

General conditions for the purchase of goods intended for commercial construction activities

ABM 07

These conditions have been drawn up by the Construction Contracts Committee [Föreningen Byggandets Kontraktsskommitté (BKK)] and the Federation of Swedish Building Material Producers Organisations [Byggmaterialindustrierna], namely the Swedish Precast Concrete Federation [Betongvaruindustrin], the Building Material Producers' Association of Sweden [Industrins Byggmaterialgrupp – IB], the Swedish Plastics & Chemicals Federation [Plast- och Kemiföretagen], the Swedish Forest Industries Federation [Skogsindustrierna] the Swedish Federation of Wood & Furniture Industry [TMF – Trä- och Möbelindustriförbundet], Swedisol, the Swedish Flat Glass Association [Svensk Planglasförening], the Swedish Association of Air Handling Industries [Svensk Ventilation], the Swedish Ready Mixed Concrete Association [Svenska Fabriksbetongföreningen – (SFF)] and the Swedish Aggregates Producers' Association [Sveriges Bergmaterialindustri]. The Association of Swedish Building Materials and Hardware Merchants [Sveriges Bygg- och Järnhandlareförbund (SBJF)] has also taken part in the negotiations.

Initial regulations

1. "Framework conditions" have been used in ABM 07 to leave it open for the parties to agree on regulation differing from that provided by ABM 07. These are marked by the wording "unless otherwise agreed" or similar.

The following definitions are used in the application of ABM 07:

Purchase sum: price exclusive of value added tax for all the goods which, under the contract, are to be delivered to a project or a place of delivery.

In writing: information that can be read and stored. Examples of methods of communication of such information are post, fax and e-mail.

2. Unless otherwise stipulated below or otherwise agreed between the parties, the Purchasing Act applies.
3. If the Seller's tender differs from the Buyer's enquiry, this shall be clearly stated in the tender. Otherwise what is prescribed in the enquiry will apply, unless the circumstances clearly imply otherwise.
4. Unless otherwise stated, the tenderer is bound by his tender for one month from the submission of the tender.
5. In addition to possibly being protected under intellectual property legislation or the Business Secrets Act, a document containing proposals and ideas that is provided by the party inviting or submitting a tender shall not be used by the other party without the consent of the party making the proposal except in the relation between the tenderer and the party inviting the tender.
If in the intended object of the procurement the inviter of the tender makes use of such a document from a tenderer whose tender has not been accepted and whose consent has not been obtained and this entails financial advantage to the inviter of the tender, the inviter of the tender shall pay reasonable financial compensation to the tenderer.
6. Unless otherwise agreed the Seller shall not later than at the time of delivery supply assembly, operating, servicing and maintenance instructions in Swedish to the extent appropriate to the nature of the goods.
7. A party is responsible for compliance with statutory provisions insofar as they relate to the party's undertaking.
8. All persons on or delivering to a building site have a duty to wear a name badge giving the name and employer of the wearer and to carry valid identification, for example, in the form of a driving licence or ID card.

Unless otherwise agreed the Seller shall pay liquidated damages for each reported occasion when one of his employees or an employee of a carrier utilized by the Seller infringes the provisions of the previous paragraph. Liquidated damages shall be SEK 500 per person per day.

Commentary

The purpose of the rule is to make it simple to identify persons on the site. There is no objection to information concerning the name and employer of a person being made clear by other means than with a name badge, e.g. by marking of clothing.

Transport and reception

9. The Seller shall, in good time before delivery, give the Buyer information of importance to the transport and reception of the goods.

When the Seller is responsible for transport the Buyer shall inform the Seller without delay if transport cannot take place in the manner stated by the Seller. Should the Buyer fail to do this, he is responsible for ensuring that access roads connecting with the site and conditions on the site permit delivery in the manner stated by the Seller. It is also the duty of the Seller to obtain necessary knowledge of conditions of importance to the completion of transport.

Commentary

ABM 07 contains no conditions of delivery. Examples of different conditions of delivery from which parties may choose are contained in "Levansklausuler för Byggbranschen" [Delivery Clauses for the Construction Industry] and "INCOTERMS".

Right to extension of time

10. A party is entitled to an extension of the delivery period if the completion of the purchase is prevented as a result of circumstances on the side of the opposing party or as a result of circumstances beyond the party's control or other conditions not caused by the party, which he cannot be expected to have anticipated and whose consequences he could not reasonably have avoided. For there to be a right to such extension a party is required to notify the opposing party of the hindrance without delay.

Liability in case of delay

11. A party shall inform the opposing party immediately if conditions that the party has or ought to have anticipated will lead to delay, stating at the same time when delivery or reception can take place.

12. Unless otherwise agreed in writing the Seller shall for each week or part of a week by which he exceeds the agreed date for the delivery of the goods pay liquidated damages of 2 % of the purchase sum or of that part of the purchase sum that relates to contracted and late part-delivery. Otherwise, for example in connection with a sub-order under an annual contract or frame work agreement, the liquidated damages shall be calculated on that part of the purchase sum that relates to the sub-ordered and delayed delivery.

Liquidated damages for delay under this paragraph shall be paid to the amount of at least SEK 2 000 per week or part of a week. However the Seller is not liable for liquidated damages for more than ten weeks of delay.

Should the Seller be able only to deliver a certain part of the agreed delivery on time, the whole delivery is to be regarded as late until the agreed part has been delivered. If in such a case the Seller has informed the Buyer in writing of shortfall in quantity and the Buyer before the agreed date of delivery has agreed in writing to accept the reduced quantity, the Seller is liable – provided that the reduced quantity is delivered on time – only to pay liquidated damages based on that part of the purchase sum that relates to the outstanding quantity.

13. In the event of delay in receiving the goods the Buyer shall pay compensation for the loss thereby incurred by the Seller. Such compensation shall be payable to a maximum amount of 20 % of the purchase sum or of that part of the purchase sum that relates to agreed and delayed part-delivery. In the case of a sub-order under an annual contract, frame work agreement or similar, the maximum amount shall be calculated on that part of the purchase sum that relates to the sub-ordered and delayed reception. Compensation under this clause shall however always be payable to an amount of at least SEK 2 000 per occasion of delay.
14. Beyond the provisions of Clauses 12 and 13 a party is not entitled to compensation for loss in case of delay other than in the event of cancellation as provided below.

15. A party is entitled to cancel the purchase with relation to goods that have not been delivered or received in due time if the delay is of substantial importance to him and the opposing party has realized or ought to have realized this.

Should the delay involve goods that shall be manufactured or procured especially for the Buyer in accordance with his directions or requests and the Seller otherwise is unable without substantial loss to make use of the goods, the Buyer may cancel the purchase only if the purpose of his purchase has been negated by the delay or if another seller has undertaken to deliver similar goods before the new delivery date advised by the Seller under Clause 11. Should the Seller fail to give notice of the delay or the delivery not be effected within the time stated when the delay was advised, the Buyer shall however be entitled to cancel the purchase as stated in the first paragraph.

Should the maximum period of delay under Clause 12 be exceeded, the Buyer is entitled to cancel the purchase.

If the purchase cannot be completed within a reasonable time as a result of circumstances envisaged in Clause 10 a party may cancel the purchase to the extent that its completion is prevented. In the case of such cancellation further sanctions may be claimed only when circumstances on the side of and caused by the opposing party are involved.

16. If delayed goods are connected with goods already delivered or with goods to be delivered later in such a way that it would cause significant inconvenience to the party entitled to cancel if he were in part to abide by the purchase, the purchase may be cancelled in its entirety.
17. Should a party cancel the purchase in the case of a delay, he is entitled to compensation for loss arising after the cancellation. The damages, including compensation under Clause 12 or 13, shall not in total exceed the purchase sum.

Reception inspection

18. The goods shall be accompanied by a delivery note.

When the goods are delivered to the Buyer, he shall check them against the delivery note and also inspect the goods for externally visible defects.

When the goods are unpacked or otherwise before the goods are installed the reception inspection shall be completed with the care appropriate to the nature of the purchase and the goods.

Should the goods have been delivered for contract works for which final inspection or other handover is to take place, the Buyer shall after unpacking and before installation check the goods for visible damage and obvious defects. The check

will then be completed by final inspection or other approval of the Buyer's contract works.

Complaints

19. The Buyer may not claim that goods are defective unless he notifies the Seller of the defect (complaints) within the times stated below.

A defect which has been noticed or ought to have been noticed when the goods were delivered to the Buyer shall be complained of within a week thereafter and before the goods are installed. If the defect may be assumed to have arisen in transit and the goods have been signed for on a separate consignment note, the defect shall also be reported immediately to the carrier.

Otherwise a defect shall be complained of within a reasonable time after it has been noticed or ought to have been noticed or has otherwise come to the knowledge of the Buyer as a result of a complaint from another party.

Commentary

"Complaint from another party" may include the complaint presented by the Buyer's employer, usually by inspecting the contract works. The Buyer shall complain to the Seller without delay if items objected to at inspection are due in the Buyer's opinion to defects in the goods.

Seller's liability for defects

20. Unless otherwise agreed, the following will apply:

The period of liability is ten years calculated from the handover of the goods and it begins with a guarantee period of five years. If the goods are intended for contract works that are to be subject to final inspection or otherwise handed over the period of liability and the guarantee period will be calculated from the date when the contract works are approved. The period of liability and the guarantee period for goods delivered to contract works will however expire not later than eleven years and six years after the handover of the goods respectively.

The Seller is liable for defects that appear and are reported during the period of liability. For defects that appear after the expiry of the guarantee period, however, the Seller is liable only if the defect is substantial and is shown to be due to negligence on the part of the Seller.

The guarantee liability implies a liability of the Seller to remedy defects that appear during the guarantee period. However the Seller is not liable for defects due to incorrect assembly or installation, inadequate maintenance, incorrect operation, neglect, abnormal use or other circumstances attributable to the Buyer. The Buyer has a liability to carry out and document agreed maintenance and servicing measures. If during the guarantee period the Seller is of the opinion that he is not liable for a reported defect it is up to him to show that the goods are in accordance with the contract and to show probability that the reported defect is due to a circumstance on the Buyer's side.

Commentary

Deliveries to contract works take place earlier than the approval of the contract works. The provisions of ABM 07 assume that the interval between these events does not exceed one year. Such a limitation of the supplier's liability has not previously been included in ABM.

21. After receiving a complaint the Seller shall, without delay and without cost to the Buyer, remedy defects or make a new delivery. If without further enquiry the Seller can show that there is no defect, he is entitled to reasonable compensation for costs incurred.

22. Should the Seller fail to remedy a defect or make a new delivery without delay, the Buyer is entitled, after notifying the Seller, to compensation for reasonable costs of remedying the defect himself or to a price deduction equivalent to the defect.

23. If remedying of defects or a new delivery is out of the question or does not take place within a reasonable time after the complaint, the Buyer may cancel the purchase in respect of the defective goods, if the defect is of substantial importance to the Buyer and the Seller was aware or ought to have been aware of this. Should the Buyer cancel in respect of defective goods, he may at the same time cancel the purchase in respect of earlier or later deliveries if because of the connection between them he would have suffered significant inconvenience from abiding by the purchase of these deliveries.

24. If the Seller is responsible for a defect in the goods, he is also liable to pay compensation for loss arising from the defect.

The Seller's liability to pay compensation under this clause is limited to 15 % of the purchase sum or such higher amount as is covered by the Seller's liability insurance together with applicable policyholder's excess. This limitation does not apply to costs of locating the defect, costs of access to and installation of repaired or replaced goods, and costs arising from the repair or replacement.

For loss resulting from damage due to stoppage or disruption of industrial production or other commercial activity compensation is payable only if the loss is shown to be the result of gross negligence on the part of the Seller.

The Seller is not liable for compensation under this clause if he can show that there has been a hindrance to the handover of defect-free goods such as is referred to in Clause 10 and the Seller has informed the Buyer of this in accordance with the provisions of the same clause.

Liability for goods in party's charge etc

25. A party is liable for damage caused by neglect or inadequate care on his part to material, goods or facilities provided for him by the opposing party, unless he can show that the damage was not caused by his negligence.

Insurance

26. Unless otherwise prescribed in other contract documents relating to the Seller's insurance, the following will apply:

The Seller shall during the guarantee period including the period after the handover of the goods have the usual third party liability insurance covering loss resulting from defects in the goods. The insured amount shall be not less than two hundred times the price base amount and the policyholder's excess shall be not more than three times the price base amount.

The Seller shall at the request of the Buyer supply the Buyer with evidence that the agreed insurance exists. If the Seller fails to do this, the Buyer may himself contract insurance at the Seller's expense.

In the event of loss it is the duty of the Seller to use the agreed insurance.

Risk of breach of contract

27. If after the purchase it becomes clear that the actions or financial position of a party are such that there is strong reason to assume that he will not fulfil a substantial part of his undertakings, the opposing party is entitled for his own part to suspend fulfilment and to withhold his performance and to demand that satisfactory surety is furnished for the proper fulfilment of the agreement. The party that has suspended his fulfilment or prevented goods from being dispatched shall resume fulfilment if the opposing party provides acceptable surety for his fulfilment. If surety is not provided without delay, the party that has demanded surety may cancel the purchase in respect of that part that has not been fulfilled.

A party is entitled to cancel the purchase without first demanding surety if the opposing party is declared bankrupt or otherwise as a result of insolvency cannot be expected to fulfil his obligations under the agreement.

Should the Buyer cancel the purchase with regard to a part-delivery, he is entitled at the same time to cancel in respect of earlier or later deliveries if because of the connection between them abiding by the purchase in respect of these deliveries would cause him significant inconvenience.

Price

28. A fixed price not subject to indexation shall be adjusted in consideration of both cost changes resulting from actions of a public authority and cost changes caused by war or other crisis situation of similar effect which relate to supplies or services necessary for the goods, and also cost changes due to abnormal price changes relating to materials included in the goods. Adjustment of the agreed price shall however be allowed only if the cost change has been unforeseeable and materially affects the whole cost of the goods.

Payment and limitation

29. A period of limitation of three months calculated from the date of handover applies to the Seller's claims. However to the extent that the Seller's claims relate to the originally agreed purchase sum or value added tax a period of limitation of 21 months calculated from the date of handover applies. If the goods are intended for contract works the limitation periods will be calculated from the date of approval of the contract works. However the Seller is entitled to payment to the extent that the Buyer is entitled to payment from his employer.

If the Seller can show that he neither knew nor ought to have known of his claim, the period of limitation is calculated as three months from the date when he ought first to have had such knowledge. However the period of limitation shall never be longer than two years calculated from the approval of the contract works.

After interruption of a period of limitation a new period of limitation of two years applies.

30. An invoice shall be paid within 30 days from the date when it is received. Payment does not imply approval of the goods.

If the Buyer has a legitimate claim against the Seller on account of the purchase, the Buyer may withhold as much of the payment as is equivalent to the claim.

31. If payment is not made in due time, interest on overdue payments under the Interest Act shall be payable. On amounts withheld by the Buyer under Clause 30 interest on overdue payments is calculated from the date when payment ought properly to have been made.

Cancellation

32. The Buyer is entitled to cancel orders for goods not delivered. When cancelling the Buyer shall reimburse the Seller's costs for cancelled goods and pay reasonable compensation for loss of profits, if the Seller cannot obtain compensation for this by selling to another party or in some other manner.

Product safety

33. The Seller is liable to the Buyer for costs resulting from an injunction issued against the Buyer under the Product Safety Act if the injunction is due to properties of goods included in the purchase.

Dispute

34. Unless the parties have agreed otherwise, the following will apply. Disputes arising from the agreement shall be settled in Sweden, applying Swedish national law. If the amount in dispute does not clearly exceed 150 times the price base amount, exclusive of value added tax, the dispute shall be settled in a public court. In other cases disputes shall be settled by arbitration in accordance with the Swedish Arbitration Act. By price base amount is meant the price base amount at the time of bringing the action.

Commentary

The parties should agree that disputes will be tested by other means, such as by simplified resolution of disputes under AB 04 Chapter 10 § 1 or by mediation in accordance with the rules of the Mediation Institute of the Stockholm Chamber of Commerce.

This is a translation of the Swedish general conditions ABM 07. In case the translation should differ from the Swedish text, the Swedish text shall apply.