

# GENERAL TERMS AND CONDITIONS OF SALE AND DELIVERY OF READY MIXED CONCRETE

between member of FABEKO (hereinafter "the Supplier") and byer of ready mixed concrete (hereinafter "the Buyer")

## 1. SCOPE OF APPLICATION

These general terms and conditions of sale and delivery (hereinafter "the Terms and Conditions") and the Supplier's valid price list (hereinafter "the Price List") shall apply to each purchase of ready-mixed concrete between the Supplier and the Buyer unless the purchase is regulated by mandatory provisions in the Sale of Goods Act no. 27/1988 or the Consumer Purchases Act no. 34/2002. In the event of conflict between provisions in the Terms and Conditions and/or the Price List and provisions in a separate contract between the parties, the provisions in the separate contract shall take precedence. In the event of conflict between the Terms and Conditions and the Price List, the provisions in the Price List shall take precedence. The provisions in NS 8409 shall not apply unless they are included in and are given precedence as a separate contract between the parties.

## 2. ORDERS AND CANCELLATIONS

An order/delivery-day order ("Order") placed by the Buyer shall specify the amount (tolerance  $\pm 10\%$ ), delivery date, delivery commencement time, delivery schedule and technical data for the concrete. The Buyer shall be responsible for ensuring that the ordered concrete corresponds to its intended purpose (see clause 8).

The Order shall be binding once it has been confirmed by the Supplier. Requirements to delivery time, order confirmation and notice period for cancellations shall be stated in the Price List.

Should the Buyer cancel the Order outside the agreed notice period, the Supplier may claim compensation to cover additional expenses.

## 3. PRICES TERMS AND CONDITIONS OF PAYMENT

Unless the price of the concrete is stated in a separate contract or in an accepted written offer, prices shall be set according to the Price List. The same shall apply for remuneration for other types of performance such as transport, overtime work, waiting, handling of residual concrete, etc. The Supplier has the right to adjust an agreed price when the price of one or more factor inputs for use in the production of a deliverable has significantly increased in proportion to the price stated at the time of formation of the contract. The price may not be increased more than is necessary to compensate for the increase in the cost of the factor input(s). For deliveries of concrete with special mixes ("Special Concrete"), the Supplier may demand a surcharge, special rates or special terms for the delivery unless otherwise agreed. For orders of Special Concrete with non-stock factor inputs, the Supplier may invoice such factor inputs in full, even if they do not make up, or only partly make up, part of the final product.

The Buyer shall settle undisputed payment claims by the due date at the latest. If by the due date the Buyer contends that the Supplier is in breach of contract and files a claim on these grounds, the Buyer may only withhold as much of the invoice amount as to cover such a claim. Unwarranted withholding of payment shall give the Supplier grounds to claim interest on overdue payment.

In the event of overdue payment, the Buyer shall pay interest in accordance with the Act no. 100 of 17 December 1976 relating to Interest on Overdue Payments. The unwarranted withholding of a payment shall be deemed to be an overdue payment.

## 4. PLACE AND TIME OF DELIVERY / TRANSFER OF RISK FOR THE CONCRETE / LIABILITY FOR DAMAGE ON DELIVERY

Unless otherwise agreed, the Supplier shall deliver the concrete to the designated unloading point at the stated delivery address. In the case of deliveries to building sites, delivery shall be deemed to have been performed when the truck mixer or other transport vehicle has arrived at and is ready to unload at the designated unloading point at the stated delivery address, even if unloading is not commenced. In the case of ex-works deliveries, delivery shall be deemed to have been performed once the concrete is manufactured and ready for collection at the concrete plant.

The Buyer shall carry the risk for ensuring that the unloading point and access from the closest road open to public traffic to the unloading point (both hereinafter jointly referred to as "the Unloading Point" in this clause) are satisfactory. The Unloading Point shall not be deemed to be satisfactory if the axle load tolerance at the Unloading Point is less than the axle load of the truck mixer carrying the ordered load. The same shall apply if the Unloading Point does not allow sufficient manoeuvring space for the truck mixer or if conditions on or near the Unloading Point complicate, prevent or render hazardous accessing, parking or unloading of the concrete, such as the presence of overhead cables, cables or other installations, barriers, bridges, narrow passages, gates/gateways, etc. Should it not be possible to perform delivery due to circumstances as mentioned above and which the Buyer failed to disclose when placing the order at the latest, the delivery shall nonetheless be deemed to have been performed. If the Buyer notified the Supplier of such circumstances in time and the Supplier did not explicitly state conditions when confirming the order, it shall assume the risk for performing the delivery. If accessing, parking or unloading of the concrete to/at the Unloading Point cannot be carried out due to the need for special equipment, detours, additional work, extra labour or similar, a delivery shall nonetheless be deemed to have been performed unless the Buyer notified the Supplier about such conditions in sufficient time to allow the Supplier to make the necessary arrangements and no later than 24 hours prior to the appointed time of delivery. The Buyer shall in all cases be responsible for obtaining all the information required to assess conditions that might affect the performance of the delivery. The foregoing shall apply insofar as is appropriate when deliveries to building sites must be carried out with other means of transport.

Liability for the concrete shall be transferred to the Buyer once delivery has been performed (see first and second paragraphs above).

The Supplier shall bear responsibility for unloading the concrete from mixer drums to feeders, skips, etc., according to the Buyer's instructions. Should the Buyer wish the Supplier to arrange for the concrete to be pumped or unloaded with a conveyor belt or hydraulic chute, this must be agreed specifically and well in advance. The Supplier shall in such cases be responsible for unloading and transporting to the site where the concrete is to be used.

The Supplier shall notify the Buyer immediately of any substantial deviations from the agreed delivery time.

Unless otherwise agreed, the Supplier shall overtake responsibility from the Buyer for the residual concrete in return for remuneration as set out in the Price List.

The Buyer shall be responsible for any damage or loss that may occur in connection with deliveries, including costs for return transport and for recovering/emptying truck mixers and loads, should such damage be due to the unsatisfactory state of the Unloading Point (see second paragraph above) and the damage or loss cannot be attributed to gross negligence on the part of the transporter of the concrete.

## 5. BUYER'S INSPECTION / VOLUME AND QUALITY OF CONCRETE

The Buyer's receiving inspection shall be carried out in compliance with the Norwegian Standard valid at the time of delivery. This inspection shall include ensuring that the specifications stated in the delivery note comply with the Order and that the properties of the concrete comply with the Order as far as is possible to determine at the time of delivery.

The Buyer shall conduct an identity test of the concrete on the building site. The identity test must be conducted in compliance with the Norwegian Standard valid at the time of delivery. The Buyer is requested to take samples before any concrete is placed.

The volume of the concrete shall be calculated on the basis of the weighed-in components. The accuracy of the weighing equipment shall comply with the Norwegian Standard valid at the time of delivery.

The concrete shall on delivery have the consistency and, where appropriate, the air content that is specified on the delivery note. When concrete is ordered to a specific consistency or to a specific consistence class, any deviations in compliance with the Norwegian Standard valid at the time of delivery shall be deemed to be in compliance with the contract. The same shall apply when concrete is ordered to a specific air content.

If a delivery of concrete with a specific temperature is ordered, deviations of between  $+5$  and  $-3$  °C shall be deemed to be in compliance with the contract. The mortar phase (aggregate size 0-8 mm included) may contain a few stones with particle sizes equivalent to the largest stone size for concrete in the Supplier's delivery range. If the Buyer sets quality requirements to concrete beyond what is customary, the specifications must be communicated to the Supplier well in advance of delivery. The Supplier gives no guarantees for the quality of concrete that is mixed according to the Buyer's instructions. The quality of the concrete delivered shall otherwise be according to the Norwegian Standard valid at the time of delivery unless otherwise agreed.

## 6. COMPLAINTS

If the Buyer intends to claim that a delivery of concrete was delivered at the wrong time or was deficient, it must lodge a complaint immediately. Complaints shall be noted on all copies of the delivery note, and the Buyer must immediately notify the Supplier's responsible point of contact so that the delivery can be rectified or replaced. In the event of substantial deviations from an agreed order, complaints must also be reported immediately to the Supplier's responsible point of contact.

The Buyer must notify the Supplier within reasonable time after a lodging a complaint if it files a claim for rectifying, replacing or cancelling an order. If it fails to do so, the claim will cease to apply.

In the event of deficiencies which neither could nor ought to have been discovered on delivery, the Buyer shall complain in writing and without undue delay and no later than 14 days after it discovered or ought to have discovered such a deficiency. Complaints shall be made in writing and shall state the type of deficiency in question. Notification shall be given if a complaint is based on the result of compressive strength tests. The pertinent sample shall be stored and shall on request be placed at the disposal of the Supplier.

The Buyer may not lodge a complaint against the Supplier once more than five years have passed since a delivery was made.

The Buyer shall lose its right to subsequently lodge a complaint against the Supplier if it signs a delivery note without reservation and a delay or deficiency could have, or ought to have, been discovered at the time of delivery. The same shall apply for complaints after the abovementioned time limits for complaints. The same shall also apply if the Buyer applies admixtures to the concrete without the prior approval of the Supplier.

## 7. DELAYS

A delay shall be deemed to exist when concrete is not delivered at the agreed time. The Buyer may claim compensation if a delay is substantial and the Supplier fails to prove that the delay was due to an impediment outside its control and which it could not reasonably have been expected to take into account at the time of delivery or avoid or overcome the consequences thereof, such as stoppage of work, non-delivery or delayed delivery from subcontractors, traffic obstructions, disruption to fuel or material supplies, power outage, unforeseen breakdown of equipment, machinery, etc. The Buyer may only terminate a contract in the case of repeated, substantial delays from the Supplier and in such cases only with effect on future delivery-day orders.

If the Supplier is entitled to and wishes to request a new delivery time due to amendments to an Order made by the Buyer, the Supplier shall notify the Buyer without unreasonable delay after

the Supplier becomes aware that the amendment may result in a delay to the agreed time of delivery.

If the Supplier incurs a loss because the Buyer is unable or unwilling to receive the concrete at the agreed time and the time deviation is substantial, the Supplier may claim compensation from the Buyer unless the Buyer proves that the circumstances were due to impediments that were beyond its control and which it could not reasonably have been expected to take into account at the agreed time of delivery nor avoid or overcome the consequences thereof. In the case of repeated, substantial deviations from the delivery time for which the Buyer is responsible, the Supplier may terminate the contract with effect on future delivery-day orders.

## 8. DEFICIENCIES

A deficiency shall be deemed to exist if the concrete delivered fails to meet the requirements to amount, quality and other properties under the contract, and these are not due to circumstances that were beyond the control of the Supplier and which it could not reasonably have been expected to take into account at the time of the contract or avoid or overcome the consequences thereof. Even though the Supplier was aware or ought to have been aware of the Buyer's purpose at the time when a purchase was agreed, the Supplier will not have such knowledge about the individual factors in the Buyer's building project as to be in a position to evaluate whether the concrete is appropriate for the purpose for which it is ordered. The Buyer itself shall therefore be responsible for the suitability of the concrete ordered for the purpose and may not relinquish this responsibility by asserting the Supplier's expert knowledge or judgement or assert that the Supplier accepted the Buyer's purpose. Communication prior to an Order agreed between the parties regarding the suitability of concrete for a given purpose may neither fully nor partly be deemed to contain any advice or recommendation made by the Supplier to the Buyer with respect to the Buyer's choice of concrete quality, amount or other properties.

If a deficiency is deemed to exist at the time of delivery, the Supplier shall have the right to rectify such a deficiency by using admixtures etc. or by making a replacement delivery. If a deficiency is rectified or replaced within a reasonable amount of time, the Buyer may not claim compensation or terminate the contract. In the opposite case, the Buyer may claim compensation under the provision in clause 9 or, in the case of a substantial deficiency, also terminate the contract with effect on future same-day orders. This shall not, however, apply if the deficiency is due to properties of the raw materials used and the Supplier cannot transfer the compensation or termination claim to the producer of the raw material.

## 9. SCOPE OF COMPENSATION LIABILITY

The Buyer's claim for compensation due to delay (clause 7) or deficiency (clause 8) shall be limited to any direct loss incurred by the Buyer, including direct outlays and any price differences for rectifying or for deliveries performed by other parties, but shall not apply to loss of earnings related to delays, etc. Material damage to objects assumed to be used in close connection with the concrete, such as reinforcement, shall also be deemed to be a direct loss. The Supplier shall nonetheless not be liable for any loss which the Buyer can document and which could reasonably be assumed to be an expected and adequate consequence of the delay or deficiency. Compensation shall be reduced if the Buyer did not take reasonable measures to reduce the costs of a delay or deficiency.

The Supplier's liability shall not cover indirect loss, including loss due to operational interruptions or if the Buyer cannot make use of the concrete as expected (loss of use), loss of earnings or loss due to the Buyer having to pay daily penalties or compensation to another party to a contract, etc. The total amount of the Supplier's compensation liability shall be limited to the contractual amount for the delayed or deficient delivery unless the Supplier is insured for a higher limit of liability and the liability is covered by payment from such insurance cover. The Supplier's total compensation liability in connection with one and the same contract shall in any circumstances be limited to NOK 3,000,000. If deliveries are related to other contracts but apply to the same building project, the amount of the abovementioned limit shall be linked to the building project.

The Supplier's claim for compensation for delay (clause 7) shall be limited to the expected loss of earnings from sales of concrete that were lost because the Supplier was unable to make use of the truck mixer(s) that was/were delayed in unloading, and/or to expected losses incurred by the Supplier due to hiring reserve vehicles. Compensation shall be reduced if the Supplier did not take reasonable measures to reduce the costs of the delay.

## 10. OBLIGATION OF CONFIDENTIALITY, ETC

The Buyer obligates itself not to disclose information concerning the Supplier's recipes, prices, terms and conditions, mix proportions, etc. to which it may become privy on formation of the contract or in the course of performing the contract. Furthermore, the Buyer is obligated not to itself use such information for any purpose other than what was intended when the information was communicated.

## 11. DISPUTES

Any dispute between the parties over the conditions of the contract shall be settled by standard legal proceedings unless the parties agree to allow the dispute be settled by arbitration.

The parties agree that the point of delivery shall constitute the legal venue for all disputes that may arise from this contract. All disputes shall be settled in accordance with Norwegian law.