

Terms of delivery: Sapa Profiler AB



Apply as of 1 January 2009

Scope

1. These terms of delivery shall apply to agreements for delivery of goods from Sapa Profiler AB (the Seller) to an individual or legal entity which has ordered goods (the Buyer).

2. An agreement of delivery arises when the Seller confirms an order or a delivery forecast from the Buyer. Unless otherwise agreed in writing, these terms of delivery shall apply to such agreement even if the Buyer imposes other conditions. If the agreement involves successive deliveries, each delivery shall be regarded as a separate sale.

Quantity and character

3. Unless otherwise agreed in writing, the product shall meet the Seller's standard tolerances regarding measures and dimensions and normal quality according to the agreed drawing or specification. Delivered goods may differ by up to ten (10) percent as compared with the ordered quantity. Any information of weight on drawings is indicative unless otherwise agreed in writing.

Price and Payment

4. Unless otherwise agreed, the Seller's tender is valid for four (4) weeks from the date of the tender. The offered price is based on current price on raw materials and the Seller therefore reserves the right to adjust the final price if the price of raw material has changed since the date of the tender. In case of changes in exchange rates, taxes, fees or insurance premiums between the time of the tender, order, confirmation and/or delivery, the Seller reserves the right to adjust the final price accordingly.

5. Unless otherwise agreed, payment shall be made no later than thirty (30) days after the date of the invoice. Overdue payments will result in a penalty interest of one point five (1.5) per cent per month from the day on which payment was due until payment is made. The Buyer is not entitled to set off counterclaims (if any) against the Seller.

6. The Seller retains title to delivered goods until full payment is made. Seller reserves the right to, prior to delivery, request security for payment of ordered goods and for any delivered goods that remains unpaid, and to perform a credit check. A Buyer who has not passed the credit check is not entitled to penalties according to clause 9 and 10.

Delivery

7. Any agreed trade term shall be construed in accordance with the version of Incoterms that was in force at the formation of the agreement. If no trade term is specifically agreed, delivery shall be made Ex Works.

8. If the Seller anticipates that he will not be able to deliver at the time of delivery, he shall promptly inform the Buyer thereof in writing, and, if possible, the time when delivery can be expected.

9. If the goods are not delivered within the time set out in the order confirmation, the Buyer is entitled to liquidated damages from the day the delivery should have taken place. The liquidated damages shall constitute zero point five (0.5) per cent of the agreed price for each completed week of delay. The liquidated damages shall not exceed 7.5% of the agreed price. If only part of the goods is delayed, the liquidated damages shall be calculated on the part of the price which is attributable to such part of the goods as cannot be used because of the delay. The liquidated damages shall become due upon written request from the Buyer, however not earlier than when all goods has been delivered or at the time of cancellation according to clause 10. The Buyer forfeits his right to liquidated damages if he has not made a written request for such damages within six months after the time when delivery should have taken place.

10. If the Buyer is entitled to the maximum penalty under clause 9 and if the goods have still not been delivered, the Buyer may by written notification require delivery within a reasonable final period that shall not be less than one week.

Should the Seller not deliver within such final period, and this is not due to any circumstance for which the Buyer is responsible, then the Buyer may by written notification to the Seller cancel the agreement in respect of such part of the goods as cannot be used due to the delay. A Buyer domiciled outside the Nordic countries is entitled to the penalties set out in clause 9 – 19 if this has been specifically agreed in writing.

11. If the Buyer anticipates that he will be unable to accept delivery of the goods at the agreed delivery time, the Buyer shall promptly notify the Seller thereof and, if possible, specify when he will be able to accept delivery. If the Buyer fails to accept delivery of the goods at the agreed delivery time, he shall nevertheless be liable to pay for the goods as if delivery had taken place. If possible, the Seller will arrange for storage of the goods at the Buyer's risk and expense.

12. If the Buyer fails to accept delivery of the goods on the agreed delivery time, the Seller may require the Buyer to accept delivery within a final reasonable period. If the Buyer does not accept delivery of the goods within such final period, then the Seller may cancel the agreement in respect of such part of the goods as has not been accepted. The Seller is entitled to compensation for the damage caused by the Buyer's default.

Liability for defects

13. The Seller undertakes to remedy any defect in the goods due to deviations from the specification by re-delivery of conforming goods or repair of defective goods and shall ship defective and replacement goods to and from the agreed point of delivery at his own risk and expense in connection with re-delivery or repair. The Buyer shall ensure that the goods is properly packed so that it is not damaged during shipment to the Seller. If re-delivery or repair should not be carried out within reasonable time, the Buyer is entitled to a reduction of the purchase price corresponding to the difference between the value of the defective goods and conforming goods, up to a maximum of 15% of the agreed price.

14. The Seller is not liable for defects arising out of materials provided, or a design stipulated or specified by the Buyer. The Seller is not liable for the suitability of the goods for a specific purpose unless the Seller has provided a warranty by a written agreement with the Buyer.

15. The Seller's liability is limited to faults that occur under circumstances that could have been foreseen by the Seller. The Seller's liability does not cover faults caused by circumstances that have occurred after the risk has passed to the Buyer. For example, the liability does not cover faults that have occurred as a consequence of inaccurate use or refinement of the goods or storage by an unvarnished piece of goods without accurate weather protection. Neither does the liability cover faults caused by inadequate maintenance, inaccurate mounting or repair by the Buyer, or by normal wear and tear.

16. Any visible error or defect in the goods that may be assumed to have occurred during shipment shall be reported immediately to the carrier by the Buyer by written notification on the waybill. The Buyer shall, promptly upon acceptance, examine the goods and determine whether it is conforming to the agreement. The Buyer shall, within a week of delivery, notify the Seller of any defect that the Buyer noticed or should have noticed during such delivery inspection. Notification of a defect that could not have been detected at such delivery inspection shall be made immediately after the Buyer noticed or should have noticed the defect, and no later than before any processing of the goods and within twelve (12) months of delivery. The Buyer will forfeit his right to any remedies in case of a delay in notification. The Seller's liability does only cover defects that appear within one year of delivery of the goods.

17. If the remedy of a fault would result in interference with anything but the goods in itself, the Buyer is responsible for any consequential labour and cost. If the goods is located at another site than the place of delivery stipulated in the agreement, the Buyer shall bear the additional cost resulting thereof.

Goods made to order

18. For goods that have been manufactured according to the Buyer's instructions and specifications (goods made to order) the Buyer is liable for any infringements of any patent, design or other intellectual property that belongs to a third party. If any claim is made against the Seller as a result of such infringement, the Buyer shall, if requested, provide all necessary assistance and compensate the Seller for any damages that the Seller may suffer because of such infringement and for any other costs incurred by the Seller as a result of such claim.

19. If the Seller has produced a special tool for the manufacturing of goods made to order, such tool shall be owned jointly by the Seller and the Buyer. If the Buyer has not ordered any goods that are being manufactured by the use of such tool for a period of three (3) years the Seller shall be entitled to scrap the tool unless otherwise agreed.

Product Liability

20. If the Seller incurs liability towards any third party for such damage or loss that the Seller is not liable for according to clause 21 below, the Buyer shall indemnify, defend and hold the Seller harmless.

21. The Sellers shall not be liable for damage caused by the goods

a) to property or the consequences of such damage, after the goods has been delivered and whilst it is in the possession of the Buyer, or

b) on products made by the Buyer or to products of which the Buyer's goods form a part.

22. If a claim for damage as described in this clause is lodged by a third party against one of the parties, the latter party shall promptly inform the other party thereof in writing. The Seller and the Buyer shall be mutually obliged to let themselves be summoned to the court or arbitral tribunal examining claims for damages lodged against one of them on the basis of damage allegedly caused by the goods. The internal relationship between the Buyer and the Seller shall always be subject to arbitration according to clause 25

Liability; Force Majeure

23. The Seller's liability for delays is limited to what has been set forth in clause 9 and 10. The Seller's liability for defects is limited to what has been set forth above in clause 13 – 17. These limitations of the Seller's liability apply to any loss caused by the delay or defect (as the case may be), for example loss of production, loss of profit and other consequential damage. No limitation of liability applies if the Seller is guilty of gross negligence.

24. The following circumstances entitle to suspension of performance of obligations under the contract to the extent that such performance is impeded or made unreasonably onerous: labour disputes and any other circumstance beyond the control of the parties such as fire, war, military mobilization, requisition, seizure, embargo, riots, scarcity of means of transportation, general scarcity of goods, restrictions in the use of power, machine- or tool breakdown, and defects or delays in deliveries by sub-contractors caused by any such circumstance. Should the period of suspension last for more than six (6) months, either party is entitled to cancel the agreement by written notice to the other party.

Disputes and Applicable Law

25. Any dispute, controversy or claim arising out of or in connection with this contract, or the breach, termination or invalidity thereof, shall be finally settled by arbitration in accordance with the Arbitration Rules of the Arbitration Institute of the Stockholm Chamber of Commerce.

26. This contract shall be governed by the substantive law of the Seller's country.