

# Ragasco - General Sales Conditions

## 1 Preamble

- 1.1 The agreement for the sale and delivery of goods and services from Ragasco (the Product) is constituted by these General Sales Conditions (General Conditions), Ragasco's offer, the Buyer's order and Ragasco's order acceptance (the Agreement), if not otherwise agreed. The Buyer's conditions for purchase contained in the Buyer's order or other documents shall only apply if explicitly accepted in writing by Ragasco.
- 1.2 In case of conflict between the documents within the Agreement, they shall have the following priority: (1) The order acceptance, (2) the General Conditions, (3) the offer and (4) other documents.
- 1.3 When used in the Agreement, the term "written" or "in writing" refers to a document signed by both parties and a letter, fax, electronic mail or other means agreed by the parties.
- 1.4 Deviations from the Agreement shall not apply unless agreed in writing.

## 2 Offer, product information, qualities

- 2.1 The offer is not legally binding unless otherwise explicitly stated. Final agreement depends upon Ragasco's written acceptance of the order.
- 2.2 The Products are delivered, unless otherwise stated, in accordance with Ragasco's regular quality norms and dimension tolerances.
- 2.3 Information communicated from Ragasco concerning weight, dimensions, prices or other technical data is not binding for Ragasco unless the information is referred to from or included in the Agreement.

## 3 Industrial property and confidentiality

- 3.1 All drawings and other technical documents regarding the Products or their manufacture submitted by one party to the other, prior or subsequent to the formation of the Agreement, shall remain the property of the submitting party.
- 3.2 Drawings, technical documents or other technical information received by one party shall not be used for any other purpose than the one for which they were submitted. They may not, without the consent of the other party be copied, reproduced, transmitted or otherwise communicated to a third party.

## 4 Delivery test

- 4.1 Where a delivery test has been agreed, it shall, unless otherwise agreed, be carried out where the Products are manufactured. If technical requirements for the test have not been agreed, the test shall be carried out in accordance with general practice in the industry concerned in the country where the Products are manufactured.
- 4.2 Ragasco shall notify the Buyer in writing of the delivery test in sufficient time to permit the Buyer to be present at the test. If the Buyer has received such notice, the test may be carried out even if the Buyer is not represented at the test.
- 4.3 Ragasco shall record the test. The test report shall be sent to the Buyer. The report shall, unless otherwise established by the Buyer, be considered

to correctly describe the execution of the test and its results.

- 4.4 If at the delivery test the Products are found not to be in accordance with the Agreement (defect), Ragasco shall, as soon as possible, ensure that the Products comply with the Agreement. If so required by the Buyer, a new test shall thereafter be carried out. The Buyer may not however, require a new test if the defect was insignificant.
- 4.5 If no other division of cost has been agreed, the Buyer shall bear all costs for delivery tests carried out where the Products are manufactured. The Buyer shall also, at such delivery tests bear all costs for his representatives, including costs for travel and subsistence.

## 5 Delivery

- 5.1 Any stated delivery time is only indicative, not binding and based on:
  - a) prompt receipt by Ragasco of all information necessary in order to permit immediate start of preparation for delivery and subsequent fulfilment of the order without interruption,
  - b) the Buyer's compliance with conditions of payment, and
  - c) requested documentation of the presence and effectiveness of any required export and/or import licensees or other governmental or public authorization.
- 5.2 Where a trade term has been agreed, it shall be interpreted in accordance with the INCOTERMS 2000 in force at the formation of the Agreement.
- 5.3 If no trade term is specifically agreed upon, the delivery shall be Ex Works.
- 5.4 In case of sale Ex Works or Free on board, the Buyer is obliged to give necessary shipment instructions to Ragasco, when ordering, and in any case no later than two weeks before delivery. If he fails to provide such instructions, the method of shipment will be chosen at Ragasco's discretion, without liability. In no case is Ragasco responsible for any charges for special transport services, demurrage or detention.

If the Agreement calls for a final specification of a delivery by a certain date, the Buyer is obliged to furnish the specification by that date. If he fails to do so, Ragasco, has, at its own discretion, the right to specify, complete the delivery and charge additionally for the incurred expenses. If the Buyer specifies a larger quantity than the original order, and Ragasco is able to deliver, the Buyer will be charged for the excess quantity at the price generally applicable at the time of delivery.

- 5.5 The Buyer may not cancel the Agreement or claim damages or compensation for delay. If, however, the delay must be deemed substantial, the Buyer may claim liquidated damages in accordance with Clause 6.3, from the day the delay must be deemed substantial. If the Buyer then becomes entitled to maximum liquidated damages, Clause 6.4 shall apply.
- 5.6 Ragasco may make partial deliveries, to fulfil an order.
- 5.7 In order to utilize cargo space (trucks, containers, etc.) efficiently, Ragasco may adjust (up or down)

the size of the shipment by up to 5% of the contract value, and change the amount due accordingly.

- 5.8 The Buyer shall be responsible for obtaining any required authorization such as an export or import license, exchange permit, type approval or any other required authorization. The Buyer and Ragasco shall assist each other in every manner reasonable in securing and complying with such authorizations. The Buyer further agrees to comply with applicable export control laws and regulations.

Ragasco shall not be liable for any delayed, denied or revoked authorization. The Buyer shall therefore not be relieved of his obligation to pay in accordance with the Agreement.

## 6 Delay

- 6.1 If Ragasco has expressly guaranteed a certain delivery time and finds that it will not be able to deliver the Products at the agreed time, it shall notify the Buyer thereof, stating the reason for the delay, and if possible, the time when delivery can be expected.

- 6.2 If delay is caused by a circumstance which under Clause 11.1 constitutes a ground for relief or by an act or omission on the part of the Buyer, including suspension by Ragasco under Clauses 7.3 and 7.7, the time for delivery shall be extended by a period, which is reasonable having regard to the circumstances in the case. The time for delivery shall be extended even if the reason for delay occurs after the originally agreed time for delivery.

- 6.3 If Ragasco fails to deliver the Products on time (when expressly guaranteed, see 6.1), the Buyer is entitled to liquidated damages from the date on which delivery should have taken place.

The liquidated damages shall be payable at a rate of 0.2 per cent of the agreed price for each completed week of delay. If the delay concerns only a part of the Products, the liquidated damages shall be calculated on the part of the price that is properly attributable to the part of the Products that cannot be taken in use due to the delay.

The liquidated damages shall not exceed 7.5 per cent of the part of the price on which it is calculated.

The liquidated damages become due at the Buyer's written demand, but not before all of the Products have been delivered or the Agreement is terminated under Clause 6.4.

The Buyer loses his right to liquidated damages if he has not lodged a written claim for such damages within three months after the time when delivery should at the latest have taken place.

- 6.4 If the Buyer is entitled to maximum liquidated damages under Clause 6.3, and the Products still not are delivered, the Buyer may in writing demand delivery within a final reasonable period, which shall not be less than 15 days.

If Ragasco fails to deliver within such final period and this is not due to any circumstance for which the Buyer is responsible, the Buyer may, by written notice to Ragasco, terminate the Agreement in respect of that part of the delivery that cannot be taken in use due to the delay.

In case of such termination the Buyer shall also be entitled to compensation for any direct losses it suffers because of Ragasco's delay, to the extent that the loss exceeds the maximum of liquidated

damages which the Buyer may claim under Clause 6.3. This compensation shall not exceed 7.5 per cent of the part of the price which is properly attributable to the delayed part of the delivery that forms the bases for termination of the Agreement.

The Buyer shall also have the right to terminate the Agreement by written notice to Ragasco if it is clear that there will be a delay, which, under Clause 6.3, would entitle the Buyer to maximum liquidated damages. In case of termination on this ground, the Buyer shall be entitled to both maximum liquidated damages and compensation under the third paragraph of this Clause.

Except for liquidated damages under Clause 6.3 and termination of the Agreement with limited compensation under this Clause 6.4, all other claims in respect of Ragasco's delay shall be excluded. This limitation of Ragasco's liability shall not apply, however, if Ragasco has been guilty of wilful misconduct.

- 6.5 If the Buyer finds that he will be unable to accept delivery of the Products on the agreed date, or if delay on his part seems likely, he shall, without undue delay, notify Ragasco in writing, stating the reason for the delay and, if possible, the time when he will be able to accept delivery.

- 6.6 If the Buyer fails to accept delivery on the agreed date, he shall nevertheless make any payment that is dependent on delivery as if the Products in question had been delivered. Ragasco shall arrange storage of the Products at the Buyer's risk and expense. If the Buyer so requires, Ragasco shall insure the Products at the Buyer's expense.

- 6.7 Unless the Buyer's failure to accept delivery as referred to in Clause 6.5 is due to any such circumstance as described in Clause 11.1, Ragasco may by written notice require the Buyer to accept delivery within a reasonable period.

If, for any reason for which Ragasco is not responsible, the Buyer fails to accept delivery within such period, Ragasco may, by written notice to the Buyer, terminate the Agreement in respect of that part of the Products that is ready for delivery but has not been delivered due to the Buyer's default. Ragasco shall then be entitled to compensation for the losses suffered as a consequence of the Buyer's default.

## 7 Price and payment

- 7.1 The prices set forth in the Agreement are in NOK (if not otherwise specified) and include the cost of normal factory tests and inspection by Ragasco and the cost of export packing in accordance with good commercial practice for export shipments.

- 7.2 The price is exclusive of VAT and any other duties or taxes. The Buyer agrees to pay or reimburse Ragasco and/or its subsidiaries, subcontractors and suppliers any such taxes which Ragasco and/or its subsidiaries, subcontractors and suppliers are required to pay or collect or which are required to be withheld by the Buyer.

- 7.3 If, in the judgement of Ragasco, the financial condition of the Buyer, at any time prior to delivery, does not justify the terms of payment specified, Ragasco may require payment in advance, acceptable security, suspension of performance or cancelation of any outstanding order, whereupon Ragasco shall be entitled to receive reasonable cancellation charges.

- 7.4 Unless otherwise agreed, the agreed purchase price, together with any additional charge and value added tax, shall be invoiced when the bulk of the Products are produced and are ready for delivery.
- 7.5 The invoiced amount is due 30 days after the invoice date.
- 7.6 If the Buyer fails to pay, Ragasco shall be entitled to interest from the due date at the rate of interest determined by the law on late payments in Norway.
- 7.7 If the Buyer fails to pay by the due date, Ragasco shall also, after having notified the Buyer in writing, have the right to suspend performance until payment is made.
- 7.8 If the Buyer has failed to pay the amount due within three months after the due date, Ragasco may terminate the Agreement by written notice to the Buyer and, in addition to interest on late payment, claim compensation for the losses suffered.

## 8 Retention of Title

The Products shall remain the property of Ragasco until paid for in full, to the extent that such retention of title is valid.

## 9 Defects and rectification

- 9.1 Ragasco shall, in accordance with the provisions in Clauses 9.4-9.17 below, remedy any defect (see Clause 4.4) in the Products caused by faulty design, materials or workmanship. If the delivered Products are found to have any defect for which Ragasco is responsible, Ragasco have the choice of (1) remedying the defect, (2) replacing the Product or (3) crediting the Buyer for a part of the Agreement price, proportional to the defect. If Ragasco choose to credit the buyer, no credit is due until the defective Products are placed at Ragasco's disposal.
- 9.2 Ragasco's liability does not cover defects caused by circumstances, which arise after the risk has passed to the Buyer. The liability does not, for instance, cover defects due to conditions of operation deviating from those anticipated in the Agreement or to improper use of the Products. Nor does it cover defects due to faulty maintenance or incorrect installation, alterations undertaken without Ragasco's written consent or faulty repairs by the Buyer. Finally, the liability does not cover normal wear and tear or deterioration.
- 9.3 Ragasco's liability is limited to defects that appear within a period of two years from the date of manufacture of the Products. If the Products are used more intensely than agreed or assumed, this period shall be reduced proportionately.
- 9.4 For parts, which have been repaired or replaced under Clause 9.1, Ragasco shall have the same liability for defects as for the original Products for a period of two years. For other parts of the Products the liability period referred to in Clause 9.3 shall be extended only by the period during which the Products could not be used due to a defect for which Ragasco is liable.
- 9.5 The Buyer shall notify Ragasco in writing of a defect without undue delay after the defect has appeared and in no case later than two weeks after the expiry of the liability period defined in Clause 9.3 as supplemented by Clause 9.4. The notice shall contain a description of how the defect manifests itself. If the Buyer fails to notify Ragasco in writing

within the above time limits, he loses his right to make any claim in respect of the defect.

- 9.6 If there is reason to believe that the defect may cause damage, notice shall be given immediately. If notice is not given immediately, the Buyer loses the right to make any claim based on damage which occurs and which could have been avoided if such notice had been given immediately.
- 9.7 After receipt of a written notice under Clause 9.5, Ragasco shall remedy the defect, replace the Product or credit the Buyer in accordance with Clause 9.1, without undue delay. Within this limit the time for any remedial work shall be chosen in order not to interfere unnecessarily with the Buyer's activities. Ragasco shall bear the costs as specified in Clauses 9.1-9.16.
- 9.8 Remedial work shall be carried out at Ragasco's premises by Ragasco or by a repair partner authorised by Ragasco.
- 9.9 Ragasco shall carry out dismantling and re-installation of the part if this requires special knowledge. If such special knowledge is not required, Ragasco has fulfilled its obligations in respect of the defect when it delivers a duly repaired or replaced part to the Buyer.
- 9.10 If the Buyer gives such notice as referred to in Clause 9.5, and no defect is found for which Ragasco is liable, Ragasco shall be entitled to compensation for the work and costs that it has incurred as a result of the notice.
- 9.11 If remedy of the defect requires intervention in other equipment than the Products, the Buyer shall be responsible for any work or costs caused thereby.
- 9.12 All transports in connection with repair or replacement shall be at Ragasco's risk and expense.
- 9.13 The Buyer shall follow Ragasco's instructions regarding how the transport shall be carried out.
- 9.14 The Buyer shall bear the increase in costs for remedying a defect which Ragasco incurs when the Products are located elsewhere than at the destination stated in the Agreement or - if no destination has been stated - the place of delivery.
- 9.15 Defective parts, which have been replaced in accordance with Clause 9.1, shall be placed at Ragasco's disposal and shall become its property.
- 9.16 If Ragasco fails to fulfil its obligations under Clause 9.7 within reasonable time, the Buyer may by written notice require him to do so within a final time limit. If Ragasco fails to fulfil its obligations within that time limit, the Buyer may at his option:
  - a) have the necessary remedial work carried out and/or have new parts manufactured at Ragasco's risk and expense, provided that the Buyer proceeds in a reasonable manner, or
  - b) demand a reduction of the agreed purchase price not exceeding 15 per cent.

If the defect is substantial, the Buyer may instead terminate the Agreement by written notice to Ragasco. The Buyer shall also be entitled to such termination where the defect remains substantial after measures referred to in a). In case of termination, the Buyer shall be entitled to compensation for any direct losses suffered. The compensation shall not, however, exceed 15 per cent of the agreed purchase price for the defect Products.

- 9.17 Regardless of the provisions of Clauses 9.1-9.16, Ragasco shall have no liability for defects in any part of the Products for more than three years from the start of the liability period referred to in Clause 9.3.
- 9.18 Ragasco shall have no liability for defects save as stipulated in Clauses 9.1-9.17. This applies to any loss the defect may cause, and excludes all consequential losses such as loss of production and profit. This limitation of Ragasco's liability shall not apply, however, if it has been guilty of wilful misconduct.

## **10 Liability for Damage to Property Caused by the Products**

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

Ragasco shall have no liability for damage caused by the Products:

- a) to any (movable or immovable) property, or consequential loss due to such damage, occurring while the Products are in the possession of the Buyer or his customer, or
- b) to products manufactured by the Buyer or to products of which the Buyer's products form a part.

The above limitations of Ragasco's liability shall not apply if it has been guilty of wilful misconduct.

- 10.2 If a third party lodges a claim for compensation against Ragasco or the Buyer for loss or damage referred to in this Clause 10, the other party to the Agreement shall immediately be notified thereof in writing.
- 10.3 Ragasco and the Buyer shall be mutually obliged to let themselves be summoned to the court or arbitral tribunal which examines claims against either of them based on damage or loss alleged to have been caused by the Products. The liability as between Ragasco and the Buyer shall, however, always be settled by arbitration in accordance with Clause 13.1.

## **11 Grounds for Relief (Force Majeure)**

- 11.1 The following circumstances shall constitute grounds for relief if they impede the performance of the Agreement or makes performance unreasonably burdensome: Industrial disputes and any other circumstance beyond the control of the parties, such as fire, war, mobilization or military call up of a comparable scope, requisition, seizure, trade and currency restrictions, insurrection and civil commotion, breakdown of machinery, shortage of transport, industrial accident, general shortage of materials, act or omission of any governmental authority, embargo, restrictions in the supply of power and defects or delays in deliveries by sub-contractors caused by any such circumstance as referred to in this Clause.
- 11.2 The party wishing to claim relief under Clause 11.1 shall without delay notify the other party in writing of the intervention and on the cessation of such circumstance.
- 11.3 If grounds for relief prevent the Buyer from fulfilling his obligations, he shall reimburse the expenses

incurred by Ragasco in securing and protecting the Products.

- 11.4 Notwithstanding other provisions of these General Conditions, either party shall be entitled to terminate the Agreement by notice in writing to the other party, if performance of the Agreement is delayed more than six months by reason of any grounds for relief as described in Clause 11.1.

## **12 Partial invalidity**

If any provision herein or portion thereof shall, for any reason, be held invalid or unenforceable, such invalidity or unenforceability shall not effect any other provision or portion thereof, but these General Conditions shall be construed as if such invalid or unenforceable provision or portion thereof had never been contained herein.

## **13 Disputes. Applicable Law**

- 13.1 Disputes arising out of or in connection with the Agreement shall be sought settled amicably and in good faith. If no amicable settlement is reached, the dispute shall be finally settled by arbitration in accordance with the Norwegian Arbitration Act (14.05.2004). All aspects of the proceedings and the award shall remain confidential. The language of the proceedings shall be English unless both parties have their main office in Norway, Sweden or Denmark, in which case the language shall be Scandinavian. The arbitration award may in any case be given in a Scandinavian language accompanied by an authorized translation into English.
- 13.2 If, in any arbitration proceeding, any issue arise concerning the validity, construction or effect of any patent, the arbitrators shall assume the validity of all claims as set forth in such patent, and in no event shall the arbitrators delay the arbitration proceeding for the purpose of obtaining or permitting the Buyer or Ragasco to obtain judicial resolution of such issue, unless an order staying such arbitration proceedings is issued by a court of competent jurisdiction.
- 13.3 All disputes arising out of the Agreement shall be judged according to the laws of Norway, with Vestre Toten, Norway as legal venue.