

Powermec General Terms and Conditions Norway 2017

1 Application

- 1.1 These General Terms and Conditions apply when the parties (the Customer and the Supplier) so agree in writing or otherwise. Any variations of these General Terms and Conditions must be agreed in writing to be valid. Consequently, the Customer's own delivery terms are only accepted if the parties expressly agree to this. If the Supplier has undertaken to install a Product, the Special Terms and Conditions for Installation apply in addition to these General Terms and Conditions.
- 1.2 In these General Terms and Conditions, "Product(s)" is taken to mean the components which the Supplier undertakes to sell to the Customer and which are typically detailed and specified in the Agreement (as defined in section 1.3).
- 1.3 In these General Terms and Conditions, "(the Agreement)" is taken to mean each individual agreement between the Customer and the Supplier on the sale of Products. These General Terms and Conditions constitute an integral part of each such Agreement.

2 Drawings, descriptions or other documents

- 2.1 Information in marketing materials, price lists and other product information is binding only to the extent that the Agreement expressly refers to it.
- 2.2 Drawings, descriptions, software and other technical data provided by one party to the other may not be used for a purpose other than that for which it was provided. Nor may such material be copied or in any other way reproduced without the consent of the party that provided it.
- 2.3 No later than on delivery, the Supplier shall, free of charge, provide the Customer with a copy, or the number of copies agreed, of drawings or other technical documents held by the Supplier so that the Customer can carry out the installation, commissioning, operation and maintenance (including running repairs) of all of the Product's parts. Other documents such as test reports and certificates shall be provided on agreement on a paid basis. The Supplier is not obliged to provide drawings and documents for the production of the Product or spare parts. The Supplier may discharge the aforementioned obligations by making equivalent documentation available over the Internet.

3 Pre-delivery testing (delivery test)

- 3.1 If a delivery test has been agreed, this shall be carried out at the producer of the Product at the Customer's expense, unless agreed otherwise in writing.
- 3.2 Where the parties have not reach more detailed agreement on the technical requirements and how the delivery test is to be carried out, the delivery test shall be carried out in accordance with standard practice in

the relevant industry in the country of the producer. The Supplier shall prepare a report on the delivery test, which shall be sent to the Customer. The delivery test shall be approved by the Customer in the delivery test report. Where the Customer does not submit written objections to the delivery test within five days of its performance, the Customer shall be deemed to have approved the delivery test. If the Product is not as agreed, the Supplier shall ensure that the necessary corrections are made as soon as possible, given that the defect is not immaterial to the use of the Product. The Customer is then entitled to a new delivery test.

4 Price and payment

- 4.1 Unless expressly agreed otherwise between the parties, sales shall take place at the prices stated by the Supplier at the time of receiving the order from the Customer. Unless expressly agreed otherwise, prices and any other costs are stated net of value-added tax and other public levies, which shall be paid by the Customer. If the exchange rate changes by more than 2%, the Supplier is entitled to adjust the stated prices until such time as the invoice for the Product is issued. This applies even if the price has been separately agreed between the parties.
- 4.2 Unless expressly agreed otherwise between the parties, payment shall be made against invoice and no later than the date stated on the invoice. The Customer is not entitled to withhold payment in any circumstances, including delay or defect. If payment is delayed, penalty interest accrues from the due date until payment is made to the Supplier. This penalty interest is calculated at the rate specified from time to time in the Norwegian Act relating to Interest on Overdue Payments. If the Customer does not pay on time, the Supplier may also, after notifying the Customer in writing, suspend performance of the Agreement until payment is made.
- 4.3 If the Customer's actions or financial circumstances are such that there is reason for the Supplier to believe that the Customer will not pay in full, the Supplier may suspend performance of the Agreement and demand advance payment or adequate security to recommence performance. If the Supplier has already dispatched the Product and it emerges that the Customer's circumstances are as described in the previous sentence, the Supplier may withhold or prevent delivery of the Product to the Customer. The Supplier shall notify the Customer in writing as soon as possible of a decision to suspend his performance of the Agreement.
- 4.4 If the Customer does not pay within three months of the due date, the Supplier may terminate the Agreement. The Supplier will then be entitled not only to penalty interest but also to compensation for losses he incurs. Such compensation shall not, however, exceed the agreed price.

5 Delivery and delivery time

- 5.1 The delivery clause agreed between the parties

shall be interpreted in accordance with Incoterms as worded on the conclusion of the Agreement. If no delivery clause has been agreed, delivery is Ex Works.

- 5.2 If delivery is to take place within a certain period, the period commences on the day on which the Agreement is concluded, unless expressly agreed otherwise. Such period shall not, however, in any circumstances commence before the Supplier has received (i) payment, if payment is to be made before production has begun or as otherwise agreed, and (ii) the necessary licenses, permits, technical data and instructions.
- 5.3 If delivery is delayed due to circumstances as set out in section 11.1 or to act or omission on the part of the Customer, the delivery period shall be extended by as much as is reasonable under the circumstances. In such cases, the delivery period shall be extended even if the cause of the delay arises after the expiry of an agreed delivery period.
- 5.4 If the Supplier does not deliver on time, the Customer is entitled to demand delivery within a final reasonable deadline by notifying the Supplier in writing. Should the Supplier not deliver within this deadline, the Customer may terminate the Agreement by notifying the Supplier in writing.
- 5.5 If the Customer terminates the Agreement as set out in section 5.4, he is entitled to compensation from the Supplier for direct additional costs he incurs in purchasing an equivalent product. Such compensation is, however, limited to 7.5% of the price of the Product. If the Customer does not terminate the Agreement, he is not entitled to any compensation due to the Supplier's delay.
- 5.6 If the Customer fails to take delivery of the Product on the agreed day, payment shall nevertheless be made as though delivery has taken place in accordance with the Agreement, and the Customer shall compensate the Supplier for direct additional costs caused to the Supplier by the Customer's failure to accept.

6 Liability for defects

- 6.1 If the Product deviates from the specifications agreed between the parties, the Product shall be deemed defective, unless the deviation is immaterial to its intended use. The Supplier is liable only for defects that are due to deficiencies in design, materials or manufacture.
- 6.2 Information on the Product's use or other aspects of the Product that is not part of an expressly agreed specification constitutes only a recommendation or general guidance. This applies regardless of the form in which the information is given. The Supplier is not liable for such information.
- 6.3 The Supplier's liability is limited to defects that appear within one year counted from the day that the risk for the Product passed to the Customer (warranty period). The warranty period may never exceed the lower of 1,760 hours of operation or the Product's expected operating life where this is less than 1,760 hours. This warranty period does not, however, apply to consumable parts that have a normal life of less than a year.

The Supplier is not liable for defects that are due to the Customer having provided defective, ambiguous or incomplete information. Nor does his liability extend to defects caused by circumstances arising after the risk has passed to the Customer, such as defects resulting from normal wear and tear.

- 6.4 If there is a defect in the Product within the warranty period, the Supplier may choose instead of compensation to supply a new Product as a replacement for the Product that is defective (redelivery) or to rectify the defect. The Supplier's obligations do not include an obligation to bear the cost of consumable parts or consumable fluids such as coolants. Rectification may take place either at the Supplier or at the Customer, depending on what the Supplier deems most appropriate. The warranty period for replacement Products or replacement parts that the Supplier provides to the Customer is that specified in section 6.3. The Supplier shall retain title to the replaced Product or replaced parts if he so demands. Any destruction costs shall be borne by the Customer.
- 6.5 The Customer shall bear the cost and the risk of transporting a defective part or Product to the Supplier, while the Supplier shall bear the cost and the risk of transporting the replaced, delivered or repaired part or Product to the place of delivery. If the Supplier chooses to carry out rectification at the Customer, the Customer shall pay travel costs and per diem expenses for time spent travelling and working for the Supplier's personnel. The Customer shall also bear any additional costs arising as a result of the Product being in a location other than the place of delivery.
- 6.6 If the Supplier does not deliver a replacement Product or rectify the defect within a reasonable period after the Customer lodges a complaint, the Customer is entitled to terminate the Agreement by notifying the Supplier in writing. Should the Customer terminate the Agreement, the Customer is entitled not only to have the purchase price paid for the Product returned, but also to compensation from the Supplier for direct additional costs he incurs in purchasing an equivalent Product, limited to 7.5% of the price of the Product.
- 6.7 By delivering a repaired or replacement part or Product to the Customer, the Supplier shall be deemed to have discharged his obligations under the Agreement. If any dismantling or installation involves work other than to the Product, the Customer is liable for this work and the costs caused by it.
- 6.8 The Customer shall examine the Product immediately on delivery in accordance with good business practice.
- 6.9 The Customer may not invoke a defect if the Customer does not inform the Supplier of the defect in writing within 15 days of when the defect was or should have been discovered, and in any case no later than within the warranty period set out in section 6.3 above. If the Customer lodges a complaint about a defect and it transpires that the Supplier is not liable for the defect, the Supplier is entitled to compensation for costs caused to him by the complaint.
- 6.10 Instead of rectification or redelivery, the Supplier may choose to refund the purchase price. The Customer shall then return the Product in an

essentially unchanged condition. If this is not possible, the Supplier shall, as an adjustment of the purchase price, be credited with an amount corresponding to the value of the benefit retained by the Customer. Should the Supplier choose to refund the purchase price, the Customer is entitled to compensation from the Supplier for direct additional costs he incurs in purchasing an equivalent Product, limited to 7.5% of the price of the Product.

7 Liability for personal injury and property damage

- 7.1 The Supplier is not liable for damage caused by the Product to real or personal property, or for the consequences of such damage, if the damage occurs while the Product is not in the Supplier's possession.
- 7.2 The Customer shall indemnify the Supplier to the extent that the Supplier is found liable to a third party for such damage or loss as the Supplier is not liable for under section 7.1.
- 7.3 The limitations on the Supplier's liability in section 7.1 shall not apply if the Supplier has shown gross negligence.
- 7.4 If a third party brings a claim against the Supplier or the Customer for compensation for damage or loss as referred to in this section 7, the other party shall immediately be informed in writing.
- 7.5 The Supplier and the Customer undertake to appear before the court or arbitration tribunal adjudicating a compensation claim against either of them if the claim is due to damage or loss alleged to have been caused by the Product. The relationship between the Customer and the Supplier *inter se* shall nevertheless always be determined by that which is set out in the Agreement.
- 7.6 The Supplier's liability for personal injury or damage to real or personal property belonging to the Customer or a third party caused by the Product shall in all circumstances be limited to EUR 500,000 per loss event. The Customer shall indemnify the Supplier for any such liability in excess of that amount.

8 Compensation and limitation of liability

- 8.1 In the event of delay or defect, the Customer is entitled to compensation as set out in sections 5.5 or 6.6 and 6.10.
- 8.2 If it has been agreed that the Supplier is to develop a Product in collaboration with the Customer at the Supplier's own expense, the Supplier is not liable for delays or defects in the Product. The same applies to Products that the Supplier has transferred or lent to the Customer free of charge.
- 8.3 The Supplier is not under any circumstances liable for loss of production, loss of profits or any other economic loss.
- 8.4 The Customer's entitlement to compensation is always limited to an amount corresponding to 7.5% of the

purchase price for the Product. The Supplier's liability is limited to that which is set out here regardless of whether or not the Agreement is terminated.

- 8.5 Other than the sanctions expressly provided for in the Agreement, the Customer may not seek any remedies for breach of contract against the Supplier.

9 Retention of title

- 9.1 The Product remains the property of the Supplier until paid for in full, to the extent that such retention of title is valid.

10 Confidentiality

- 10.1 A party shall not, without the consent of the other party, disclose documents to a third party or in any other way pass on information of a confidential nature about the Agreement or about the other party other than to the extent required for the performance of the Agreement. The parties shall ensure that confidentiality is observed through a confidentiality undertaking for employees or in some other appropriate manner. The duty of confidentiality does not apply to information that a party can demonstrate has legitimately come to that party's attention other than through the Agreement, or to information that is in the public domain. The duty of confidentiality applies even if the rest of the Agreement is terminated.

11 Force majeure

- 11.1 Circumstances that prevent or significantly hinder the performance of any of the parties' obligations under the Agreement and are beyond the control of the party, such as lightning, fire, earthquake, flood, war, mobilisation or military conscription on a large scale, riot, requisition, seizure, currency restriction, government ruling, fuel rationing, general shortage of transport, goods or energy, strike, lockout or other labour dispute, regardless of whether or not the contracting party is party to the dispute, and defects or delays in deliveries from subcontractors due to the aforementioned circumstances, shall constitute force majeure and entitle the party to necessary deadline extensions and exemption from compensation and other sanctions. The party shall inform the other party in writing of such grounds for exemption without undue delay after he becomes or should have become aware of such grounds.
- 11.2 If the performance of the Agreement is prevented for more than six months due to circumstances as set out in section 11.1, each party shall be entitled to exit 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 Product having the necessary export, import and re-export licences. If such permits are not held, or if those already granted are withdrawn without this being due to the Supplier's negligence, the Supplier is released from the obligation to deliver the Product, and the Customer may not bring any

claim for liability against the Supplier in such cases.

- 12.2 The Customer undertakes to comply with applicable rules on exports, imports, certification, etc., and to assist to the extent necessary in obtaining export or import licences for the Product purchased. In the event of the re-export of the Product or another product in which the Product is wholly or partly included, the Customer shall assist in obtaining the necessary permits.
- 12.3 Any certification of the Product shall be paid for by the Customer.

13 Limitation period

- 13.1 If a claim for arbitration under section 14.2 is not brought within two years of the delivery of the Product in question, the claim against the Supplier will be deemed to have expired, unless the parties have agreed otherwise in writing.

14 Applicable law and disputes

- 14.1 This Agreement, the interpretation of the Agreement and any disputes arising from the

Agreement are governed by Norwegian law.

- 14.2 Any disputes arising from or around the Agreement shall be settled through arbitration under the rules in Norwegian Act No. 25 of 14 May 2004 (the Arbitration Act). The arbitration tribunal shall comprise three arbitrators. Each of the Parties shall appoint one arbitrator each within one week of the notice of arbitration being sent by one of the Parties. These two arbitrators shall appoint the third arbitrator, who will chair the tribunal, as soon as possible. In each arbitration case, the parties shall agree that it is to remain confidential in its entirety. The arbitration tribunal is to sit in Oslo.
- 14.3 A duty of confidentiality shall apply to (i) information that arbitration proceedings between the parties are taking or have taken place that enables the party to be identified, (ii) representations in the arbitration proceedings and oral representations to the arbitration tribunal, and (iii) the arbitration tribunal's rulings to the extent that there is a risk that a party could be identified. Regardless of the above, the party demanding arbitration shall be entitled to disclose the aforementioned information to relevant authorities to the extent that is required.
