skadeslös, hvis kravet var rejst over for denne.
 - d) Med hensyn til skade på tredjejærands ejendom finder bestemmelserne under c) ovenfor anvendelse med de for nærdætte tillæmpelser.
 - e) Bestemmelserne nærværende punkt finder anvendelse på handlinger og undladelser af parternes personale på samme måde, som de finder anvendelse på handlinger og undladelser af parterne selv. Hvad angår handlinger og undladelser af den ekstra arbejdskraft, der måtte være tilvejebragt af køberen i henhold til punkt 30, er leverandøren ansvarlig for følgerne af sådanne ordre og instruktioner, som har været urettige eller som er givet til en person, som ved ordnes eller instruktionens modtagelse bevidligt har oplyst at have de fornødne kvalifikationer.
 - f) Partiene kan træffe særlig aftale om begrænsning i ertastningsanvaret.
60. Hvis den ene del, mod hvem der fremsættes et krav, vil gøre brug af sine rettigheder i henhold til punkt 59 c) og d), må han give den anden part underretning om dette krav og give ham tilladelse til om ønskes at føre alle forhandlinger med henblik på afgørelsen af dette samt til at handle på forsænkvæste parts vegne eller til — i det omfang, loven i det land, hvor sagen er anlagt, hjemler mulighed deraf — at indtræde i sagen.
61. Bestemmelserne i punkterne 59 og 60 finder tilsvarende anvendelse inden for det tidsrum, leverandøren opholder sig på monteringsstedet under opfyldelsen af sine garantiforpligtelser.

tageisen. I særdeleshed omfatter ansvaret ikke mangler, der skyldes mangelfuld vedligeholdelse eller uregulig montering fra køberens side, endringer foretaget uden leverandørens skriftlige samtykke, fejl ved nogen af køberens udført reparation eller normalt slid eller forringelse.

57. Med undtagelse af bestemmelserne i punkt 47 har leverandøren efter overtagelsen intet ansvar for mangler, selv om de skyldes ansæger, der foretager overtagelsen. Det vedtages udtrykkeligt, at leverandøren ikke er forpligtet til at yde køberen nogen ersstatning for personskade eller skade på ejendom, som ikke omfattes af aftalen, eller for tabt fortjeneste, medmindre det af sagens omstændigheder fremgår, at leverandøren ved en handling eller undladelse har gjort sig skyldig i grov uugtsomhed ved at undlade at tage tilboretlig hensyn til sådanne alvorlige følger, som en samvittighedsstød leverandøren normalt burde have kunnet forudsætte, eller ved bevidst at have set bort fra sådanne følger.

58. Uanset bestemmelserne i punkterne 47–57 gælder leverandørens garantiforpligtelser ikke for augen del af leverancen ud over 2 år fra den oprindelige garantiperiodes begyndelse.

Ansvarsfrihed (force majeure)

62. Folgende omstændigheder medfører ansvarsfrihed, når de indtræffer efter aftalens indgåelse og forhindrer dens opfyldelse: arbejdskonflikt og enhver anden omstændighed, såsom brand, krig, mobilisering eller uforudsete militærindtakelser af tilsvarende omfang, rekruttering, beslaglæggelse, valutarestriktioner, oprør og uroligheder, mangel på transportmidler, almindelig vækknaphed, kasuation af større arbejder, restriktioner på drivkraft og mangler ved leverancer fra underleverandører eller forsinkelse med sådanne leverancer, som skyldes nogen af de i dette punkt nævnte omstændigheder, som parterne ikke har været herre over.
63. Det påhviler den part, der ønsker at påberørbe sig nogen i punkt 62 omhandlet omstændighed, uformelt skriftligt at underrette den anden part om dens opståen og opphør.
64. Enhver af parterne er berettiget til ved skriftlig meddelelse til den anden part at hæve aftalen, når dens opfyldelseinden for en rimelig tid bliver umulig på grund af nogen i punkt 62 nævnt omstændighed. Denne bestemmelse medfører ingen indskrænkning i, hvad der er fastsat i punkterne 22, 25 og 40.

Ansvaret på person og ejendom

59. Optiør der før hele leverancens overtagelse skade på person eller ejendom, skal ansvaret fordeles således:
- I) Leverandøren skal for egen regning yde godtgørelse for et hvert tab eller enhver skade på materiellet eller leverancen, som opstår, for risikoens herfør er gået over på køberen, unanset hvad tabet eller skaden hidrører fra, bortset fra en handling eller undladelse fra køberens side.
 - II) Leverandøren skal for egen regning yde godtgørelse for et hvert tab eller enhver skade på materiellet eller leverancen, som opstår, efter at risikoen herfor er gået over på køberen, såfremt tabet eller skaden skyldes en handling eller undladelse fra leverandørens side.
 - III) Leverandøren skal på køberens forlangende og for denne regning udbrede tab eller skade på materiellet eller leverancen, der skyldes forhold, for hvilke leverandøren i henhold til bestemmelserne I) og II) ovenfor ikke er ansvarlig.
- b) Sker der skade på køberens ejendom – bortset fra selve leverancen – er leverandøren forpligtet til at holde køberen skadesløs i det omfang, skaden er forvoldt af leverandøren eller skyldes

Ansvaret for skade

65. Såfremt den ene part skal betale ersatning til den anden, skal ersatningen kun dække sådan skade, som den skyldige part med rimelighed kunne have forudsat ved aftalens indgåelse, og indirekte skade Kun under de i punkt 57 nævnte omstændigheder.
66. Den part, der påberører sig misligholdelse af aftalen, er forpligtet til at træffe alle nødvendige foranstaltninger til begrænsning af opstændende skade i det omfang, han kan gøre det uden urimlig omkostning eller ulempe. Undlader han dette, kan den anden part kræve afslag i ersatningssummen.

Voldsgift

67. Twistigheder i anledning af aftalen og til denne sejde bestemmelser, samt twistigheder vedrørende deri omtalte og deraf flydende retsforhold med hvidt deraf følger, kan ikke underkastes domstolenes prøvelse, men skal afgøres ved voldsgift og i overensstemmelse med loven i leverandørens land.

BEMÆRKNINGER TIL

**Almindelige leveringsbetingelser for leverancer af varige
forbrugsgoder og lignende industrielle produkter mellem
Danmark, Finland, Norge og Sverige samt inden for disse
lande**

Ligesom Dokumenterne nr. 188 og 188 A blev oversat til de nordiske sprog og simplificeret under hensyn til den delvis fællesnordiske formueretlige lovgivning, har jern- og metalindustrierne i Norden anset det for hensigtsmæssigt at udarbejde et dokument svarende til nr. 730 på de nordiske sprog.

De nordiske jern- og metalindustrier og Industriraadet er efter en række forhandlinger i 1965 nået frem til »Almindelige leveringsbetingelser for leverancer af varige forbrugsgoder og lignende industrielle produkter mellem Danmark, Finland, Norge og Sverige samt inden for disse lande«.

Dokumentet foreligger først trykt i begyndelsen af 1966.

Der henvises iøvrigt vedrørende området for leveringsbetingelserne til bemærkningerne pag. 134 (de produkter, leveringsbetingelserne omfatter) og pag. 166 (det territorium, leveringsbetingelserne dækker).

Inden trykningen af dokumentet blev det besluttet at ændre nummereringen af de enkelte bestemmelser, således at paragraf-nummereringen erstattes af fortløbende punkter, idet også understykkerne til de enkelte paragraffer indgår i den fortløbende punkt-nummerering – alt i overensstemmelse med den i de øvrige nordiske leveringsbetingelser anvendte fremgangsmåde. Desværre har det ikke været muligt at nå at foretage de heraf flydende ændringer i den her gengivne udgave af dokumentet.

Almindelige leveringsbetingelser

for leverancer af varige forbrugsgoder og lignende industrielle produkter mellem Danmark, Finland, Norge og Sverige samt inden for disse lande.

Udgivet 1965 af Sammenslutningen af Arbejdsgivere indenfor distys – Finlands Metallindustriförening r.y., r.f., Mekaniske Verk-Jern- og Metalindustrien i Danmark, Suomen Metalliteollisuusyhdisteders Landsforening, Norge, samt Sveriges Mekanförbund, Sverige.

Indledning

§ 1. Nedenstående almindelige leveringsbetingelser finder anvendelse i det omfang, de ikke fraviges ved skriftlig aftale mellem parterne.

Aftalens indgåelse

§ 2. Hvis en eksport- eller importlicens, en attest fra en fremmed valutamyndighed el.lign. attestation er nødvendig for at gennemføre aftalen, skal den part, der er ansvarlig for erhvervelse af licensen m.v., udvise fornøden omhu for at opnå den i god tid før varernes afsendelse fra sælgeren. Hvis licensen m.v. ikke kan erhverves inden 3 måneder efter datoen for aftalens indgåelse, skal hver af parterne være berettiget til at betragte aftalen som ikke indgået, under forudsætning af at den pågældende part uden ugrundet ophold underretter sin medkontrahent herom.

Beskrivelse og instruktion vedrørende brug og vedligeholdelse.

§ 3. Alle oplysninger om vægt, dimensioner, kapacitet, pris, tekniske og andre data anført i kataloger, prospekter, cirkulærer, annoncer,

billedmateriale og prislister er kun bindende i det omfang, aftalen udtrykkeligt henviser til dem.

Stk. 2. Sælgeren skal senest ved garantiperiodens begyndelse vedlagsfrit forsyne køberen med materiale indeholdende instruktion vedrørende varernes brug og vedligeholdelse.

Emballage

§ 4. Medmindre andet fastsættes, anses

- a) de i prislister og kataloger anførte priser at gælde exclusive emballage;
- b) de i tilbud og aftaler anførte priser at omfatte udgifterne til sådan emballage eller anden beskyttelse, som under normale transportforhold kræves for at forhindre beskadigelse eller forringelse af varerne, indtil de kommer frem til det i aftalen angivne bestemmelsessted.

Risikoens overgang

§ 5. Medmindre andet er aftalt, anses varerne for solgt »ab fabrik«.

Stk. 2. Tidspunktet for risikoens overgang fastsættes i overensstemmelse med de af Det internationale Handelskammer udarbejdede internationale regler om fortolkning af handelsudtryk (Incoterms), som er gældende på det tidspunkt, aftalen indgås.

Stk. 3. Ved alle andre leveringsformer end de i Incoterms omhandlede fastsættes tidspunktet for risikoens overgang i overensstemmelse med parternes aftale.

Stk. 4. Sælgeren skal i alle tilfælde give køberen tilstrækkeligt tidligt varsel om varernes afsendelse til at sætte ham i stand til at tage alle nødvendige forholdsregler for varernes afhentelse eller modtagelse.

Leveringstid

§ 6. Medmindre andet er aftalt, skal leveringstiden regnes fra det seneste af følgende tidspunkter:

- (a) den dag, da aftalen indgås;
- (b) den dag, da sælgeren modtager meddelelse om, at gyldig importbevilling er udstedt, for så vidt aftalens opfyldelse er betinget af sådan bevilling;
- (c) den dag, da sælgeren modtager en i aftalen vedtaget betaling, der skal erlægges inden fremstillingens påbegyndelse.

Stk. 2. Ud over den i aftalen fastsatte leveringstid er sælgeren berettiget til en yderligere frist, der – såfremt ikke andet er aftalt – er på 1 måned, regnet fra udløbet af den i aftalen fastsatte leveringstid, under forudsætning af at han uden ugrundet ophold underretter køberen om enhver forventet overskridelse af den fastsatte leveringstid.

Stk. 3. Hvis forsinkelse med levering skyldes nogen i § 10 nævnt omstændighed eller køberens handling eller undladelse, forlænges leveringstiden i det omfang, hvori det efter omstændighederne skønnes rimeligt. Denne bestemmelse finder ikke anvendelse, hvis forsinkelsen med leveringen indtræffer efter udløbet af den i stk. 2 nævnte »yderligere frist«, medmindre forsinkelsen skyldes køberens handling eller undladelse.

Stk. 4. Hvis sælgeren ikke leverer inden for den i stk. 2 omhandlede »yderligere frist«, er køberen berettiget til ved skriftlig meddelelse til sælgeren at hæve aftalen såvel med hensyn til alle ikke leverede varer som med hensyn til varer, som, selv om de er leveret, ikke kan anvendes i overensstemmelse med deres formål uden de ikke-leverede varer. Når køberen hæver aftalen, er han berettiget til at kræve allerede erlagt betaling tilbage, såvel med hensyn til alle ikke-leverede varer som med hensyn til varer, som, selv om de er leveret, ikke kan anvendes i overensstemmelse med deres formål

uden de ikke-leverede varer, til at afvise leverede varer, som er ubrugelige, og til at kræve erstatning for alle udgifter, som med rimelighed er afholdt af ham for at opfylde hans forpligtelser i henhold til kontrakten; hermed udelukkes køberen fra ethvert andet retsmiddel mod sælgeren i anledning af den forsinkede levering. Hvis køberen ikke hæver aftalen, er han ikke berettiget til nogen erstatning i anledning af sælgerens forsinkelse med leveringen, medmindre andet er aftalt.

Stk. 5. Undlader køberen at modtage varerne på det sted og til den tid, der er fastsat i aftalen, og skyldes dette ikke sælgerens handling eller undladelse, er køberen desuagtet forpligtet til at erlægge enhver i aftalen fastsat betaling, som om varerne var leveret. Når varerne i et sådant tilfælde er udskilt for køberen, skal sælgeren sørge for, at varerne opbevares for køberens regning og risiko. Sælgeren er endvidere berettiget til at kræve erstatning for alle udgifter, som med rimelighed er afholdt af ham for at opfylde hans forpligtelser i henhold til kontrakten og som ikke dækkes af alderede modtaget betaling; hermed udelukkes sælgeren fra ethvert andet retsmiddel i anledning af køberens undladelse af at modtage varerne.

Betaling

§ 7. Betalingen skal finde sted på de vilkår, der er aftalt mellem parterne. Medmindre andet er aftalt eller forudsat, forfalder købesummen ved salg »ab fabrik« til betaling 30 dage efter at sælgeren har givet køberen underretning om, at varerne er stillet til dennes disposition, og i alle andre tilfælde 30 dage efter at sælgeren har givet køberen underretning om, at varerne er afsendt.

Stk. 2. Erlægger køberen ikke betaling i rette tid og skyldes forsinkelsen ikke sælgerens handling eller undladelse, er sælgeren berettiget til:

- (a) at udsætte opfyldelsen af sine egne forpligtelser, indtil betaling har fundet sted; og
- (b) efter skriftligt inden rimelig tid at have underrettet køberen derom, at beregne sig morarente fra forfalddagen med 2 pct. p.a. over den i sælgerens land officielt fastsatte højeste diskonto, sammenlagt dog mindst 6 pct. p.a.

Stk. 3. Har køberen 30 dage efter beløbets forfalddag eller efter udløbet af anden af parterne fastsat frist stadig ikke erlagt det forfaldne beløb, er sælgeren berettiget til ved skriftlig meddelelse til køberen at hæve aftalen, uden at dette medfører nogen indskrænkning i hans ret til at kræve betaling af noget forfaldent beløb for leverede varer og alle udgifter, som er afholdt af ham for at opfylde hans forpligtelser i henhold til kontrakten; hermed udelukkes sælgeren fra ethvert andet retsmiddel mod køberen i anledning af dennes forsinkelse med betalingen.

Køberens ret til afvisning

§ 8. Inden for en frist, som giver køberen rimelig tid til at undersøge varerne, er han berettiget til at afvise disse, for så vidt de ikke er i overensstemmelse med aftalen (bortset fra sådanne, hvor manglerne er opstået efter risikoens overgang), dog således at sælgeren, inden køberen kan gøre sin ret til at afvise varerne gældende, skal have mulighed for inden for en rimelig tid at afhjælpe manglerne for egen regning.

Stk. 2. Køberens ret til at afvise varerne skal også omfatte de varer, som, selv om de er leveret og akcepteret, ikke kan anvendes i overensstemmelse med deres formål uden de i stk. 1 nævnte varer.

Stk. 3. Sælgeren er berettiget til at kræve afviste varer returneret til sig for egen regning og risiko.

Garanti.

§ 9. Sælgeren forpligter sig til i overensstemmelse med nedenstående at afhjælpe alle mangler, som skyldes konstruktion, fremstilling eller materiale.

Stk. 2. Sælgerens ansvar omfatter kun mangler, der viser sig inden for en frist (i det følgende kaldet »garantiperioden«), der regnes fra risikoens overgang og, medmindre andet aftales, udløber 12 måneder derefter eller 6 måneder efter varernes første salg til forbruger, alt efter hvilken af disse to frister, der først udløber.

Stk. 3. Med hensyn til sådanne varedele, som udtrykkeligt er omtalt i aftalen, skal garantiperioden være en sådan anden frist, som måtte være fastsat for enhver sådan del.

Stk. 4. Hvis køberen ønsker at påberåbe sig garantien, skal han uden ugrundet ophold give sælgeren skriftlig underretning om mangler, der har vist sig. Efter at have modtaget sådan underretning skal sælgeren, hvis mangelen omfattes af denne paragraf, efter eget valg enten:

- (a) reparere de mangelfulde varer på det sted, hvor de befinder sig; eller
- (b) lade de mangelfulde varer eller dele returnere til sig og reparere dem; eller
- (c) foretage omlevering; eller
- (d) levere erstatningsdele for at sætte køberen i stand til at udføre de nødvendige reparationer for sælgerens regning.

Stk. 5. Hvis sælgeren får mangelfulde varer eller dele tilbagesendt med henblik på omlevering eller reparation, skal køberen, medmindre andet er aftalt, bære omkostningerne og risikoen ved transporten. Ved fremsendelse til køberen af varer eller dele i form af omlevering eller som reparerede varer eller dele foregår transporten, medmindre andet er aftalt, for sælgerens regning og risiko.

Stk. 6. Mangelfulde varer eller dele, der ombyttes i henhold til denne paragraf, skal stilles til sælgerens disposition.

Stk. 7. Hvis sælgeren undlader at opfylde sine forpligtelser i henhold til denne paragraf inden for en rimelig tid efter at have modtaget den i stk. 4 nævnte underretning, kan køberen lade mangelen afhjælpe for sælgerens regning, under forudsætning af at han gør det på en rimelig måde.

Stk. 8. Sælgerens ansvar omfatter kun mangler, som opstår under de i aftalen forudsatte funktionsvilkår og ved rigtig anvendelse. Det omfatter specielt ikke mangler, der skyldes uriktig installation, mangelfuld vedligeholdelse eller fejl ved nogen reparation, der er udført af andre end sælgeren eller dennes repræsentant eller som hidrører fra ændringer foretaget uden sælgerens skriftlige samtykke, og det omfatter ej heller normalt slid eller forringelse.

Stk. 9. Med undtagelse af bestemmelserne i § 8 har sælgeren, efter at risikoen for leverancen er gået over til køberen, intet ansvar for mangler, selv om de skyldes årsager, der forelå før risikoens overgang. Det vedtages udtrykkeligt, at sælgeren ikke er forpligtet til at yde køberen nogen erstatning for personskade eller skade på ejendom, som ikke omfattes af aftalen, eller for tabt fortjeneste, medmindre det af sagens omstændigheder fremgår, at sælgeren ved en handling eller undladelse har gjort sig skyldig i grov uagtsomhed ved at undlade at tage tilbørligt hensyn til sådanne alvorlige følger, som en samvittighedsfuld sælger normalt burde have kunnet forudse, eller ved bevidst at have set bort fra sådanne følger.

Ansvarsfrihed (force majeure)

§ 10. Følgende omstændigheder medfører ansvarsfrihed, når de indtræffer efter aftalens indgåelse og forhindrer dens opfyldelse: arbejdskonflikt og enhver anden omstændighed, som parterne ikke

har været herre over, såsom brand, krig, mobilisering eller uforudsete militærindkaldelser af tilsvarende omfang, rekvirering, beslaglæggelse, valutarestriktioner, oprør og uroligheder, mangel på transportmidler, almindelig vareknaphed, kassation af større arbejder, restriktioner af drivkraft og mangler ved leverancer fra underleverandører eller forsinkelse med sådanne leverancer, som skyldes nogen af de i dette stykke nævnte omstændigheder.

Stk. 2. Det påhviler den part, der ønsker at påberåbe sig nogen af de nævnte omstændigheder, uden ugrundet ophold skriftligt at underrette den anden part om dens opståen og ophør.

Stk. 3. Enhver af parterne er berettiget til ved skriftlig meddelelse til den anden part at hæve aftalen, når dens opfyldelse inden for en rimelig tid bliver umulig på grund af nogen af de i stk. 1 nævnte omstændigheder, og i så fald skal der ske en tilbageførsel af de under aftalen eventuelt stedfundne ydelser, enten i form af tilbagebetaling af penge, returnering af varer eller på anden rimelig måde og således som de i stk. 1 nævnte omstændigheder tillader det.

Voldgift m.v.

§ 11. Twistigheder i anledning af aftalen og til denne føjede bestemmelser, samt twistigheder vedrørende deri omtalte og deraf flydende retsforhold med hvad deraf følger, kan ikke underkastes domstolenes prøvelse, men skal afgøres ved voldgift og i overensstemmelse med loven i sælgerens land.