

Guide to LFG 21

for the delivery of customisations, e.g. bodyworks, tippers, cranes, rolling hooklifts, lift dumpers and tanker customisations, etc. and trailers

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LASTFORDONSGRUPPEN



För bilbranschens bästa

This Guide has been produced in co-operation between the Swedish Body Builder Association (LFG) and The Swedish Association for Motor Retail Trades and Repairs (MRF) in connection with the publication of LFG 21. The purpose of the document is to clarify the underlying basis and considerations with respect to certain clauses in LFG 21. The Guide shall be considered a living document which will be updated and amended as deemed appropriate.

Scope of Application

1. In order to incorporate LFG 21 into the agreement, it is important to make a reference to LFG 21 as well as to attach LFG 21 to the agreement as early as possible in the business transaction process, preferably already in the written offer. The template for order confirmation (please see enclosure "Order Confirmation") should be used as a standard with respect to acceptance of the order, in order to ensure that proper specifications are used. Please ensure that the order confirmation is signed by both parties. Do not refer to FO (factory order number); instead seek to ensure that the buyer assumes his responsibility and studies the order confirmation carefully (please also refer to enclosure "Information in connection with Orders for Customisation").

The latest day for changes in the specification, or the latest day for fixation/vetting of order, should be indicated in the customising seller's order confirmation. This would normally occur six (6) weeks, at the latest, before the arrival of the chassi; alternatively, it will coincide with the latest day for adjustments, as applied by the manufacturer of the chassi.

The order confirmation should include information to the effect that adjustments and additions requested by the buyer may lead to extra costs, e.g. through a clarifying wording as per the following:

"The buyer is aware that additions and adjustments ordered or requested by the buyer may result in extra costs. The seller cannot guarantee that requested additions or adjustments can be made. Additions and adjustments shall be ordered in writing by the buyer and be confirmed in writing by the seller."

Definitions

2. It follows from the definitions "written" and "in writing" that they relate to a document signed by both parties or a letter, electronic mail or other means of communications agreed by the parties. Since both ordinary letters and electronic mails may disappear and may consequently not reach the intended recipient, it will always be the responsibility of the sender to ensure that the recipient has received the message. The sender should therefore ask the recipient for a confirmation of receipt with respect to any important correspondence.

Applicable Laws, etc.

4. The seller should at all times observe and take into account applicable rules and regulations. The General Terms do not provide exhaustive references to overlapping or superior rules or regulations. Such references would make the terms very extensive and would also entail a need for time-consuming and onerous updates. The last paragraph in clause 4 is an example of a reference to a legal framework having precedence.

The reference to the Machinery Directive is however regarded to be of particular importance for the application of LFG 21; hence this reference has been retained in LFG 21. At the time of drafting of LFG 21, the Machinery Directive was under revision, with the aim, inter alia, to transform the Directive into a Regulation, directly applicable in each EU Member State. Since effective date of the new Regulation was envisaged to fall after the launch date for LFG 21, it was decided to retain the (old) reference to the "EU Machinery Directive" in LFG 21.

Liability for Received Property

5. Upon arrival, a systematic and documented control should be done and be documented, e.g. with photos. This is likely to facilitate any future discussion regarding damage to the property (please refer to enclosure "Arrival Control, Chassi").

With regard to damages on received property, the seller is excluded from liability only if he can show that the damage has not been caused by the seller's negligence. The seller thus has a duty of care with respect to the property he has received, from the time the seller has confirmed receipt of the Goods. The seller's responsibility normally ends when the Goods have been collected (for example when the keys to the vehicle have been provided to the buyer or, following instructions by the buyer, when the vehicle has been placed in an agreed place and locked). Taking into consideration the seller's duty of care with respect to the buyer's property in his possession, the seller should review his insurance in order to assess whether he has adequate insurance coverage.

If the buyer doubts that the seller will be capable to take proper care of the chassi and other property provided by the buyer and/or if the buyer doubts the seller's ability to compensate the buyer in case of damage, then the parties should agree that the seller procures insurance coverage for the received property.

Delivery Terms

6. Access to the applicable version of INCOTERMS (available as a book, published by the International Chamber of Commerce; ICC) is strongly recommended. In addition, please carefully consider how a potential agreement on other delivery terms than Ex Works in clause 6 of the LFG 21 will affect the seller's liability.

Time of Delivery

8. The parties shall indicate the time of delivery in the individual agreement. If the parties agree on a certain date or a certain week/weeks, no problems will generally arise when construing the contract. In the latter case, the seller will be entitled to deliver on any business day of his choice during the agreed week.

Clause 8 sets out circumstances which entitle the seller to postpone delivery. The delivery time shall be reasonably extended, having regard to the circumstances at hand, e.g. with respect to adjustment works following changes in legislation which have appeared after the order and of which the seller was not aware or should have been aware at the time of order.

9. If the seller has reason to suspect that the agreed delivery will be delayed, e.g. due to shortage of vital components, it is important that the seller immediately informs the buyer of the situation, aiming at a solution, as satisfactory as possible, for both parties.

It follows from the last paragraph in clause 9, that the buyer loses its right to liquidated damages in the event that he has made a claim to this effect within six months after the day when delivery should have taken place. Even if there has been no dialogue whatsoever between the seller and the buyer after the execution of the agreement, it is reasonable to assume that it will be in the interest of the buyer to contact the seller upon the agreed delivery date, at the latest, or shortly thereafter.

Buyer's Delay

11. The wordings contained in clause 11 correspond to the wordings set out in clause 9, but are focused on the buyer's delay. It is reasonable to assume that the seller will relatively promptly contact the buyer if the buyer does not timely provide the chassis or other agreed property. In conformity with clause 9, the last paragraph in clause 11 states that the seller forfeits its right to liquidated damages, unless he has made a claim to this effect within six months after the buyer should have provided the property in question.

Price and Payment

16. Clause 16 of the delivery terms stipulate that the agreed price shall be invoiced with 10 per cent at the entering into of the agreement. This advance payment may be of significant importance for the seller, given the fact that the seller may have incurred substantial expenses until the business transaction is completed. If needed, the buyer could engage a third party in order to finance the advance payment. It is important that the seller, who builds the vehicle, does not assume the role of a lender to the buyer. This is rarely a part of the seller's core business.

Retention of Title

18. Due to mandatory case law from the Swedish Supreme Court, retention of title will usually not work in an insolvency scenario. If the vehicle and customised product delivered is one unit and delivered by the same party, however, then a retention of title clause may be upheld.

Liability for Defects

22. The template for notification of defects which has been issued by the Swedish Body Builder Association (LFG) should be used when notifying defects (Sw: "reklamation") (please refer to enclosure "Notification of Defects"). If the template is used by the buyer, then the seller cannot reject it and refer to a alternative routine or policy. It shall be noted that it constitutes an application for rectification under the warranty.

23. It is important to communicate, to end customers and service workshops, that notification of a defect must be given before the enduser (itself, or with the assistance of a third party) spends time and costs on remedying the defect.

Through the engagement by the buyer of a service workshop approved by the seller, the likelihood increases that the defect will be remedied in a cost effective manner, as compared to rectification by a service workshop without a corresponding relation to the seller.

It can obviously be the case that a defect must be remedied at a time which is outside the seller's - or its approved service workshops' - normal business hours. The buyer is then entitled to rectify the defect itself or through a third party appointed by it which is not approved by the seller. In such case, the buyer will receive compensation from the seller corresponding to reasonable time spent and reasonable price for added spare parts.

In the event that the end customer elects to spend time and costs in order to remedy defects, itself or through the engagement of a third party, the buyer shall be able to provide documentation on the measures performed relating to the defect.

As a final option, the buyer may, at its own cost, provide the Goods to the seller.

24. According to clause 24, the buyer shall retain defect spare parts which have been changed in under clause 19, in order to return them, at the seller's request, to the seller within three months as from the time when rectification was made. There may be several reasons why the buyer does not wish to retain changed parts for up to three months. The buyer and the seller should therefore, as soon as possible after the rectification, agree on whether the buyer shall send the spare parts to the seller or not. In such case, the buyer may not have to allocate office space for changed parts which the seller potentially does not want to have returned.

Release of Liability (Force Majeure)

29. Clause 29 contains a non-exhaustive list of examples on events that may constitute grounds for release of liability to the extent that they hinder the due performance of the agreement or makes the performance unreasonably onerous for a party. The wordings in the last paragraph should be noted. They state that the events will constitute ground for release of liability only if their impact on the performance of the agreement could not be foreseen at the time when the agreement was entered into. Consequently, if an agreement is e.g. entered into during an ongoing pandemic or a mobilisation, then it will not be possible to invoke force majeure with reference to these particular events.