

# General Conditions

# LFG 10 E

for the Supply of Super Structures for Commercial Vehicles such as Bodies, Tippers, Cranes, Demountable Body Systems, Skip Loaders, Tank Bodies and Trailers

Issued 2009 by the Truck Body Manufacturers (LFG) of the Association of Swedish Engineering Industries (Teknikföretagen), representing the body manufacturers, and MRF, representing the resellers/dealers



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## Preamble

**1.** These General Conditions shall apply when the parties agree in writing or otherwise thereto. Deviations from the Conditions shall not apply unless agreed in writing.

## Definition

**2.** In these General Conditions the term “Goods” shall mean: The materials and other objects to be delivered and the work to be performed by the Seller under the contract.

## Product Information

**3.** Data contained in product information and price lists are binding only to the extent that they are expressly referred to in the contract.

## Laws etc.

**4.** The Seller shall carry out changes due to amendments of laws, regulations and their general application before delivery.

The Seller shall provide information to the extent required in order to allow the producer to fulfil his producer responsibility in accordance with applicable laws and regulations.

If the Goods, as a result of a delay in delivery for which the Seller is responsible, may not be used as intended, the Seller shall at his own cost ensure that the Goods are in conformity with the laws and regulations in force on the actual date of delivery or with a granted exemption therefrom.

The Seller shall issue an EC declaration of conformity and affix a CE mark to the Goods in order to certify that the Goods are in conformity with the EC Machinery Directive.

## Responsibility for property in the care of the Seller

**5.** The Seller shall take proper care of chassis and other property provided by the Buyer. The Seller is liable for damage to such property unless he can show that he has not failed to take proper care.

The parties may agree that the Seller shall take out insurance covering such property.

## Trade term

**6.** Unless otherwise agreed, the delivery shall be Ex Works (EXW) in accordance with the INCOTERMS in force at the formation of the contract.

## Training

**7.** If the Seller, pursuant to the contract, is obliged to train the Buyer's personnel, the training shall take place at the Seller's premises, unless otherwise agreed.

## Time for Delivery

**8.** If delay in delivery is caused by any such circumstance as referred to in Clause 29 or by an act or omission on the part of the Buyer, including late delivery of the chassis or other property, the time for delivery shall be extended by a period which is reasonable having regard to all the circumstances in the case. This applies regardless of whether the reason for delay occurs before or after the originally agreed time for delivery.

**9.** If the Seller fails to deliver the Goods on time, the Buyer is entitled to liquidated damages from the date on which delivery should have taken place. If, however, the Seller can show that someone else has caused the delay, e.g. the supplier of a component, which is important for the Goods, difficult to substitute and expensive, then the liquidated damages shall be limited to the amount that the Seller may be entitled to receive from the one who caused the delay.

The liquidated damages shall, for each complete week of delay, be calculated on that part of the agreed price which is attributable to that part of the Goods which, due to the delay, cannot be put to its intended use.

The liquidated damages shall the initial five weeks be payable at a rate of 0.5 per cent per week and the following weeks at a rate of 1 per cent per week.

The liquidated damages shall not exceed 7.5 per cent of

that part of the price on which it is calculated according to the second paragraph of this Clause.

The liquidated damages become due at the Buyer's written demand but not before all of the Goods have been delivered or the contract is terminated under Clause 10.

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

**10.** If the time for which the Buyer is entitled to maximum liquidated damages under Clause 9 has expired and the Goods are still not delivered, the Buyer may in writing demand delivery within a final reasonable period which shall not be less than one week.

If the Seller fails to deliver within such final period and this is not due to any circumstance for which the Buyer is responsible, then the Buyer may, by notice in writing to the Seller, terminate the contract in respect of that part of the Goods which cannot be put to its intended use.

In case of such termination the Buyer shall also be entitled to compensation for the loss he suffers because of the Seller's delay to the extent that the loss exceeds the maximum of liquidated damages which the Buyer may claim under Clause 9. This compensation shall not exceed 7.5 per cent of that part of the price which is attributable to the part of the Goods in respect of which the contract is terminated. If, however, the Seller can show that someone else has caused the delay, e.g. the supplier of a component, which is important for the Goods, difficult to substitute and expensive, then the compensation shall be limited to the amount that the Seller may be entitled to receive from the one who caused the delay.

Liquidated damages under Clause 9 and termination of the contract with limited compensation under this Clause 10 are the only remedies available to the Buyer in case of delay on the part of the Seller. All other claims against the Seller based on such delay shall be excluded.

#### **Buyer's delay**

**11.** If the Buyer fails to supply the chassis or other property which he has undertaken to provide, the Seller shall be entitled to liquidated damages from the date when such property should have been provided. If, however, the Buyer can show that someone else has caused the delay, e.g. the supplier of the chassis, then the liquidated damages shall be limited to the amount that the Buyer may be entitled to receive from the one who caused the delay.

The liquidated damages shall, for each complete week of delay, be calculated on that part of the agreed price which is attributable to that part of the Goods for which the delayed property is intended.

The liquidated damages shall the initial five weeks be payable at a rate of 0.5 per cent per week and the following weeks at a rate of 1 per cent per week.

The liquidated damages shall not exceed 7.5 per cent of that part of the price on which it is calculated according to the second paragraph of this Clause.

The liquidated damages become due at the Seller's written demand.

The Seller loses his right to liquidated damages if he has not lodged a claim for such damages within six months after the time when the property should have been provided.

**12.** If the time for which the Seller is entitled to maximum liquidated damages under Clause 11 has expired and the property is still not provided, the Seller may in writing demand that the property shall be provided within a final reasonable period which shall not be less than one week.

If the Buyer fails to provide the property within such final period and this is not due to any circumstance for which the Seller is responsible, then the Seller may, by notice in writing to the Buyer, terminate the contract in respect of that part of the Goods for which the delayed property is intended.

In case of such termination the Seller shall also be entitled to compensation for the loss he suffers because of the Buyer's delay to the extent that the loss exceeds the maximum of liquidated damages which the Seller may claim under Clause 11. This compensation shall not exceed 7.5 per cent of that part of the price which is attributable to the part of the Goods in respect of which the contract is terminated. If, however, the Buyer can show that someone else has caused the delay, e.g. the supplier of the chassis, then the compensation shall be limited to the amount that the Buyer may be entitled to receive from the one who caused the delay.

Liquidated damages under Clause 11 and limited compensation under this Clause 12 are the only remedies available to the Seller in respect of the Buyer's delay. All other claims against the Buyer based on such delay shall be excluded.

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

**14.** The Buyer shall immediately inform the Seller of any delay as referred to in Clauses 11 and 13.

**15.** Unless the Buyer's failure to accept delivery as referred to in Clause 13 is due to any such circumstance as referred to in Clause 29, the Seller may by notice in writing require the Buyer to accept delivery within a reasonable period.

If the Buyer, for any reason, fails to accept delivery within such period, the Seller may by notice in writing terminate the contract in respect of that part of the Goods which the Buyer has failed to accept delivery of. The Seller shall then be entitled to compensation from the Buyer for the loss he has suffered by reason of the Buyer's default. The compensation shall not exceed 7.5

per cent of that part of the price which is attributable to the part of the Goods in respect of which the contract is terminated.

#### **Price and Payment**

**16.** 10% of the agreed price shall be invoiced at the formation of the contract. Final payment shall be invoiced at delivery of the Goods.

The invoiced amounts become due 30 days after the date of the invoice.

The Seller shall, at the Buyer's request, provide security for the advance payment. The cost of the security shall be borne by the Buyer.

**17.** If the Buyer fails to pay on time, the Seller shall be entitled to interest from the due date according to the law on interest (1975:635).

#### **Reservation of Title**

**18.** The Goods shall remain the property of the Seller until paid for in full.

#### **Liability for Defects**

**19.** The Seller shall, pursuant to the provisions of Clauses 20-28 below, remedy any defect in the Goods resulting from faulty design, materials or workmanship.

**20.** The Seller's liability is limited to defects which appear within a period of twelve months from the date of delivery of the Goods or, where the Buyer acts as a reseller, from the date of delivery to his customer.

The Seller is only liable for defects which appear under the conditions of operation foreseen in the contract and under proper use. The Seller's liability does not cover defects caused by faulty maintenance or incorrect installation from the Buyer's side, alterations undertaken without the Seller's consent in writing, faulty repairs by the Buyer or normal wear and tear or deterioration.

**21.** When a defect has been remedied the same liability period applies as for the original Goods, i.e. the liability period is not extended.

**22.** The Buyer shall notify the Seller 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 specified in Clause 20, first paragraph. The notice shall contain a description of how the defect manifests itself. If the Buyer fails to notify the Seller in writing within the above time limits, he loses his right to make any claim in respect of the defect.

**23.** After receipt from the Buyer of a notice of a defect referred to in Clause 19, the Seller shall without undue delay remedy the defect at his own cost, or reimburse the Buyer's specified costs for remedying the defect. The reimbursement shall be equivalent to the applicable compensation for warranty work paid by the respective vehicle manufacturer.

The Buyer may, without prior contact with the Seller, at the Seller's expense remedy or have remedied defects requiring up to three hours work at a workshop. The cost of spare parts shall in such case not exceed an amount equal to payment for three hours work at a workshop.

**24.** Unless otherwise agreed, the Buyer shall bear the cost and risk of transport of defective parts to the Seller, while the Seller shall bear the cost and risk of transport of repaired parts or replacement parts to the place of delivery named in the contract. When necessary for remedying a defect referred to in Clause 19, the Buyer shall at his own cost deliver the Goods – where appropriate the vehicle – to the Seller.

**25.** If the Seller, despite a request, fails to fulfil his obligations under Clause 23 within a reasonable time, the Buyer shall be entitled either to receive a reasonable reduction of the price or to have the necessary remedial work carried out or have new Goods manufactured at the Seller's risk and expense, provided that the Buyer proceeds in a reasonable manner.

If the defect is substantial, the Buyer may instead choose to terminate the contract by written notice to the Seller. In case of termination, the Buyer shall be entitled to compensation for the loss he has suffered. The compensation shall, however, not exceed 15 per cent of the agreed price.

**26.** The Seller is not liable for defects arising out of materials provided by, or a design stipulated by the Buyer.

**27.** Save as stipulated in Clauses 19-26, the Seller shall have no liability for defects. The Seller shall thus, in case of defects in the Goods, not be liable to indemnify the Buyer for any loss of production, loss of profit or other consequential economic loss. This limitation of the Seller's liability shall, however, not apply if he has been guilty of gross negligence.

**28.** Parts specifically listed or otherwise identified, which are not manufactured by the Seller (e.g. tyres, axles, coupling devices) shall only be covered by the sub-supplier's liability for defects. Claim for such defects shall however, unless otherwise agreed, be made to the Seller.

#### **Grounds for Relief (force majeure)**

**29.** The following circumstances shall be considered as grounds for relief if they impede the performance of the contract or makes performance unreasonably onerous: industrial disputes and any other circumstance beyond the control of the parties such as fire, natural disasters and extreme natural events, war, mobilization or military call up of a comparable scope, requisition, seizure, currency restrictions, insurrection and civil commotion, shortage of transport, general shortage of materials, restrictions in the use of power and defects or delays in the deliveries by sub-contractors caused by any such grounds for relief.

Circumstances which have already occurred at the formation of the contract shall constitute grounds for relief only if their effect on the performance of the contract could not then be foreseen.

**30.** The party wishing to claim relief shall notify the other party in writing without delay on the intervention and on the cessation of such circumstance.

If grounds for relief prevent the Buyer from fulfilling his obligations, he shall compensate the Seller for expenses incurred in securing and protecting the Goods.

**31.** Notwithstanding Clauses 10, 12 and 15, either party may terminate the contract by notice in writing to the other party if any grounds for relief as described in Clause

29 make it impossible to perform the contract within a reasonable time.

**Arbitration, applicable law**

**32.** Any dispute in connection with the contract shall be finally settled by arbitration in accordance with the Rules of the Arbitration Institute of the Stockholm Chamber of Commerce (SCC Institute). Where the amount in dispute does not exceed 1 million SEK the SCC Institute's Rules for Expedited Arbitrations shall apply.

Unless the parties agree otherwise the place of the arbitration shall be Stockholm.

**33.** The contract shall be governed by Swedish law.