

# GENERAL CONDITIONS

## for the Supply and Erection of Plant and Machinery for Import and Export

*Prepared under the auspices of the  
UNITED NATIONS ECONOMIC COMMISSION FOR EUROPE  
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### 1. PREAMBLE

1.1. These General Conditions shall apply, save as varied by express agreement accepted in writing by both parties.

### 2. FORMATION OF CONTRACT

2.1. The Contract shall be deemed to have been entered into when, upon receipt of an order, the Contractor has sent an acceptance in writing within the time-limit (if any) fixed by the Purchaser.

2.2. If the Contractor, in drawing up his tender, has fixed a time-limit for acceptance, the Contract shall be deemed to have been entered into when the Purchaser has sent an acceptance in writing before the expiration of such time-limit, provided that there shall be no binding Contract unless the acceptance reaches the Contractor not later than one week after the expiration of such time-limit.

### 3. DRAWINGS AND DESCRIPTIVE DOCUMENTS

3.1. The weights, dimensions, capacities, prices, performance ratings and other data included in catalogues, prospectuses, circulars, advertisements, illustrated matter and price lists constitute an approximate guide. These data shall not be binding save to the extent that they are by reference expressly included in the Contract.

3.2. Any drawings or technical documents intended for use in the construction or erection of the Works\*\*\*) or of part thereof and submitted to the Purchaser prior or subsequent to the formation of the Contract remain the exclusive

property of the Contractor. They may not, without the Contractor's consent, be utilised by the Purchaser or copied, reproduced, transmitted or communicated to a third party. Provided, however, that the said plans and documents shall be the property of the Purchaser:

- a) if it is expressly so agreed, or
- b) if they are referable to a separate preliminary Development Contract on which no actual construction was to be performed and in which the property of the Contractor in the said plans and documents was not reserved.

3.3. Any drawings or technical documents intended for use in the construction of the Works or of part thereof and submitted to the Contractor by the Purchaser prior or subsequent to the formation of the Contract remain the exclusive property of the Purchaser. They may not, without his consent, be utilised by the Contractor or copied, reproduced, transmitted or communicated to a third party.

3.4. The Contractor shall, if required by the Purchaser, furnish free of charge to the Purchaser at the commencement of the Guarantee Period, as defined in Clause 23, information and drawings other than manufacturing drawings of the Works in sufficient detail to enable the Purchaser to carry out the operation and maintenance (including running repairs) of all parts of the Works and (except where under the Contract the Contractor is responsible for commissioning the Works) the commissioning thereof. Such information and drawings shall be the property of the Purchaser and the restrictions on their use set out in paragraph 2 hereof shall not apply thereto. Provided that if the Contractor so stipulates, they shall remain confidential

\*) These Conditions may be used, at the option of the parties, as an alternative to the General Conditions for the Supply and Erection of Plant and Machinery for Import and Export prepared at Geneva, in March 1957 (No. 574 A).

The English, French and Russian texts are equally authentic. The observations of the experts who drew up these General Conditions, together with a description of the procedure followed, are embodied in the "COMMENTARY ON THE GENERAL CONDITIONS FOR THE SUPPLY OF PLANT AND MACHINERY FOR EXPORT No. 188" (Document E/ECE/169), published by the Economic Commission for Europe. It can be obtained direct from the Sales Selection of the European Office of the United Nations, Geneva, Switzerland, or through United Nations Sales Agents.

\*\*) In these General Conditions "Plant" means all machinery, apparatus, materials and articles to be supplied by the Contractor under the Contract and "the Works" means all Plant to be supplied and work by the Contractor under the Contract.

#### **4. PACKING**

4.1. Unless otherwise specified:

- a) prices shown in price lists and catalogues shall be deemed to apply to unpacked Plant;
- b) prices quoted in tenders and in the Contract shall include the cost of packing or protection required under normal transport conditions to prevent damage to or deterioration of the Plant before it reaches its destination as stated in the Contract.

#### **5. LOCAL LAWS AND REGULATIONS**

5.1. The Purchaser shall, at the request of the Contractor and to the best of his ability, assist the Contractor to obtain the necessary information concerning the local laws and regulations applicable to the Works and to taxes and dues connected therewith.

5.2. If, by reason of any change in such laws and regulations occurring after the date of the tender, the cost of erection is increased or reduced, the amount of such increase or reduction shall be added to or deducted from the price, as the case may be.

#### **6. WORKING CONDITIONS**

6.1. The price shall be on the understanding that the following conditions are fulfilled, except so far as the Purchaser has informed the Contractor to the contrary:

- a) the Works shall not be carried out in unhealthy or dangerous surroundings;
- b) the Contractor's employees shall be able to obtain suitable and convenient board and lodging in the neighbourhood of the site and shall have access to adequate medical services;
- c) such equipment, consumable stores, water and power as are specified in the Contract shall be available to the Contractor on the site in good time, and, unless otherwise agreed, free of charge to the Contractor;
- d) the Purchaser shall provide the Contractor (free of charge, unless otherwise agreed) with closed or guarded premises on or near the site as a protection against theft and deterioration of the Plant to be erected, of the tools and equipment required therefor, and of the clothing of the Contractor's employees;
- e) the Contractor shall not be required to undertake any works of construction or demolition or to take any other unusual measures to enable the Plant to be brought from the point where it has been unloaded to the point on the site where it is to be erected, unless the Contractor has agreed to deliver the Plant to the last mentioned point.

Any departure from the conditions mentioned in this paragraph shall attract an extra charge.

6.2. If the circumstances resulting from such departure are such that it would be unreasonable to require the Contractor to proceed with the Works, the Contractor may, without prejudice to his rights under the Contract, refuse to do so.

#### **7. ERECTION ON A TIME BASIS AND LUMP SUM ERECTION**

7.1. When erection is carried out on a time basis the following items shall be separately charged:

- a) all travelling expenses incurred by the Contractor in respect of his employees and the transport of their equipment and personal effects (within reasonable limits) in accordance with the specified method and class of travel where these are specified in the Contract;
- b) the living expenses, including any appropriate allowances, of the Contractor's employees for each day's absence from their homes, including non-working days and holidays;
- c) the time worked, which shall be calculated by reference to the number of hours certified as worked in the time-sheets signed by the Purchaser. Overtime and work on Sundays, holidays and at night will be charged at the special rates mentioned in the Contract. Save as otherwise provided, the hourly rates cover the wear and tear and depreciation of the Contractor's tools and light equipment;
- d) Time necessarily spent on:
  - i) preparation and formalities incidental to the outward and homeward journeys;
  - ii) the outward and homeward journeys;
  - iii) daily travel morning and evening between lodgings and the site if it exceeds half an hour and there are no suitable lodgings closer to the site;
  - iv) waiting when work is prevented by circumstances for which the Contractor is not responsible under the Contract;
- e) any expenses incurred by the Contractor in accordance with the Contract, in connection with the provision of equipment by him, including where appropriate a charge for the use of the Contractor's own heavy equipment;
- f) any taxes or dues levied on the invoice and paid by the Contractor in the country where erection takes place.

7.2. When erection is carried out for a lump sum, the quoted price includes all the items above mentioned. Provided that if the erection is prolonged for any cause for which the Purchaser or any of his contractors other than the Contractor is responsible and if as a result the work of the Contractor's employees is suspended or added to, a charge will be made for any idle time, any extra work, any extra living expenses of the Contractor's employees and the cost of any extra journey.

#### **8. INSPECTION AND TESTS OF THE PLANT INSPECTION**

8.1. If expressly agreed in the Contract, the Purchaser shall be entitled to have the quality of the materials used and the parts of the Plant, both during manufacture and when completed, inspected and checked by his authorized

representatives. Such inspection and checking shall be carried out at the place of manufacture during normal working hours after agreement with the Contractor as to date and time.

8.2. If as result of such inspection and checking the Purchaser shall be of the opinion that any material or parts are defective or not in accordance with the Contract, he shall state in writing his objections and the reason therefor.

#### TESTS

8.3. Tests provided for in the Contract other than taking over tests will be carried out, unless otherwise agreed, at the Contractor's works and during normal working hours. If the technical requirements of the tests are not specified in the Contract, the tests will be carried out in accordance with the general practice obtaining in the appropriate branch of the industry in the country where the Plant is manufactured.

8.4. The Contractor shall give to the Purchaser sufficient notice of the tests to permit the Purchaser's representatives to attend. If the Purchaser is not represented at the tests, the test report shall be communicated by the Contractor to the Purchaser and shall be accepted as accurate by the Purchaser.

8.5. If on any test (other than a taking-over test as provided for in Clause 21) the Plant shall be found to be defective or not in accordance with the Contract, the Contractor shall with all speed make good the defect or ensure that the Plant complies with the Contract. Thereafter, if the Purchaser so requires, the test shall be repeated.

8.6. Unless otherwise agreed, the Contractor shall bear all the expenses of tests carried out in his works, except the personal expenses of the Purchaser's representatives.

#### 9. PASSING OF RISK

9.1. Save as provided in paragraph 10.1. the time at which the risk shall pass shall be fixed in accordance with the International Rules for the Interpretation of Trade Terms (Incoterms) of the International Chamber of Commerce in force at the date of the formation of the Contract.

Where no indication is given in the Contract of the form of sale, the Plant shall be deemed to be sold "ex works".

9.2. In the case of a sale "ex works", the Contractor must give notice in writing to the Purchaser of the date on which the Purchaser must take delivery of the Plant. The notice of the Contractor must be given in sufficient time to allow the Purchaser to take such measures as are normally necessary for the purpose of taking delivery.

#### 10. DELAYED ACCEPTANCE OF DELIVERY

10.1. If the Purchaser fails to accept delivery of the Plant on due date, he shall nevertheless make any payment conditional on delivery as if the Plant had been delivered. The Contractor shall arrange for the storage of the Plant at the risk and cost of the Purchaser. If required by the Purchaser, the Contractor shall insure the Plant at the cost of the Purchaser. Provided that if the delay in accepting delivery is due to one of the circumstances mentioned in Clause 25 and the Contractor is in a position to store it in

his premises without prejudice to his business, the cost of storing the Plant shall not be borne by the Purchaser.

10.2. Unless the failure of the Purchaser is due to any of the circumstances mentioned in Clause 25, the Contractor may require the Purchaser by notice in writing to accept delivery within a reasonable time.

If the Purchaser fails for any reason whatever to do so within such time the Contractor shall be entitled by notice in writing to the Purchaser, and without requiring the consent of any Court, to terminate the Contract in respect of such portion of the Plant as is by reason of the failure of the Purchaser aforesaid not delivered and thereupon to recover from the Purchaser any loss suffered by reason of such failure up to an amount not exceeding the sum named in paragraph A of the Appendix or, if no sum be named, that part of the price payable under the Contract which is properly attributable to such portion of the Plant.

#### 11. PAYMENT

11.1. Payment shall be made in the manner and at the time or times agreed by the parties.

11.2. Any advance payments made by the Purchaser are payments on account and do not constitute a deposit, the abandonment of which would entitle either party to terminate the Contract.

11.3. If delivery has been made before payment of the whole sum payable under the Contract, Plant delivered shall, to the extent permitted by the law of the country where the Plant is situated after delivery, remain the property of the Contractor until such payment has been effected. If such law does not permit the Contractor to retain the property in the Plant, the Contractor shall be entitled to the benefit of such other rights in respect thereof as such law permits him to retain. The Purchaser shall give the Contractor every assistance in taking any measures required to protect the Contractor's right of property or such other rights as aforesaid.

11.4. A payment conditional on the fulfilment of an obligation by the Contractor shall not be due until such obligation has been fulfilled, unless the failure of the Contractor is due to an act or omission of the Purchaser.

11.5. If the Purchaser delays in making any payment, the Contractor may postpone the fulfilment of his own obligation until such payment is made, unless the failure of the Purchaser is due to an act or omission of the Contractor.

11.6. If delay by the Purchaser in making any payment is due to one of the circumstances mentioned in Clause 25, the Contractor shall not be entitled to any interest on the sum due.

11.7. Save as aforesaid, if the Purchaser delays in making any payment, the Contractor shall on giving to the Purchaser within a reasonable time notice in writing be entitled to the payment of interest on the sum due at the rate fixed in paragraph B of the Appendix from the date on which such sum became due. If at the end of the period fixed in paragraph C of the Appendix, the Purchaser shall still have failed to pay the sum due, the Contractor shall be entitled by notice in writing to the Purchaser, and without requiring the consent of any Court, to terminate the Contract and

thereupon to recover from the Purchaser the amount of his loss up to the sum mentioned in paragraph A of the Appendix.

## **12. PREPARATORY WORK**

12.1. The Contractor shall in good time provide drawings showing the manner in which the Plant is to be affixed together with all information relating, unless otherwise agreed, only to the Works, required for preparing suitable foundations, for providing suitable access for the Plant and any necessary equipment to the point on the site where the Plant is to be erected and for making all necessary connections to the Plant (whether such connections are to be made by the Contractor under the Contract or not).

12.2. The preparatory work shall be executed by the Purchaser in accordance with the drawings and information provided by the Contractor and mentioned in paragraph 1 hereof. It shall be completed in good time and the foundations shall be capable of taking the Plant at the proper time. Where the Purchaser is responsible for transporting the Plant, it shall be on the site in good time.

12.3. Any expenses resulting from an error or omission in the drawings or information mentioned in paragraph 1 hereof which appears before taking over shall be borne by the Contractor. Any such error or omission which appears after taking over shall be deemed faulty design for purposes of Clause 23.

## **13. LIAISON AGENTS**

13.1. The Contractor and Purchaser shall each designate in writing a competent representative to be his channel of communication with the other party on the day-to-day execution of the Works on the site.

13.2. Each such representative shall be present on or near the site during working hours.

## **14. ADDITIONAL LABOUR**

14.1. If the Contractor so requires in good time the Purchaser shall make available to the Contractor free of charge such skilled and unskilled labour as is provided for in the Contract and such further reasonable amount of unskilled labour as may be found to be necessary even if not provided for in the Contract.

## **15. SAFETY REGULATIONS**

15.1. The Purchaser shall notify the Contractor in full of the safety regulations which the Purchaser imposes on his own employees and the Contractor shall secure the observance by his employees of such safety regulations.

15.2. If breaches of these regulations come to the notice of the Purchaser, he must inform the Contractor in writing forthwith, and may forbid persons guilty of such breaches entry to the site.

15.3. The Contractor shall inform the Purchaser in full of any special dangers which the execution of the Works may entail.

## **16. OVERTIME**

16.1. Any overtime and the conditions thereof shall, within the limits of the laws and regulations of the Contractor's country and of the country where erection is carried out, be as agreed between the parties.

## **17. WORK OUTSIDE THE CONTRACT**

17.1. The Purchaser shall not be entitled to use the Contractor's employees on any work unconnected with the subject-matter of the Contract without the previous consent of the Contractor. Where the Contractor so consents, he shall not be under any liability in respect of such work, and the Purchaser shall be responsible for the safety of the Contractor's employees while employed on such work.

## **18. CONTRACTOR'S RIGHT OF INSPECTION**

18.1. Until the Works are taken over and during any work resulting from the operation of the guarantee the Contractor shall have the right at any time during the hours of work on the site to inspect the Works at his own expense. In proceeding to the site, the inspectors shall observe the regulations as to movement in force at the Purchaser's premises.

## **19. INSTRUCTION OF THE PURCHASER'S EMPLOYEES**

19.1. In appropriate cases the Contract may provide on the terms and conditions therein set out for instruction to be given by the Contractor to the Purchaser's employees who will run the Plant.

## **20. TIME FOR COMPLETION**

20.1. Unless otherwise agreed the completion period shall run from the latest of the following dates:

- a) the date of the formation of the Contract as defined in Clause 2;
- b) the date on which the Contractor receives notice of the issue of a valid import licence where such is necessary for the execution of the Contract;
- c) the date of the receipt by the Contractor of such payment in advance of manufacture as is stipulated in the Contract.

20.2. Should delay in completion be caused by any of the circumstances mentioned in Clause 25 or by an act or omission of the Purchaser and whether such cause occur before or after the time or extended time for completion, there shall be granted subject to the provisions of paragraph 5 hereof such extension of the completion period as is reasonable having regard to all the circumstances of the case.

20.3. If a fixed time for completion is provided for in the Contract, and the Contractor fails to complete the Works within such time or any extension thereof granted under paragraph 2 hereof, the Purchaser shall be entitled, on giving to the Contractor within a reasonable time notice in writing, to claim a reduction of the price payable under the Contract, unless it can be reasonably concluded from the circumstances of the particular case that the Purchaser has suffered

no loss. Such reduction shall equal the percentage named in paragraph D of the Appendix of that part of the price payable under the Contract which is properly attributable to such portion of the Works as cannot in consequence of the said failure be put to the use intended for each complete week of delay commencing on the due date of completion but shall not exceed the maximum percentage named in paragraph E of the Appendix. Such reduction shall be allowed when a payment becomes due on or after completion. Save as provided in paragraph 5 hereof, such reduction of price shall be to the exclusion of any other remedy of the Purchaser in respect of the Contractor's failure to complete as aforesaid.

20.4. If the time for completion mentioned in the Contract is an estimate only, either party may after the expiration of two thirds of such estimated time require the other party in writing to agree a fixed time.

Where no time for completion is mentioned in the Contract, this course shall be open to either party after the expiration of nine months from the formation of the Contract.

If in either case the parties fail to agree, either party may have recourse to arbitration, in accordance with the provisions of Clause 28, to determine a reasonable time for completion and the time so determined shall be deemed to be the fixed time for completion provided for in the Contract and paragraph 5 hereof shall apply accordingly.

20.5. If any portion of the Works in respect of which the Purchaser has become entitled to the maximum reduction provided for by paragraph 5 hereof, or in respect of which he would have been so entitled had he given the notice referred to therein, remains uncompleted, the Purchaser may by notice in writing to the Contractor require him to complete and by such last mentioned notice fix a final time for completion which shall be reasonable taking into account such delay as has already occurred. If for any cause other than one for which the Purchaser or some other Contractor employed by him is responsible, the Contractor fails to complete within such time, the Purchaser shall be entitled by notice in writing to the Contractor, and without requiring the consent of any Court, to terminate the Contract in respect of such portion of the Works and thereupon to recover from the Contractor any loss suffered by the Purchaser by reason of the failure of the Contractor as aforesaid up to an amount not exceeding the sum named in paragraph F of the Appendix, or, if no sum be named, that part of the price payable under the Contract which is properly attributable to such portion of the Works as could not in consequence of the Contractor's failure be put to the use intended.

## 21. TAKING-OVER TESTS

21.1. Unless otherwise agreed, taking-over tests shall be carried out. If such tests are to be carried out, the Contractor shall notify the Purchaser in writing when the Works will be ready, and such notification shall be in sufficient time to enable the Purchaser to make any necessary arrangements. The tests shall take place in the presence of both parties. The technical requirements shall be as specified in the Contract or, if not so specified, in accordance with the general practice existing in the appropriate branch of the industry in the country where the Plant is manufactured.

21.2. If as a result of such tests the Works are found to be defective or not in accordance with the Contract, the Contractor shall with all speed and at his own expense make good the defect or ensure that the Works comply with the Contract, and thereafter, if the Purchaser so requires, the test shall be repeated at the expense of the Contractor.

21.3. Subject to the provisions of paragraph 2 hereof the Purchaser shall free of charge provide any power, lubricants, water, fuel and materials of all kinds reasonably required for final adjustments and for taking-over tests. He shall also install free of charge any apparatus necessary for the above mentioned operations.

## 22. TAKING OVER

22.1. As soon as the Works have been completed in accordance with the Contract and have passed all the taking-over tests to be made on completion of erection, the Purchaser shall be deemed to have taken over the Works and the Guarantee Period shall start to run. The Purchaser shall thereupon issue to the Contractor a certificate, called a "Taking-over Certificate", in which he shall certify the date on which the Works have been completed and have passed the tests.

22.2. If the Purchaser is unwilling to have the taking-over tests carried out, the Works shall be deemed to have been taken over and the Guarantee Period shall start to run on a written notice to that effect being given by the Contractor.

22.3. If by reason of difficulties encountered by the Purchaser (whether or not covered by Clause 25) it becomes impossible to proceed to the taking-over tests, these shall be postponed for a period not exceeding six months, or such other period as the parties agree, and the following provisions shall apply:

- a) The Purchaser shall make payments as if the taking over had taken place, provided that, in the case of a difficulty due to any of the circumstances falling within paragraph 25.1, the Purchaser shall not unless otherwise agreed, be required to pay at the due time of taking over the cost of uncompleted work or, before the expiration of the Guarantee Period fixed in accordance with sub-paragraph (d) hereof, any sum retained by way of guarantee.
- b) At the appropriate time, the Purchaser shall give notice in writing to the Contractor stating the earliest date on which the tests can be carried out and requesting him to fix a new date for the tests. Such new date shall be within the period stated in paragraph G of the Appendix after the date mentioned in such notice.
- c) The Contractor may, at the cost of the Purchaser, examine the Works before making the tests and make good any defect or deterioration therein that may have developed, or loss thereof that may have occurred, after the date when the Works were first ready for testing in accordance with the Contract.
- d) The Guarantee Period shall run from the date when the postponed tests have been successfully carried out.

- e) If the Purchaser so requires, the Contractor shall, subject to the provisions of the Contract in respect of the passing of risk, protect and preserve the Works until the tests are carried out or for one month from the time when the Works were first ready for testing in accordance with the Contract, whichever is the shorter period. The Contractor shall be entitled to recover from the Purchaser the costs of any measures actually taken by the Contractor to protect and preserve the Works. Unless otherwise agreed, the liability of the Contractor for protecting and preserving the Works shall cease on the expiry of such month. If by reason of other commitments the Contractor is unable to leave his employees on the site, he shall give the Purchaser any directions required to enable the Purchaser to make satisfactory arrangements for protecting and preserving the Works.
- f) If at the end of six months or such other period as the parties may have agreed the tests have not taken place the provisions of paragraph 22.2. shall apply unless the provisions of Clause 25 are applicable.

### 23. GUARANTEE

23.1. Subject as hereinafter set out, the Contractor undertakes to remedy any defect resulting from faulty design, materials or workmanship.

23.2. This liability is limited to defects which appear during the period (called "the Guarantee Period") specified in paragraph H of the Appendix and commencing on taking over.

23.3. In respect of such parts (whether of the Contractor's own manufacture or not) of the Works as are expressly mentioned in the Contract, the Guarantee Period shall be such other period (if any) as is specified in respect of each of such parts.

23.4. The daily use of the Works and the amount by which the Guarantee Period shall be reduced if the Works are used more intensively are stated in paragraph J of the Appendix.

23.5. A fresh Guarantee Period equal to that stated in paragraph H of the Appendix shall apply, under the same terms and conditions as those applicable to the original Works, to parts supplied in replacement of defective parts or to parts renewed in pursuance of this Clause. This provision shall not apply to the remaining parts of the Works, the Guarantee Period of which shall be extended only by a period equal to the period during which the Works are out of actions as a result of a defect covered by this Clause.

23.6. In order to be able to avail himself of his rights under this Clause the Purchaser shall notify the Contractor in writing without delay of any defects that have appeared and shall give him every opportunity of inspecting and remedying them.

23.7. On receipt of such notification the Contractor shall remedy the defect forthwith and, save as mentioned in paragraph 8 hereof, at his own expense. Save where the nature of the defect is such that it is appropriate to effect repairs on site, the Purchaser shall return to the Contractor any part in which a defect covered by this Clause has

appeared, for repair or replacement by the Contractor, and in such case the delivery to the Purchaser of such part properly repaired or a part in replacement thereof shall be deemed to be a fulfilment by the Contractor of his obligations under this paragraph in respect of such defective part.

23.8. Unless otherwise agreed, the Purchaser shall bear the cost and risk of transport of defective parts and of repaired parts or parts supplied in replacement of such defective parts between the place where the Works are situated and one of the following points.

- i) the Contractor's works if the Contract is "ex works" or F.O.R.;
- ii) the port from which the Contractor dispatched the Plant if the Contract is F.O.B., F.A.S., C.I.F. or C & F;
- iii) in all other cases the frontier of the country from which the Contractor dispatched the Plant.

23.9. Where, in pursuance of paragraph 7 hereof, repairs are required to be effected on site, the incidence of any travelling or living expenses of the Contractor's employees and the costs and risks of transporting any necessary material or equipment shall be settled, in default of agreement between the parties, in such manner as the arbitrator shall determine to be fair and reasonable.

23.10. Defective parts replaced in accordance with this Clause shall be placed at the disposal of the Contractor.

23.11. If the Contractor refuses to fulfil his obligations under this Clause or fails to proceed with due diligence after being required so to do, the Purchaser may proceed to do the necessary work at the Contractor's risk and expense, provided that he does so in a reasonable manner.

23.12. The Contractor's liability does not apply to defects arising out of materials provided, or out of a design stipulated, by the Purchaser.

23.13. The Contractor's liability shall apply only to defects that appear under the conditions of operation provided for by the Contract and under proper use. It does not cover defects due to causes arising after taking over. In particular it does not cover defects arising from the Purchaser's faulty maintenance or from alterations carried out without the Contractor's consent in writing, or from repairs carried out improperly by the Purchaser, nor does it cover normal deterioration.

23.14. After taking over and save as in this Clause expressed, the Contractor shall be under no liability in respect of defects due to causes existing before taking over. It is expressly agreed that the Purchaser shall have no claim in respect of personal injury or of damage to property not the subject matter of the Contract arising after taking over nor for loss of profit unless it is shown from the circumstances of the case that the Contractor has been guilty of gross misconduct.

23.15. "Gross misconduct" does not comprise any and every lack of proper care or skill, but means an act or omission on the part of the Contractor implying either a failure to pay due regard to serious consequences which a conscientious Contractor would normally foresee as likely to ensue, or a deliberate disregard of any consequences of such act or omission.

## 24. LIABILITY FOR PERSONAL INJURY AND DAMAGE TO PROPERTY

24.1. In the event of personal injury or damage to property occurring before all the Works have been taken over, the liabilities shall be apportioned as follows:

- a) i) The Contractor shall at his own expense make good any loss or damage to the Plant or Works occurring before the risk therein has passed and arising from any cause whatsoever other than an act or omission of the Purchaser;
  - ii) the Contractor shall at his own expense make good any loss or damage to the Plant or Works occurring after the risk therein has passed, if such loss or damage is caused by an act or omission of the Contractor;
  - iii) if any portion of the Plant or Works is lost or damaged from a cause for which the Contractor is not responsible by virtue of sub-paragraphs a) I) or a) II) hereof, the loss or damage shall, if required by the Purchaser, be made good by the Contractor at the expense of the Purchaser.
- b) In respect of damage to the Purchaser's property other than the Works, the Contractor shall indemnify the Purchaser to the extent that such damage was caused by the Contractor, or by the failure of equipment or tools provided by the Contractor for the purpose of the erection, if the circumstances show that the Contractor failed to use proper skill and care.
- c) i) In respect of personal injury, the respective liabilities of the Purchaser and of the Contractor towards the injured person shall be governed by the law of the country where the injury occurred;
  - ii) if the injured person brings a claim against the Purchaser, the Contractor shall indemnify the Purchaser against such claim to the extent that the injury was due to any of the causes mentioned in sub-paragraph (b) hereof;
  - iii) if the injured person brings a claim against the Contractor, the Purchaser shall, to the extent permitted by the law of the country where the injury occurred, indemnify the Contractor against such claim save to the extent that, by the operation of sub-paragraph c) II) hereof, the Contractor would have been liable to indemnify the Purchaser had the claim been brought against the Purchaser.
- d) In respect of damage to property of third parties, the provisions of sub-paragraph c) hereof shall apply *mutatis mutandis*.
- e) The provisions of this paragraph shall apply to the acts or omissions of the respective servants of the parties as they apply to the acts or omissions of the parties themselves. Provided always that as respects acts or omissions of the additional labour provided by the Purchaser in accordance with paragraph 14. 1. the Contractor shall be liable for the consequences of

such orders and instructions as have been incorrectly given, inadequately expressed or given to a person not purporting to possess the necessary qualifications.

24.2. In order to avail himself of his rights under sub-paragraphs (c) and (d) of paragraph 24.1. the party against whom a claim is made must notify the other of such claim and must permit the other, if the other so wishes, to conduct all negotiations for the settlement of such claim and to act in his stead or, to the extent permitted by the law of the country where the action is brought, to join in such litigation.

24.3. Any limitation of the indemnities payable by either party by virtue of this clause shall be as stated in paragraph I of the Appendix.

24.4. The provisions of this Clause shall apply equally while the Contractor is on the site in fulfilment of an obligation under Clause 25.

## 25. RELIEFS

25.1. The following shall be considered as cases of relief if they intervene after the formation of the Contract and impede its performance: industrial disputes and any other circumstances (e. g. fire, mobilization, requisition, embargo, currency restrictions, insurrection, shortage of transport, general shortage of materials and restrictions in the use of power) when such other circumstances are beyond the control of the parties.

25.2. The party wishing to claim relief by reason of any of the said circumstances shall notify the other party in writing without delay on the intervention and on the cessation thereof.

25.3. The effects of the said circumstances, so far as they affect the timely performance of their obligations by the parties, are defined in Clauses 10, 11, 20 and 22. Save as provided in paragraphs 10. 2, 11. 7 and 20. 5, if, by reason of any of the said circumstances, the performance of the Contract within a reasonable time becomes impossible, either party shall be entitled to terminate the Contract by notice in writing to the other party without requiring the consent of any Court.

25.4. If the Contract is terminated in accordance with paragraph 5 hereof, the division of the expenses incurred in respect of the Contract shall be determined by agreement between the parties.

25.5. In default of agreement it shall be determined by the arbitrator which party has been prevented from performing his obligations and that party shall refund to the other the amount of the said expenses incurred by the other less any amount to be credited in accordance with paragraph 7 hereof, or, where the amount to be so credited exceeds the amount of such expenses, shall be entitled to recover the excess.

If the arbitrator determines that both parties have been prevented from performing their obligations, he shall apportion the said expenses between the parties in such manner as to him seems fair and reasonable, having regard to all the circumstances of the case.

25.6. For the purposes of this Clause "expenses" means

actual out-of-pocket expenses reasonably incurred after both parties shall have mitigated their losses as far as possible. Provided that as respects Plant delivered to the Purchaser the Contractor's expenses shall be deemed to be that part of the price payable under the Contract which is properly attributable thereto, due account being taken of any work done in the erection of such Plant.

25.7. There shall be credited to the Purchaser against the Contractor's expenses all sums paid or payable under the Contract by the Purchaser to the Contractor.

There shall be credited to the Contractor against the Purchaser's expenses that part of the price payable under the Contract which is properly attributable to Plant delivered to the Purchaser or, in the case of an incomplete unit, the value of such Plant having regard to its incomplete state. In either case due account shall be taken of any work done in the erection of such Plant.

## 26. LIMITATION OF DAMAGES

26.1. Where either party is liable in damages to the other, these shall not exceed the damage which the party in default could reasonably have foreseen at the time of the formation of the Contract.

26.2. The party who sets up a breach of the Contract shall

be under a duty to take all necessary measures to mitigate the loss which has occurred provided that he can do so without unreasonable inconvenience or cost. Should he fail to do so, the party guilty of the breach may claim a reduction in the damages.

## 27. RIGHTS AT TERMINATION

27.1. Termination of the Contract, from whatever cause arising, shall be without prejudice to the rights of the parties accrued under the Contract up to the time of termination.

## 28. ARBITRATION AND LAW APPLICABLE

28.1. Any dispute arising out of the Contract shall be finally settled, in accordance with the Rules of Conciliation and Arbitration of the International Chamber of Commerce, by one or more arbitrators designated in conformity with those Rules.

28.2. Unless otherwise agreed, the Contract shall, so far as is permissible under the law of the country where the Works are carried out, be governed by law of the Contractor's country.

28.3. If the parties expressly so agree, but not otherwise, the arbitrators shall, in giving their ruling, act as *amiables compositeurs*.

# Appendix (To be completed by parties to the Contract)

	Clause	
A. Maximum amount recoverable on termination by Contractor for failure to take delivery or make payment .....	10.2. & 11.7.	_____ (in the agreed currency)
B. Rate of interest on overdue reduction payments .....	11.7.	_____ per cent per annum
C. Period of delay in payment authorizing termination by Contractor .....	11.7.	_____ months
D. Percentage to be deducted for each week's delay .....	20.3.	_____ per cent
E. Maximum percentage which the deduction above may not exceed .....	20.3.	_____ per cent
F. Maximum amount recoverable for non-completion ...	20.5.	_____ (in the agreed currency)
G. Maximum postponement of taking-over tests by Contractor .....	22.3.	_____ weeks
H. Guarantee Period for original Works and parts replaced or renewed .....	23.2. & 23.5.	_____ months
I. Maximum indemnities for personal injury or damage .....	24.3.	_____ (in the agreed currency)
J. 1) Daily use of Plant .....	23.4.	_____ hours/day
2) Reduction of Guarantee Period for more intensive use .....	23.4.	_____



## GENERAL CONDITIONS (ECE 188 A) for the Supply and Erection of Plant and Machinery for Import and Export

prepared under the auspices of the United Nations Economic Commission for Europe,  
Geneva, March 1957.

This Addendum has been issued by the organisations for the engineering industries in Denmark, Finland, Norway and Sweden (Hovedorganisationen Dansk Industri, Denmark; Metalliteollisuuden Keskusliitto – Metallindustris Centralförbund r.y., Finland; Teknologibedriftenes Landsforening, Norway; Sveriges Verkstadsindustrier, Sweden).

*The General Conditions ECE 188 A shall apply supplemented and amended as follows:*

### 1. The Appendix shall be filled in as follows:

#### Paragraph A:

100% of that part of the price payable under the Contract which is properly attributable to the part of the Works in respect of which the Contract is terminated.

#### Paragraph B:

The rate of interest shall be that which is payable under the law concerning late payments in the Contractor's country. If the Contractor's country is Denmark, the rate of interest shall be nine percentage points above the official discount rate of Denmark.

#### Paragraph C:

Three months

#### Paragraph D:

0,5%

#### Paragraph E:

7,5%

#### Paragraph F:

The total liability of the Contractor for non-completion shall not exceed 15% of that part of the price payable under the Contract which is properly attributable to the part of the Works in respect of which the Contract is terminated.

#### Paragraph G:

Twelve weeks

#### Paragraph H:

Twelve months

#### Paragraph I:

No limitation applies other than that which may follow from the applicable law.

#### Paragraph J:

1. Eight hours
2. Proportional to the amount by which the time stated in 1. is exceeded.

### 2. Clause 23 is changed as follows:

#### (i) Delete Sub-clause 23.11 and insert instead:

If the Contractor fails to fulfil his obligations under Sub-clause 23.7 within a reasonable time, the Purchaser may by written notice require him to do so within a final time limit. If the Contractor fails to fulfil his obligations within that time limit, the Purchaser may choose to:

- a) have the necessary remedial work carried out and/or have new parts manufactured at the Contractor's risk and expense, provided that the Purchaser proceeds in a reasonable manner, or
- b) demand a reduction of the Contract price not exceeding 15 per cent thereof.

If the defect must be considered substantial, the Purchaser may instead choose to terminate the Contract by written notice to the Contractor. The Purchaser shall also be entitled to such termination where the defect remains substantial after such measures have been taken as referred to in a) of this Sub-clause. In case of termi-

nation, the Purchaser shall be entitled to be compensated for the loss he has suffered. The compensation shall, however, not exceed 15 per cent of the Contract price.

#### (ii) Delete Sub-clause 23.14 and insert instead:

Save as stipulated in this Clause 23, the Contractor shall have no liability for defects. This applies to any loss the defect may cause, including but not limited to loss of production, loss of profit and any other consequential economic loss. This limitation of the Contractor's liability shall not apply if the Contractor has been guilty of gross misconduct.

#### (iii) Add a new Sub-clause 23.16:

Notwithstanding all other stipulations of Clause 23, the validity of the Contractor's Guarantee shall not exceed two years for any part of the Works, calculated from the original date of commencement of the Guarantee Period.

### 3. Clause 24 is changed as follows:

Add a new Clause 24A as follows:

#### 24A. LIABILITY FOR DAMAGE TO PROPERTY CAUSED BY THE WORKS AFTER TAKING-OVER

The Purchaser shall indemnify and hold the Contractor harmless to the extent that the Contractor incurs liability towards any third party in respect of any damage for which the Contractor according to the second and third paragraphs of this Clause is not liable towards the Purchaser.

The Contractor shall not be liable for loss or damage caused by the Works after taking-over

- a) to any property where the damage occurs while the Works are in the Purchaser's possession, or
- b) to products manufactured by the Purchaser, or to products of which the Purchaser's products form a part or for loss or damage to any property, where the damage is caused by these products because of the Works.

The Contractor shall under no circumstances be liable for loss of production, loss of profit or any other consequential economic loss.

The above limitations in the Contractor's liability shall not apply where the Contractor has been guilty of gross misconduct.

If a claim for damage as described in this Clause is raised by a third party against either party to the Contract, the latter shall forthwith notify the other party thereof.

The Contractor and the Purchaser shall be mutually obliged to let themselves be summoned to the court or arbitral tribunal which examines claims against either of them, where the claim is based on damage alleged to have been caused by the Works. The liability as between the Contractor and the Purchaser shall, however, always be settled by arbitration in accordance with Clause 28.

### 4. Clause 25 is changed as follows:

#### (i) Add the following sentence to Sub-clause 25.1:

It shall also be considered a case of relief where performance of the Contract is impeded due to deliveries by subcontractors of the Contractor being delayed or defective by reason of such circumstances as are stated in this Sub-clause 25.1.

#### (ii) Delete the whole of Sub-clause 25.5.

#### (iii) Add the following sentence to Sub-clause 25.6:

The word "expenses" shall under no circumstances be construed to mean indirect expenses.