



## **NILAR General Terms and Conditions**

### **1. Applicability and definitions**

1.1. These NILAR General Terms and Conditions shall apply the delivery of products to a customer, hereinafter referred to as "the Customer", by NILAR, hereinafter referred to as "the Supplier". Deviations from these conditions shall not apply unless agreed in writing. In the event that the provisions in a written agreement between the Supplier and the Customer should be in conflict with these conditions the provisions in the written agreement shall prevail.

1.2. The product or products which NILAR shall deliver according to the agreement of the parties shall in these conditions be referred to as "the Product".

1.3 When used in these conditions the term "written" or "in writing" refers to a document signed by both parties or a letter, fax, electronic mail or other means of communication agreed by the parties.

1.4 In these NILAR General Terms and Conditions, "(the agreement)" means every individual agreement regarding the delivery of the Products. These NILAR General Terms and Conditions constitute an integral part of each such individual agreement.

1.5. These NILAR General Terms and Conditions covers every individual agreement regarding the delivery of the Product to a Customer from the Supplier.

### **2. Product Information, documents etc**

2.1 Information regarding the Product in marketing material, price lists and other product information are binding only to the extent that they are expressly referred to in the agreement. The information provided in catalogues, prospectuses, etc. is approximate. Technical data is provided subject to a proviso with respect to design modifications.

2.2 All technical documentation regarding the Product or its manufacture submitted by one party to the other, prior or subsequent to the formation of the agreement, shall remain the property of NILAR. Sole title to all intellectual property rights related to the Product shall remain vested in the Supplier.

2.3 Drawings, descriptions, software, and other technical data provided by one party to the other may not be used for purposes other than those for which the information was provided. Nor may the material be copied, communicated to a third party or in any other manner reproduced without the consent of the party that provided the material.

### **3. Delivery test**

3.1. Where a delivery test has been agreed, it shall, unless otherwise agreed, be carried out where the Product is being 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 Product is being manufactured.

3.3 The Supplier shall make a report of the test. The test report shall be sent to the Customer. The report shall, unless otherwise shown by the Customer, be considered to correctly describe the execution of the test and its results.

3.4. In the event the Product at the delivery test does not comply with the agreement the Supplier shall, as soon as possible, ensure that necessary corrections are carried out insofar as the deviation is no immaterial for use of the Product. If so required by the Customer a new test shall thereafter be carried out, unless the defect was insignificant.

3.5. If no other division of the costs has been agreed, the Supplier shall bear all costs for delivery tests carried out where the Product is manufactured. The Customer shall, however, at such delivery tests bear all costs for his representatives, including costs for travel, board and lodging. Any agreed delivery tests carried out of the Customer shall be at the Customer's cost.

### **4. Trade Term**

If no trade term has been agreed, the delivery shall be "Ex Works" according to the INCOTERMS in force at the formation of the agreement. Where a trade term has been agreed, it shall be interpreted in accordance with the INCO-TERMS in force at the formation of the agreement.

### **5. Time for Delivery. Delay**

5.1 Where delivery is to take place within a specific period of time, such time shall be calculated commencing on the date of execution of the agreement. However, calculation of the period shall not commence before the Supplier has received either payment, where such is to be paid prior to the commencement of manufacture, necessary notices regarding licences and permits, or necessary technical data and instructions.

5.2 Where delivery is delayed due to any of the circumstances constituting force majeure in accordance with 11.1 or due to any act or omission by the Customer, the delivery period shall be extended by such a period as is reasonable in light of the circumstances. The delivery period shall also be extended where the cause of the delay arises after the expiry of the originally agreed delivery period.

5.3. Where the Supplier fails to deliver the Product in due time, the Customer shall be entitled, through written notice to the Supplier, to demand delivery by a final reasonable deadline. Where the Supplier fails to deliver by the deadline, the Customers shall be entitled to terminate the Agreement through written notice to the Supplier.

5.4. Where the Customer terminates the agreement in accordance with 5.3, he shall be entitled to compensation from the Supplier for direct additional costs incurred in acquiring an equivalent product from another source, however limited to 7.5% of the price of the Product. In the event the Customer does not terminate the agreement, he shall not be entitled to any compensation as a consequence of the Supplier's delay. The Customer loses his right to compensation if he has not lodged a written claim for such compensation within two months after the time when delivery should have taken place.

5.5. Where the Customer fails to accept the Product on an agreed day, payment shall nevertheless be made as if delivery had taken place in accordance with the agreement and the Customer shall compensate the Supplier for the latter's direct additional costs occasioned by the Customer's failure. The Supplier also has the right to terminate the agreement if the Customer fails to accept the Product on an agreed day and the Customer shall compensate the Supplier for the latter's direct additional costs occasioned by the Customer's failure.

5.6 If, for any reason for which the Supplier is not responsible, the Buyer fails to accept delivery within such period, the Supplier may, by written notice to the Customer, terminate the contract in respect of that part of the Product which is ready for delivery but has not been delivered due to the Buyer's default. The Supplier shall then be entitled to compensation for the loss he has suffered due to the Buyer's default.

### **6. Price and payment**

6.1. Sales shall take place at the prices applied by the Supplier at the time of execution of the Agreement. All prices are exclusive of value added tax and other public charges. Where an exchange rate changes by more than 2% after the Customer has received the Supplier's bid or equivalent, the Supplier shall be entitled to adjust the price. The aforesaid shall apply irrespective of whether a particular price has been specifically agreed upon between the parties.

6.2. Payment shall be made against invoice. Under no circumstances, such as in the event of delay or defect, shall the Customer be entitled to withhold payment. In the event that the Customer at any time should fail to make payment in full on the due date the Supplier shall be entitled to claim interest on the sum overdue until payment is made at the rate of 8 per cent per annum plus the reference rate under the Swedish Interest Act.

6.3. Where, after the purchase, the Customer's actions or economic circumstances are such that it may reasonably be assumed that he will fail to make payment in full, the Supplier shall be entitled to suspend performance and withhold delivery. Where the Supplier has already shipped the Product and circumstances as referred to in the preceding sentence exist with respect to the Customer, the Supplier shall be entitled to prevent the Product from being delivered to the Customer. The Supplier shall immediately notify the Customer in writing regarding a decision to suspend performance.

6.4 If the Customer has failed to pay the amount due within three months after the due date, the Supplier may terminate the agreement by written notice to the Customer and, in addition to interest on late payment, claim compensation for the loss he has suffered. The compensation shall not exceed the agreed purchase price

## **7. Retention of Title**

7.1 The Product shall remain the property of the Supplier until paid for in full.

## **8. Liability for Defects**

8.1. Where the Product deviates from the specification agreed upon between the parties, it shall be deemed defective unless the deviation is immaterial to the intended use. The Supplier shall be liable for defects due to deficiencies in design, materials or manufacture.

8.2. Information regarding the area of use or application of the Product which does not constitute part of the specification and which is provided by the Supplier in any form whatsoever shall solely constitute a recommendation. The Supplier shall not be liable for such information or for the application of the Product.

8.3. The Supplier shall not be liable for defects resulting from erroneous, ambiguous, or incomplete information provided by the Customer. Liability shall not cover defects due to circumstances arising after the risk for the Product has passed to the Customer such as, however not limited to, defects due to normal wear and tear or deterioration. The Supplier is not liable for defects arising out of material provided by the Customer or a design stipulated or specified by him. The Supplier's liability shall relate solely to defects which become apparent during a period of 18 months calculated from the day on which the risk for the Product passed to the Customer.

8.4. The Supplier undertakes, during the warranty period, either to deliver new Products free of charge as a replacement for defective Products, or to rectify defects, depending on which is deemed most appropriate by the Supplier. The Supplier's obligations do not include an obligation to bear the cost of replacement agents or replacement liquids e.g. cooling agents. Rectification may take place either at the Supplier or at the Customer, depending on which is deemed most appropriate by the Supplier. Replacement Products or replacement parts provided by the Supplier to the Customer shall be subject to the warranty period set forth in 6.3. Where the Supplier demands title to replace parts or replace Products, title thereto shall vest in the Supplier. Any destruction costs shall be borne by the Customer.

8.5. The Customer shall bear the cost and the risk of shipment of defective parts or Products to the Supplier, and the Supplier shall bear the cost and the risk of shipment of replacement or repaired parts of Products to the place of delivery. Where the Supplier carries out rectification at the Customer, the latter shall pay travel costs and per diem expenses with respect to travel and work times for the Supplier's personnel. The Customer shall bear the additional costs incurred as a consequence of the Product being located other than at the place of delivery.

8.6. Where the Supplier fails to deliver replacement Products or to rectify the defect within a reasonable time following written notice of complaint by the Customer regarding the defect, the Customer shall be entitled, through written notice to the Supplier, to terminate the Agreement insofar as it relates to the defective Product. Where the Customer terminates the Agreement, he shall be entitled to compensation from the Supplier for the direct additional costs incurred in acquiring an equivalent product from a different source, however limited to 7.5% of the price of the Product.

8.7. Through delivery to the Customer of the repaired or replaced part or Product in question, the Supplier shall be deemed to have performed its obligations in accordance with this section. Where any installation or dismantling results in interference other than with the Product, the Customer shall be liable for the work and costs occasioned thereby.

8.8. The Customer shall investigate the Product immediately upon delivery in accordance with generally accepted business practice.

8.9. The Customer shall not be entitled to invoke defects where the Customer fails to provide the Supplier with written notice of a defect within 15 days of the date on which the defect was or should have been discovered, however not later than one year from the agreed delivery date or such later date on which the Supplier performed his obligations in accordance with the agreed delivery terms. If there is reason to believe that the defect may cause damage, notice shall be given forthwith. If notice is not given forthwith, the Customer loses the right to make any claim based on damage which occurs to the Product and which would have been avoided if such notice had been given. Where the Customer submits a notice of complaint in respect of a defect and it transpires that the Supplier is not liable for the defect, the Supplier shall be entitled to compensation for costs incurred as a consequence of the complaint.

8.10. The Supplier shall be entitled to refund the purchase price in lieu of rectification or redelivery. The Customer shall thereupon return the Product in an essentially unchanged condition. Where such is not possible, when calculating the purchase price the Supplier shall be credited with an amount equal to the value of that which is retained.

## **9. Liability for personal injury and liability for property damage**

9.1. The Customer shall indemnify the Supplier to the extent the Supplier is held liable to any third party for such damage or losses in respect of which the Supplier is not liable to the Customer in accordance with 9.2, 9.3, and 10.2.

9.2. The Supplier shall not be liable for damage to goods manufactured by the Customer or goods in which the Customer's goods are incorporated, or for damage to real or personal property caused by such goods as a consequence of the Product.

9.3. The Supplier's liability for injury or damage caused by the Product to persons or real or personal property belonging to the Customer or any third party shall under no circumstances exceed EUR 500.000 per occasion of loss. The Customer shall indemnify the Supplier for all liability exceeding the aforementioned amount.

9.4. Where a third party brings a claim against the Supplier or the Customer for compensation for damage or loss as referred to in 7.2 or 7.3, the other party shall be immediately notified thereof.

9.5. The Supplier and the Customer shall be obligated to submit to the jurisdiction of the court or arbitration tribunal adjudicating a claim for damages against any of them where the claim is based on damage or loss allegedly caused by the delivered Product. The relationship between the Customer and the Supplier shall, however, at all times be determined in accordance with the provisions of this agreement. In the event that the provisions in a written agreement between the Supplier and the Customer should be in conflict with these conditions the provisions in the written agreement shall prevail.

## **10. Liability in damages and limitation of liability**

10.1. In the event of delay or defect, the Customer shall be entitled to damages in accordance with the provisions of 5.4 and 8.6. In addition thereto, the Customer shall be entitled to damages subject to the limitations set forth in 10.2 and 10.3 below where, in lieu of rectification of the defect, the Supplier elects to refund the purchase price in accordance with 8.10. Where the Supplier has developed the Product at its own cost in collaboration with the Customer pursuant to an agreement between the parties, under no circumstances shall the Supplier be liable for delays in delivery or defects in the Product. The aforesaid shall apply to Products that the Supplier has transferred or lent to the Customer free of charge.

10.2. Under no circumstances shall the Supplier or the customer be liable for loss of production, loss of profits, or other economic consequential loss.

10.3. Unless otherwise prescribed in the Agreement, the Customer's entitlement to damages shall at all times be limited to an amount equal to 7.5% of the purchase price for the Product. Irrespective of whether or not the Agreement is terminated, the Supplier's liability shall be limited in accordance with this Agreement.

10.4. Other than the sanctions provided for in this Agreement, each and every claim by the Customer as a consequence of defect or delay is excluded. However, this limitation on the Supplier's liability shall not apply in the event of gross negligence by the Supplier.

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

11.1 Circumstances that prevent or render significantly more onerous the performance of any of the parties' undertakings pursuant to this Agreement and which are beyond the control of a party including, however not limited to, lightning, fire, earthquakes, flooding, fire, natural disasters and extreme natural events, war or mobilisation or large-scale military conscription, riot or revolt, requisition, seizure, currency restrictions, trade and currency restrictions, decisions of governmental authorities, restrictions on fuel, general shortages of transport, materials, goods, or power or strikes, blockades, lockouts or other labour conflicts, irrespective of whether the contracting parties are parties to the conflict, as well as defects or delays in delivery by subcontractors due to the aforementioned circumstances, shall constitute force majeure and entitle a party to an extension of time and release from liquidated damages and other sanctions. The other party must be given written notice of such force majeure immediately upon a party becoming aware, or where it should have been aware, of the existence of the force majeure.

11.2. Where the performance of the Agreement is prevented for a period in excess of six months due to circumstances as referred to in 11.1, either party shall be entitled to terminate this Agreement without incurring liability to compensate for damage or otherwise.

#### **12. Export and import licences, certification, etc.**

12.1. The Supplier's obligation to deliver the Product is conditional on the latter receiving and maintaining necessary export, import and re-export licences. Where such licences are not held, or where granted licences are revoked other than as a consequence of the Supplier's negligence, the Supplier shall be discharged from the obligation to deliver the Product and, in such case, the Customer shall not be entitled to raise any claims for liability against the Supplier.

12.2. The Customer undertakes, to the extent necessary, to assist in the acquisition of export or import licences for the purchased Product and, in the event of any re-export of the Product or other products in which the purchased product is included, in whole or in part, to obtain the necessary licences and comply with applicable provisions.

12.3. The costs for any certification of the Products shall be borne by the Customer.

#### **13. Disputes. Applicable Law**

13.1 This Agreement shall be construed in accordance with and be governed by the laws of Sweden.

13.2 In the event of default in payment, the Supplier shall be entitled to collect payment through an application for an expedited payment procedure or ordinary court proceedings according to Swedish law. Any other dispute, controversy or claim to an amount of no less than fifteen times the statutory base amount in accordance with the National Insurance Act (1962:381) arising out of or in connection with this Agreement, or the breach, termination or invalidity thereof, shall be finally settled by arbitration administered by the Arbitration Institute of the Stockholm Chamber of Commerce (the "SCC").

13.3 The Rules for Expedited Arbitrations shall apply where the amount in dispute does not exceed SEK 1,000,000. Where the amount in dispute exceeds SEK 1,000,000 the Arbitration Rules shall apply. The Arbitral Tribunal shall be composed of a sole arbitrator where the amount in dispute exceeds SEK 1,000,000 but not SEK 3 000 000. Where the amount in dispute exceeds SEK 3,000,000, the Arbitral Tribunal shall be composed of three arbitrators. The amount in dispute includes the claims made in the Request for Arbitration and any counterclaims made in the Answer to the Request for Arbitration.

13.4 The seat of arbitration shall be Stockholm. The language to be used in the arbitral proceedings shall be in English.

#### **14. Limitations**

14.1. Claims against the Supplier shall be forfeited in the event the litigation or arbitration procedure in accordance with 13.2 is not commenced within two years of the date of delivery of the Product.