



## GENERAL TERMS OF SALE AND DELIVERY FOR CONCRETE PUMPING SERVICES

### 1. SCOPE

These Terms of Sale and Delivery (the Terms) and the Supplier's current price list at any one time (Price List) shall apply to any delivery of concrete pumping services between the Supplier and the Customer unless the purchase is regulated by invariable provisions in law or regulation. These Terms apply between the Supplier of pumping services and the Customer who is paying the Supplier for the concrete pumping services. The Customer can be both the recipient of concrete at the building site and a supplier of ready mixed concrete where the concrete pumping services are included in an agreement of concrete deliveries.

In case of any conflict between the provisions of the Terms and/or the Price List and the provisions of a special agreement between the parties, the provisions of the special agreement shall take precedence. In case of any conflict between the Terms and the Price List, the provisions of the Price List shall take precedence. The provisions in NS 8409 do not apply unless these have been included and given precedence as a special agreement between the parties.

Other special sales and delivery terms apply for the production and delivery of ready mixed concrete for the suppliers of ready mixed concrete.

### 2. ORDER/CANCELLATION OF ORDER

The Customer's order ("Order") must contain a statement of the amount of concrete in m<sup>3</sup> ( $\pm 10\%$  tolerance), delivery address, time for start of delivery, necessary reach of pump, delivery speed, type of construction to be cast and any special conditions for the properties of the concrete that are of importance to the pump delivery. When ordering, the Customer must inform if there are any special HSE issues at the building site and along the access roads. The Customer is responsible for ensuring that the technical properties of the ordered concrete are suitable for the purpose.

The order is binding when confirmed by the Supplier. The requirements for order time, confirmation of order and cancellation of order time are stated in the Price List.

If the order is cancelled by the Customer outside the agreed cancellation of order time, the Supplier can demand compensation for the extra costs incurred.

### 3. PRICE - CALCULATION OF PRICE

Unless the price for the pumping service is stated in a special agreement or by an accepted written offer, the Supplier decides the price in accordance with the Price List. The price of pumping services shall be calculated in each case per hour, per m<sup>3</sup> concrete pumped or as a combination of these. The price includes the pump ordered with standard equipment and an operator.

If the delivery in accordance with an order requires the Supplier's staff to carry out a required safety course or other training in order to gain access to the unloading area, ref. point 4., the Supplier must advise the Customer of the costs this entails, and the Parties must make a further agreement regarding the remuneration the Supplier can demand for this.

The Customer must pay the invoices received on the due date at the latest. The Customer may only hold back the payment or parts of the payment if he has advised in writing by the due date that the Supplier has been in breach of the agreement and at the same time submitted a written claim to the Supplier. The Customer can only hold back as much of the invoice amount as is necessary to cover the claim submitted.

If payment is delayed, default interest shall be paid in accordance with the Norwegian Default Interest Act. Unwarranted payment held back is deemed to be a delayed payment.

#### **4. THE CUSTOMER'S DUTY OF DISCLOSURE, ETC**

The Customer is responsible for providing complete and correct information regarding the assignment. The Customer is aware that the Supplier bases the delivery on this information when entering into and carrying out the agreement. The Customer must always state:

- whether there are any special obstacles, risks or conditions preventing or making the assignment difficult,
- whether the assignment assumes use of special equipment, extra work, detour, an assistant etc.,
- whether there are any overhead lines, cables, bridges, narrow passages or other obstacles or conditions making transport, arrival or setting up the pump or the performance of the work difficult,
- the person responsible for coordination, HSE and code of conduct at the workplace,
- where at the workplace the machines should be set up.

The Customer is responsible for ensuring that roads and parking spaces directed by the customer are accessible, have sufficient carrying capacity as well as being suitable for the performance of the work. The Customer is also responsible for ensuring that the necessary permits and calculations are present to load building elements or intervene in buildings or facilities.

The Supplier is obliged on request to give the Customer the necessary information about the pump's axle load, support leg load, total weight and working radius. The customer must comply with the duty of disclosure in accordance with point 4 at the latest by 10:00 on the last working day before work starts, however the information about high voltage cables must be provided 24 hours prior to setting up pumping equipment or arrival of pump truck. All equipment that is to be used and is made available by the Customer shall meet public authority requirements. If the assignment requires the use of an assistant, assistance to lay pipes or a signalman, the Customer undertakes to ensure that such personnel are available and that they have the necessary qualifications for the work they are to perform.

If, after a professional assessment, the Supplier considers that the assignment needs to be performed with a larger pump or a different pump type from the one ordered or for which the Customer's information has provided the basis, the Customer undertakes to accept this and to compensate the Supplier for all additional costs, including for time spent waiting for the pump ordered. The Supplier undertakes to complete the assignment if a usable pump can be obtained within a reasonable time.

The Customer is responsible for any surplus concrete and must designate an appropriate place for this in accordance with regulations. The Customer is also responsible for a place for washing the pump in accordance with regulations. To ensure safety during pumping of concrete, the Supplier's staff must not be used for work which is the Customer's responsibility. The Customer is responsible for all damages or losses occurring in connection with delivery, including the cost of return transport, recovery of/emptying concrete from the pump, when the damage or loss is caused by the workplace/access not being satisfactory, ref. above, and the damage or loss cannot be blamed on the Supplier of the concrete pumping services as gross negligence.

#### **5. THE SUPPLIER'S RESPONSIBILITY**

The Supplier is responsible for:

- the work being performed professionally.
- the pump and its equipment being in good condition and meeting the relevant safety requirements.
- the pump being handled by skilled personnel.
- valid certificates and other necessary licences having been obtained.

Concrete shall be pumped in accordance with the Customer's instructions and at the Customer's risk, while the Supplier shall be responsible for the technical aspects of the pumping. Communication between the Customer and the Supplier about the pumping shall not be regarded as advice by the Supplier.

#### **6. POSTPONEMENT, CANCELLATION**

Pumping assignments may be postponed or cancelled at no charge if the Supplier is notified of the postponement by 12.00 on the last working day before the agreed pumping day. If the Customer cancels the assignment after the expiry of this deadline, the Supplier unless otherwise agreed has the right to compensation of a minimum of 3 hours work with reference to the terms of the Price List. In addition, all preparation work shall be compensated in full in accordance with the current hourly rate.

#### **7. DELAY - FORCE MAJEURE**

A delay that is not material may not be asserted by the party affected by the delay. If the delay is

material, the party affected may demand compensation and/or cancel the agreement. If the Customer fails to comply with the time limit in point 6, this shall always be regarded as material delay. In the event of repeated materially delayed payment, the Supplier may, in addition to asserting point 8, cancel the agreement if the assignment has not been completed. If the delay is due to gross negligence or intent by the delayed party, the other party may claim compensation notwithstanding the provision above. However, delay shall not form the basis for compensation or cancellation when the delayed party substantiates that the delay was due to impediments beyond his control that he could not reasonably have been expected to consider at the time of concluding the agreement or to avoid or overcome the consequences of, such as strike, traffic impediment, failure of fuel or material supply, power cut, unforeseen failure of equipment, machinery, etc. If the Supplier suffers a loss due to the fact that the Customer is not able to or does not agree to receive the order at the agreed time and the time delay is material, the Supplier can demand compensation from the Customer.

## **8. COMPENSATION AND CANCELLATION OF THE AGREEMENT**

The Supplier may demand that the Customer compensates any loss, damage or additional cost that the Supplier may incur on account of non-disclosure of information or incorrect, incomplete or inaccurate information from the Customer. In the event of material breach of the duty of disclosure, the Supplier may also cancel the agreement. The Customer shall compensate all damage to the pump or equipment caused by the Customer, his employees, others acting on his behalf or anyone to whom he has granted access to the workplace or any such damage that is the consequence of a lack of safety, locking, security guard or similar at the workplace. If, before the assignment has been completed, the Customer is in breach of his payment obligations, suspends his payments or files a petition for debt settlement proceedings or bankruptcy, is declared bankrupt or otherwise materially neglects his obligations under this agreement, the Supplier may cancel the agreement unless the Customer immediately lodges adequate security when requested to do so. If the Customer is in material breach of his obligations under the agreement, breaches safety regulations or otherwise performs or neglects to perform acts with a consequent risk to personnel or equipment, the Supplier may cancel the agreement. In the event of cancellation for reasons for which the Customer is responsible, the

Supplier may demand full compensation, including compensation for loss of earnings. In the event of cancellation for reasons beyond the Customer's control which are not the fault of the Supplier, the Supplier may demand full compensation for all costs incurred in connection with the assignment. Time spent on the assignment shall be compensated at the agreed price. The Customer's entitlement to compensation for delay or defect ceases to apply if the Supplier substantiates that the delay was due to impediments beyond his control that he could not reasonably have been expected to consider at the time of concluding the agreement or to avoid or overcome the consequences of, such as strike, traffic impediment, failure of fuel or material supply, power cut, unforeseen failure of equipment, machinery, etc.

The Customer's entitlement to compensation for delay (point 7) and/or defect (point 8) is limited to the direct loss the Customer has suffered, such as direct costs, any price difference on correction or delivery from others, damage to objects, including reinforcement, provided it is used in close connection to the concrete. The Supplier is nonetheless only responsible for losses the Customer is able to document and which could reasonably be predicted as caused by the delay or defect in a calculable and adequate manner. The compensation shall be reduced if the Customer has not put in place reasonable measures to reduce the costs incurred for delay or defect.

The responsibility of the Supplier does not cover indirect losses, including loss as a consequence of operational stoppages, that the Customer is unable to use the concrete as predicted (loss of use), loss of profits, or losses as a consequence of the Customer having to pay daily penalties or compensation to a co contractor, including costs incurred for delay work to avoid such obligations in respect of co contractor or similar.

The Supplier's total liability for damages shall have a maximum limit of the agreement price for the delayed or defective delivery unless the Supplier is insured for a higher amount and the liability is covered by payment from the insurance. The Supplier's total liability in conjunction with one and the same agreement relationship is under all circumstances limited to a standard amount with a stipulated limit. Unless otherwise stated the applicable limit is NOK 10,000,000. If deliveries are in conjunction with several agreement relationships, but apply to the same building project, the amount limit stated above shall apply to the building project.

## **9. INSURANCE**

The Supplier must, at his own cost, ensure that insurance is in place in accordance with current law or public regulations. If the Customer wishes any special insurance to be taken out by the Supplier, this shall be agreed separately. Any expenses associated with such insurance shall be paid by the Customer.

## **10. DISPUTES**

Any disputes regarding the agreement relationship of the parties shall be settled by the ordinary courts unless the parties agree to allow the dispute to be resolved by arbitration.

The Parties agree that the location of the delivery is the place of jurisdiction for all disputes that might arise from this agreement. All disputes shall be settled in accordance with Norwegian law.

Oslo, August 2019