

# ALEM 09

General terms and conditions for the delivery of electrical equipment for supply and use in Sweden, drawn up by the Swedish Electrical Contractors' Association (EIO) and the Swedish Electrical Wholesalers Federation (SEG).

The terms and conditions of delivery are not intended to apply to the delivery of services, electrical domestic appliances, home electronics, computers or software.

## Introductory provisions and definitions

1. The Sale of Goods Act shall apply unless otherwise stated below, or otherwise agreed between the parties.
2. Price Base Amount: Price Base Amount in accordance with the National Insurance Act (SFS 1962:381).
3. Purchase Price: The price stated, excluding value added tax, for goods which are to be delivered for a project or to a point of delivery pursuant to the individual agreement.
4. In Writing: Information which can be read and stored.
5. The seller shall keep the purchaser informed as appropriate, such as via its website, of suppliers with deviating periods of liability pursuant to section 38.

## Offers

6. Unless otherwise stated, the seller's offer is valid for one month.
7. It must be clearly stated in the offer if the seller's offer differs from the purchaser's bid. In other cases, the provisions of the bid shall apply, unless the circumstances clearly dictate otherwise.

## Documents

8. Drawings and other documents handed over by a party remain the property of such party. The other party may only use, reproduce or inform a third party of the contents of such document if this is required for the purpose intended in handing over the document.

In addition, protection may be applicable under intellectual property law legislation or the Trade Secrets Protection Act.

9. Each individual who finds himself on, or delivers to, a building site is obliged to wear a name tag bearing his name and the name of his employer and must also have a valid form of identification available, such as in the form of a driving licence or personal identification card.

Unless otherwise agreed, the seller shall pay liquidated damages each time it is noted that any of the seller's employees or the employees of the carrier engaged by the seller is in breach of the provisions of the previous paragraph. Liquidated damages of SEK 500 per person per day shall be payable.

## Notices, etc.

10. Notices shall state (e.g. by order number or object number) the name of the individual at, or division of, the recipient company which the recipient company has stated to be handling the delivery.

## Statutes, etc.

11. The goods shall satisfy the requirements applicable to the delivery as prescribed by law and other statutes, as well as the regulations and instructions referred to in the agreement between the parties.

In the event such a provision is amended after the seller's offer, the agreement shall be amended to the extent that the costs or delivery time are affected.

## Product information

12. In the event there is a reference to a catalogue or other product information in the agreement between the parties, the goods shall conform to the product data stated therein. The aforementioned shall apply where it is clear from the circumstances of the agreement that the parties intended that the goods correspond to data in the product information.

## Modifications to products

13. Unless this entails technical or financial inconvenience to the purchaser, the seller shall be entitled to deliver the goods with modifications to the products carried out after the agreement was entered into. In the event the purchaser suffers such inconvenience, the purchaser shall be entitled to cancel the agreement as far as concerns modified goods and goods which have such close connection to the modified goods that they are to be regarded as constituting one unit.

The seller shall be obliged to compensate the purchaser for loss incurred only where, at the time of entering into the agreement, the seller realised or should have realised that the modification might cause such inconvenience as referred to above.

The liability to pay compensation pursuant to this section is limited to the amount of the purchase price.

## Samples

14. A sample is to be regarded as a type sample unless exact correspondence has been agreed.

## Liability for design, etc.

15. A party is liable for information in the manufacturing documents and for designs which such party has provided.

A party is also liable for any modification to the party's design suggested by the other party, unless such party has made express reservations concerning this before manufacture commenced.

16. The seller is not liable for defects due to goods provided by the purchaser, other than in the event of the seller's negligence.

### **Transportation and reception**

17. Unless otherwise agreed, delivery will be made by the seller's carrier organisation free to an agreed destination or by an independent carrier carriage and packing free to the purchaser's nearest goods station or other agreed destination.

The seller shall take out carrier insurance or assume corresponding liability for the goods.

18. The goods shall be marked at all times in the manner agreed between the parties.
19. The disposal of packing and packaging is carried out at the purchaser's expense.
20. The purchaser is responsible for ensuring that there are access roads from the public highway to the reception point and to haulage routes laid on the building site and for ensuring that the purchaser's reception facilities permit appropriate delivery.
21. In the event a special lifting device is required for unloading the goods, such device shall be provided by the purchaser at its own expense, unless otherwise agreed. The seller shall notify the purchaser if and when a special lifting device is required, except in such cases where it is obvious, for special reasons, that such notification is not required.
22. The purchaser shall at all times be invoiced for any freight costs, which shall not be collected in cash at the time of delivery.

### **Returned goods**

23. Only returned goods in respect of which the seller has been at fault will be accepted without extra cost to the purchaser.

In the case of other returned goods accepted by the seller, the purchaser will be credited with the invoiced amount subject to a deduction which is generally 20% for stock goods.

When goods are returned, the purchaser shall provide details of the number and date of the seller's invoice or delivery note. The seller shall make out a return note for goods received or collected.

### **Time of delivery**

24. Delivery shall be made within the agreed time of delivery. If no delivery time is agreed in the case of stock goods, delivery shall be made without delay.

### **Liability in the event of delay**

25. Where a party considers that it will be delayed in the delivery or reception of goods, such party shall immediately inform the other party thereof and state when delivery or reception can be made.
26. Where the parties have agreed on a particular day or week for the delivery or reception of the goods, a party shall, unless otherwise agreed between the parties, pay liquidated damages for each calendar week or part thereof by which it fails to meet this date amounting to 2% of the contracted price for the delayed goods or, if the delivery of part of the goods is delayed, of the price of such part.

The liquidated damages are limited to 10% of the price stated above, unless the parties have expressly agreed on a different cap.

Any claim for liquidated damages must be made within 30 days of the agreed date of delivery or reception of the goods. If a claim is not made in due time, the right to liquidated damages shall lapse.

Any delay in respect of stock goods must be notified to the other party not later than ten days prior to the date of delivery. No liquidated damages shall be payable if such notification is made.

Liquidated damages of less than SEK 100 shall not be paid.

27. In the event a new delivery date becomes applicable in the case of a delay, liquidated damages pursuant to section 26 shall be payable where a party fails to meet the new date of delivery or reception of the goods, irrespective of any liquidated damages which must be paid as a result of the earlier delay.
28. In the event a party has notified the other party of a delay prior to the agreed date of delivery, the other party shall only be entitled to cancel the agreement in writing as far as concerns the delayed goods if the notified delay results in such party incurring substantial costs.

However, where the delay relates to goods which are manufactured or acquired specifically for the purchaser in accordance with their specifications or wishes, the purchaser shall only be entitled to cancel the agreement if the delay exceeds ten working days and the purchaser can also obtain delivery of the delayed goods from a source other than the seller prior to the date of delivery notified by the seller.

29. In the event delayed goods are so related to goods that have already been delivered or goods which are to be delivered at a later date, that the party entitled to cancel the agreement would incur substantial costs if such party completed the sale in part, the agreement may be cancelled in its entirety.
30. Where either party fails to exercise the right to cancel the agreement within five working days after receiving a notification of delay, the date of delivery stated therein shall be regarded as the new date of delivery.
31. Where either party cancels the agreement in the case of delay, such party shall be entitled to receive compensation for the loss incurred after the cancellation. The amount of damages, including compensation pursuant to sections 26 and 27, shall not exceed a total amount equal to the purchase price.
32. Beyond the provisions above, the seller is free from compensation liability or other liability arising from a delay in delivery.

### **Reception inspection and inspection prior to assembly**

33. Where the purchaser is unable to be present at the reception, the goods should only be handed over where so agreed by the purchaser in the order. In such case, the purchaser agrees and accepts that the carrier provide a receipt of acceptance for the goods in respect of quantities and based on visible defects.

In the event the purchaser is absent where no such agreement is made, the goods must be returned to the seller and delivered subsequently when a new delivery date has been agreed. Where the seller is able to prove that it attempted to locate the purchaser, the costs for this shall be charged.

34. The goods shall be accompanied by a delivery note.
35. When the goods have been handed over to the purchaser, the purchaser shall check the goods against the delivery note and inspect the goods for visible defects.
36. Where the goods are unpacked or otherwise before the goods are assembled, the reception inspection shall be carried out with care based on the nature of the sale and the goods.

#### Notice of defects

37. The Purchaser may not bring a claim based on defective goods unless the purchaser has provided the seller with written notice of the defect within the prescribed period specified below (notice of defect).

Defects which are discovered or should have been discovered when the goods were handed over to the purchaser must be notified within five working days thereafter and prior to the assembly of the goods. Where the defect may be assumed to have occurred in transit and receipt is given for the goods on a specific consignment note, the defect must also immediately be reported to the carrier.

In other cases, defects must be notified within ten working days after the defect was discovered or should have been discovered or was otherwise brought to the purchaser's attention due to a complaint by a third party.

#### Seller's liability for defects

38. The seller is liable for defects in the goods which appear within two years from the date of delivery of the goods.

In cases where the purchaser is liable to its customer in respect of a contract pursuant to any of the General Terms and Conditions of the Construction Contracts Committee, the seller shall be liable for any defect in the goods which appears during the period within which the purchaser is liable to its customer plus an additional six months, up to a maximum of 66 months from the date of delivery of the goods. However, where the seller is liable for a period of less than five years from the date of delivery of the goods by its supplier, such shorter period of liability shall apply where the seller has informed the purchaser thereof in writing not later than the date of execution of the agreement. However, the period of liability may not be below the period specified in the first paragraph.

39. The seller shall not be liable for any defects due to incorrect assembly or installation, insufficient maintenance, deficient care, neglect, abnormal usage or anything else which may be attributed to the purchaser.

The seller's liability shall not cover normal wear and tear and deterioration.

The purchaser shall be obliged to follow up and document agreed maintenance and care measures.

40. The seller shall only be liable for defects in goods which appear after the periods specified in section 38 where the defect is material and is proven to be based on the seller's negligence. Liability in these circumstances is subject to the statutory period of limitation calculated from the date of delivery of the goods.
41. Goods which have been notified for defects shall be made available for inspection by the seller.

42. Where the purchaser gives notice of a defect and no defect is proven to exist for which the seller is liable, and where the purchaser should have realised this, the seller shall be entitled to reasonable compensation for costs expended.

43. Following notice of a defect, the seller shall remedy the defect at no cost to the purchaser, or make a new delivery without unreasonable delay.

44. In the event the seller fails to remedy a defect or make a new delivery without unreasonable delay, the purchaser shall, after providing written notice to the seller, be entitled to compensation for reasonable costs for remedying the defect itself or shall be entitled to a price reduction corresponding to the defect.

In the event the defect arises in or affects an installation which is of a complicated nature taking into account the expertise of the purchaser, the purchaser shall be obliged, before itself trying to locate or remedy the defect, to give the seller a reasonable opportunity to do so.

Unless the defect is remedied or a new delivery is made within a reasonable period of time following notification of the defect, the purchaser may cancel the sale as far as concerns the defective goods, if the defect is of substantial importance to the purchaser and the seller realised or should have realised this.

In the event of cancellation, the purchaser shall be entitled to compensation for loss incurred. The compensation is limited to the amount of the purchase price.

45. Where the purchaser cancels the agreement with regard to defective goods, the purchaser may at the same time cancel the sale with regard to earlier or subsequent deliveries if, as a result of the connection between them, the purchaser would have suffered significant inconvenience in completing the sale with regard to those deliveries.

46. Where the second paragraph of section 38 applies, the seller is liable for reasonable costs connected with the repair or replacement of defective goods, namely for:

- locating the defect
- gaining access to and removing the defective goods
- installing repaired or replaced goods
- repairing damage to real property or to property other than the sold goods, which has occurred as a result of action necessary to the repair or replacement and which is limited to the area of work involved herein.

The seller's compensation liability pursuant to this section is limited to the amount which can be compensated by the seller's separate insurance for access.

47. The seller shall not be liable for defects or damage beyond that set forth in sections 38 to 46. This applies to each occasion of loss the defect or damage may cause, such as a loss in production, loss of profit or other economic consequential loss.

This limitation shall not apply where the seller has been found grossly negligent.

48. The seller shall not be liable to pay compensation pursuant to sections 38 to 46 where the seller is able to prove that there was an impediment to the delivery of the goods free from defect such as is referred to in section 61 and the seller notifies the purchaser thereof pursuant to the provisions of section 62.

### **Liability for goods being cared for, etc.**

49. A party is liable for damage to material, goods or aids provided by the other party to such party which occurs as a result of neglected or inadequate care on its part unless such party is able to prove that it was not to blame for such damage.

### **Insurance**

50. The seller shall take out general liability insurance covering damage arising from defects in the goods during the periods stated in section 38. The amount insured shall be a minimum of 200 Price Base Amounts.

The seller shall also take out separate insurance for access for an insurance amount of not less than 200 Price Base Amounts.

### **Security**

51. Where there is reasonable cause to assume that a party will fail to perform its delivery or payment obligation, the other party shall be entitled to require that satisfactory security be provided. Where such security is not provided without delay, the party that required the security shall be entitled to cancel the sale in writing as far as concerns the undelivered goods.
52. Either party may cancel the sale without first requiring security if the other party is declared bankrupt or otherwise as a result of insolvency cannot be expected to perform its undertakings pursuant to the agreement.

### **Reservation concerning right of repossession**

53. The goods remain the property of the seller until they have been paid for in full, to the extent that such reservation is valid under applicable law.

### **Price, etc.**

54. In addition to the agreed price, the purchaser shall pay for value added tax charged thereon.
55. Unless otherwise agreed, the price notified to the purchaser before the agreed delivery shall apply.

### **Payment and limitation period**

56. The seller shall send an invoice to the purchaser not later than four months following final delivery or, if this gives the seller a longer period of time for invoicing, four months following the date on which the purchaser's contract was handed over. If this has not taken place, the seller shall not be entitled to payment for an invoice sent at a later date.
57. Where the seller's claim relates to a sum which is included in the purchaser's contract price or value added tax payable on this contract, the limitation period pursuant to section 56 shall not apply.
58. Where the seller is able to prove that it was neither aware nor should have been aware of its claim, the limitation period shall be four months from the date on which the seller should first have become aware of it.
59. Payment does not imply approval of the goods.

### **Cancellation of goods**

60. The purchaser shall be entitled to cancel undelivered goods. In the event of cancellation of goods, the purchaser shall compensate the seller's costs for the cancelled goods unless the seller is able to obtain compensation therefore by way of a sale to a third party or otherwise.

### **Events of default**

61. The seller and the purchaser shall not be entitled to bring a legal claim against the other party for a failure to fulfil its obligations under the agreement if such performance has been made materially more difficult as a result of an event such as a labour dispute, war, decision of a public authority, extensive disruptions of the operations of the party or a sub-contractor or any other event for which the party is not to blame which has a material effect on the performance of the agreement and which the party could not have foreseen or whose detrimental effect such party could not reasonably have avoided.
62. A party shall immediately inform the other party in writing of an event of default. The party shall otherwise not be able to bring a legal claim based on such event of default.
63. Where the agreement cannot be performed within a reasonable period of time, each party shall be entitled to cancel the agreement in writing to the extent that its performance has been rendered difficult by an event referred to above.

### **Disputes**

64. The following shall apply unless the parties have agreed otherwise. Disputes arising from the agreement shall be settled in Sweden applying Swedish law with the exception of its rules concerning choice of law. Where the amount in dispute does not clearly exceed 150 Price Base Amounts, excluding VAT, the dispute shall be settled by a court of general jurisdiction. In other cases, the dispute shall be settled by arbitration pursuant to the Swedish Arbitration Act. "Price base amount" means the price base amount at the time the action is brought.

However, a party shall be entitled to bring legal proceedings in a court of general jurisdiction concerning the payment of undisputed amounts due under the agreement.