



Terms of Delivery of The Swedish Association of Electronics Industries

EL 98

Elektronikindustriföreningen Box 1133, 111 81 Stockholm, Tel: 08 - 440 11 70, fax: 08 - 24 95 30

1. Introduction and application

1.1 The Swedish Association of Electronics Industries is a trade organization for small and medium-sized electronics companies in Sweden which are engaged in business primarily involving development, design and manufacture of electronic equipment.

1.2 For the purpose of obtaining quality assurance in agreements both for members of The Swedish Association of Electronics Industries and for other suppliers in the industry (hereinafter the Supplier) and for their customers (hereinafter the Client) these terms of delivery shall apply to the manufacture and delivery of electronic equipment when the parties have agreed on this.

1.3 Departures from these terms of delivery must be agreed in writing in order to be valid.

1.4 A separate agreement exists for consultancy assignments for the development and design of electronic products (ELK 98).

2. Basis of order

2.1 All particulars in the Supplier's product information such as, for example, capacity, price, technical performance etc. in catalogues, advertisements, pictorial material, price lists, prospectuses etc. are approximate, and are binding on the Supplier only if express reference has been made to them in writing in the individual agreement between the parties.

3. Documentation

3.1 All documentation, such as drawings, technical documents, models and computer programs, concerning the product or products to which the agreement relates which has been made available by the one party to the other before or after the signing of the agreement, remains entirely the property of the party making it available unless otherwise implied by Clause 10 below. Such documentation and/or technical information must not without written consent in any part or in any way be duplicated, copied and/or divulged to a third party or otherwise brought to his notice nor used for any purpose other than that for which it has been made available.

4. Delivery and delivery time

4.1 Delivery is free ex-works (Incoterms 1994).

4.2 The product ordered shall be delivered at the time agreed by the parties.

4.3 Should the parties have agreed on a particular period within which delivery is to take place, instead of a fixed delivery date, this period shall run from the date of signing the agreement. However if the Supplier is to design the product ordered, the period for delivery shall not begin until the Supplier has received a technically complete order containing full and correct working drawings and details of the functions, weight, dimensions of the product and all other requirements made by the Client.

4.4 The period for delivery shall be extended by as much as is reasonable with regard to all the circumstances if after the start of the period for delivery the Client desires additions or adjustments to the product ordered. The same shall apply if the Client does not correctly or on time fulfil the obligations incumbent on him under the agreement between the parties or if the delay arises as a result of some circumstance which constitutes grounds for non-liability under Clause 11 below. The period for delivery shall also be extended if the reason for the delay arises after the expiry of the period for delivery.

4.5 Should the Supplier find that he cannot deliver within the agreed time and/or design the product ordered on time he shall notify the Client of this as soon as possible and in this connection also state the reason for the delay and a new delivery date.

4.6 Unless otherwise specifically stated below in this provision, the Client is entitled - in cases where the Supplier does not deliver/design the product ordered on time - to liquidated damages amounting to 0.5 % for each full week of the delay of that part of the agreed price, exclusive of VAT and any other charges, relating to that part of the ordered product which cannot be taken into service as intended. However the maximum amount of liquidated damages shall be 7.5 % of the agreed price, exclusive of VAT and any other char-

ges, or, where applicable, calculated on the price of the delayed part, exclusive of VAT and any other charges. The price shall not be considered to include the Client's costs for goods and services for which a separate charge is normally made, for example training of the staff of the Client.

Alternative: (valid only if completed)

Instead of the above-mentioned percentages, the following shall apply:

The Client is entitled to liquidated damages amounting to % for each week for which the delay continues. The damages shall be limited to ___ % of the agreed price.

Supplier's signature: ___ Client's signature

4.7 However the Client is entitled by giving the Supplier notice in writing to cancel the agreement if there has been a delay which under Clause 4.6 entitles the Client to maximum liquidated damages. In case of such cancellation the Client is not entitled to any compensation in the form of damages or similar above the maximum liquidated damages on the grounds of the delay.

4.8 The Client is not entitled in case of the Supplier's lateness to enforce sanctions other than liquidated damages. This limitation of the Supplier's liability does not apply, however, in the event of gross negligence on the part of the Supplier.

4.9 The Client loses his entitlement to liquidated damages if a written demand for these has not been presented to the Supplier within six (6) months from the date when delivery should have taken place.

5. **The Client's acceptance of the product ordered**

5.1 Should the Client find that it is impossible for him to accept the product ordered on the agreed date, or should such delay appear probable, he has a duty without delay to notify the Supplier in writing and at the same time to state the reason for the delay and, if this is possible, a date on which it is expected that delivery can be accepted. The Client shall in such cases nevertheless be obliged to make every payment which has been made conditional on delivery as if the product ordered had been delivered. The Supplier shall then arrange storage of the product ordered at the Client's risk and expense. If requested by the Client the Supplier shall also maintain insurance for the product ordered at the Client's expense.

5.2 However the Supplier is not in any circumstances obliged to store the product ordered longer than for two (2) months,

after which the Supplier is entitled to sell the product. If from such sale the Supplier does not receive full coverage of his claim against the Client with regard to the price, storage and insurance costs etc., the Client is liable to reimburse the Supplier with the difference.

5.3 Should the Supplier be unable to sell the product ordered, the Client is liable to pay the Supplier the full price for the product.

6 **Defects in the product ordered**

6.1 Defects in the product delivered shall be considered present if the product does not satisfy the requirements and specifications stated in writing by the Client at the time of ordering and as a result the product cannot be used for the purpose intended by the Client.

6.2 The Supplier is obliged free of charge to rectify defects in the product delivered which are due to defects in material, design or manufacture. The Supplier may instead of rectifying the defect supply a new product free of defects or repay the purchase price. Should the Supplier choose to repay the purchase price the Client shall return the delivered product in essentially unaltered condition. If this is not possible the Supplier may credit himself with the value of the product as a deduction from the purchase price repaid.

6.3 The Supplier is obliged to rectify defects in the product ordered or to make a new delivery or to repay the purchase price only if the Client has complained to the Supplier in writing of the defect as soon as he has discovered or ought to have discovered the defect. The complaint shall contain a brief description of the nature of the defect. However the Supplier is liable only for defects which appear within one (1) year from the date of delivery under Clause 4 above.

6.4 Should a complaint not be made within the time and in the manner stated above, the Client loses the right to complain of the defect.

6.5 After receiving a correct complaint as above the Supplier shall rectify the defect, make a new delivery or repay the purchase price with the promptness required by the circumstances.

6.6 Rectification of the defect by the Supplier shall take place at the premises of the Client unless the Supplier finds it appropriate for the defective part or the product ordered or where applicable designed to be sent to him for repair.

- 6.7 The Supplier shall be considered to have rectified the defect when repaired or replaced parts of the product ordered or where applicable designed have reached the Client. New delivery shall be considered to have taken place when the new product has reached the Client.
- 6.8 All transport for the purpose of rectifying the defect shall take place in accordance with the instructions of the Supplier. Costs of transport to the premises of the Supplier shall be borne by the Client. Costs of transport to the premises of the Client shall be borne by the Supplier.
- 6.9 The Supplier's liability does not include defects which are due to material supplied by or design or manufacture prescribed or specified by the Client. In addition the Supplier is liable only for defects which arise with correct use of the product ordered or where applicable designed.
- 6.10 Liability does not cover defects caused by circumstances which have arisen after the product ordered or where applicable designed has been delivered to the Client. Therefore the liability of the Supplier for defects does not cover defects which have been caused by inadequate maintenance or incorrect assembly on the part of the Client, modifications made without the written consent of the Supplier or repairs incorrectly carried out by the Client or normal wear or deterioration of the goods ordered.
- 6.11 Other than as prescribed in Clauses 6.1-6.10 the Supplier shall not have any liability for defects in the goods. The Supplier is therefore not liable in any circumstances to pay damages to the Client for loss sustained by the Client as a result of a defect in a supplied product such as material damage, damage to property, loss of profits, loss of goods, loss of production or other direct or indirect loss of whatever kind this may be. This limitation of the Supplier's liability does not apply, however, if he has been guilty of gross negligence.
- 6.12 Defective parts, products or reconstructions which have been replaced in accordance with this provision shall entirely be the Supplier's property.
- 6.13 Should the Client complain of a defect under Clause 6 and it then be found that there is no defect for which the Supplier is liable, the Supplier is entitled to full payment for work and for costs which the Client's incorrect complaint has caused to the Supplier.
7. **Liability for loss caused by the product ordered**
- 7.1 The Client shall indemnify the Supplier in the event of the Supplier being held liable to a third party for damage or loss for which under Clauses 7.2-7.4 below the Supplier is not liable.
- 7.2 The Supplier is not liable for damage to real or movable property or injury to person which the product ordered causes if the damage or injury occurs when the product ordered has come into the possession of the Client or to products produced by the Client or to products in which the Client's products are included, nor for damage to real or movable property which these products have caused on account of the product ordered.
- 7.3 If a third party presents a claim for compensation against the Supplier or against the Client for damage as referred to in this Clause 7, the opposite party shall be notified thereof. Such a claim shall be dealt with by the Client independently. Should the third party still choose to pursue the claim against the Supplier, it is the duty of the Supplier to deal with the claim as directed by the Client and at the Client's risk and expense.
- 7.4 The Supplier and the Client have a duty to assist the court or arbitration tribunal which is to deal with a claim for compensation against either of them, provided that such a claim is based on damage or loss which is alleged to have been caused by the product ordered. The mutual relationship between the Supplier and the Client shall however always be determined in accordance with the provisions of Clause 12.
8. **Payment**
- 8.1 Payment shall be made by the Client in the manner and at the time agreed between the parties. Should an agreement on this not exist, the Client shall make payment in cash against an invoice of one-third on making the agreement, one-third when the product ordered has been notified in writing to the Client as ready for delivery and one-third when the product ordered is delivered.
- 8.2 If the date of delivery is altered in the manner stated above on grounds of adjustment or addition requested by the Client the date of payment shall be put back correspondingly. The Supplier reserves the right to adjust the price as a result of requested additions or adjustments to the product ordered and in the event of changes in currency exchange rates, raw material prices, taxes and public charges occurring after the date of the quotation, price list or signing of the agreement.

8.3 If the Client does not pay on time the Supplier is entitled to penalty interest from the due date under the Interest Act (1975:635).

8.4 The Supplier is entitled to cancel the agreement by giving notice in writing to the Client if payment has not been made within two (2) months from the due date or where applicable from the respective due date. In such a case the Supplier is entitled to, as well as interest, compensation for the loss he sustains, always subject to a maximum of the agreed price.

8.5 The Supplier shall be entitled to demand satisfactory security for payment from the Client if there is reason to assume that the Client has or will have difficulty in paying. In cases where such security is not immediately provided the Supplier shall be entitled immediately to suspend work or to stop further deliveries to the Client without sanctions being enforced.

9. **Reservation of ownership**

9.1 The product ordered remains entirely the property of the Supplier until it has been paid for in full provided that such reservation of ownership is legally valid.

10. **Copyright ownership etc**

10.1 All copyright ownership and other intellectual property rights including proposals in documented form such as instructions for use, drawings, models and other technical documentation and patent rights relating to the product belong in their entirety to the Supplier. The Client may not therefore duplicate, copy or reproduce the product ordered or the documents here referred to or otherwise use these other than as a part of the construction for which the product ordered is intended.

10.2 Should the Supplier, at the request of the Client, have completed drawings, models or other originals which have been provided by the Client, all intellectual property rights with relation to these, including pattern and patent rights, shall belong to the Client.

10.3 The Client is liable for all infringement of the intellectual property rights of third parties, including pattern and patent rights, which is caused by the product ordered or by documents produced for or by the Client.

11. **Grounds for non-liability**

11.1 Circumstances which have arisen after the agreement has

been signed and which mean that the performance of the agreement is prevented or rendered unreasonably burdensome and which could not reasonably have been anticipated by the party when entering into the agreement shall constitute grounds for non-liability, for example labour dispute, lightning strike, conflagration, war, mobilization or similar military call-up of substantial extent, riot and insurrection, government confiscation, requisition, currency restrictions, scarcity of transport, general scarcity of supplies, restriction of supplies of fuel and faults or delays in deliveries from sub-contractors which have not been caused by the party and which could not with normal caution have been avoided. Grounds for non-liability exist for as long as a circumstance under this Clause continues to prevent performance, subject however to a maximum of 6 months. Thereafter each party is entitled to renounce the agreement without sanctions being enforceable by the other party. However the Supplier shall always be entitled to payment for products already delivered.

11.2 Grounds for non-liability may not be alleged unless a party can show that he has taken all reasonable measures to limit the effect of the obstacle and after the obstacle has ceased to exist tried to make up lost time. Nor may grounds for non-liability be alleged unless a party has without delay informed the other party in writing that such a circumstance has arisen and of the anticipated effect of the obstacle.

12. **Disputes**

12.1 Disputes concerning the making, interpretation or application of this agreement and agreements and legal matters arising therefrom shall be settled by arbitration in accordance with the rules of the Arbitration Institute of the Stockholm Chamber of Commerce on simplified arbitration procedure. However, in cases where the amount claimed in the action exceeds SEK five million the dispute shall be settled by arbitration in accordance with the rules on arbitration procedure of the Arbitration Institute of the Stockholm Chamber of Commerce.

12.2 Irrespective of what has been stipulated above a party may at a competent Swedish public court bring action which at the time of bringing the action clearly does not involve a sum higher than ten times the base amount under the National Insurance Act (1962:381).

12.3 Swedish law shall apply to this agreement.

Terms of delivery of the Electronics Industry Association, adopted 1974, revised 1975, 1981, 1983, 1987, 1988, 1992, 1996 and 1998.

