

General conditions of contract for contracts concerning the purchase of construction products

Alminnelige kontraktsbestemmelser for kjøp av byggevarer

Foreword for the English translation

This is a translation of NS 8409:2008.

All reasonable measures have been taken to ensure the accuracy of this translation, but no responsibility can be accepted for any error, omission or inaccuracy.

In cases of doubt or dispute, the Norwegian version takes precedence.

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This translation has not been adopted as Norwegian Standard.

General conditions of contract for contracts concerning the purchase of construction products

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Foreword

NS 8409:2008 was adopted in May 2008.

NS 8409:2008 supersedes NS 3409, second edition, October 1991.

This standard has been prepared and unanimously recommended by a committee appointed by Standards Norway, based on proposals put forward by:

- Byggevareindustriens Forening (Construction Products Association)
- Entreprenørforeningen – Bygg og Anlegg (The Norwegian Contractors' Association)
- Foreningen Næringseiendom (Association of Commercial Real Estate)
- Norges Byggmesterforbund (The Association of Norwegian Master Builders)
- Norges Bygg- og Eiendomsforening (The Norwegian Facilities Management Association)
- Norske Trevarerfabrikkers Landsforbund (The Norwegian Joinery Manufacturers Association)
- Trelast- og Byggevarehandelens Fellesorganisasjon (The Organization of Timber and Building Materials Merchants)

The standard expresses what the aforementioned organisations have agreed on as general conditions of contract for the purchase of construction products. It is the aforementioned organisations' intention that the standard is to be applied without alterations or deviations other than those for which the standard itself allows, except for those which are necessary on account of special circumstances pertaining to an individual project.

1 Scope

This standard lays down contractual provisions for use in the purchase of construction products when the purchaser is not a consumer. "Consumer" shall mean a physical person who is not primarily acting in the course of business; see section 1 of the Consumer Purchases Act.

The standard shall not apply if the delivery of construction products forms part of a service assignment, including a building contract, and the service assignment constitutes the preponderant part of the obligations; see section 2(2) of the Sale of Goods Act.

2 The contract

2.1 Contract documents

Unless otherwise agreed, the following documents shall form part of the contract, and shall apply in the order in which they are listed:

- a) the contract document, if such a document has been prepared;
- b) the seller's order confirmation;
- c) the purchaser's order;
- d) the seller's offer;
- e) the basis for the tender or the competition;
- f) information in the product specifications provided by the seller or an earlier sales link, if such product specifications must be assumed to have influenced the purchase;
- g) this standard (NS 8409).

2.2 Sale of Goods Act

The Act of 13 May 1988 No. 27 relating to the sale of goods (the Sale of Goods Act) shall apply insofar as no contrary provisions are laid down by this standard or the agreement between the parties.

3 Duty of confidentiality

The parties shall have a duty of confidentiality in respect of information which they obtain about the other party's business-related circumstances. Drawings and other technical documents supplied by one party shall only be used by the other party to achieve the objective of the contract, and may therefore only be given to third parties when this is necessary for the performance of the contract.

4 Delivery

4.1 Local sale

If a local sale has been agreed, delivery shall take place when the goods are received at the specified location; see section 7(1) of the Sale of Goods Act.

4.2 Shipment sale

If a shipment sale has been agreed, delivery shall take place when the goods are handed over to the carrier who undertakes to transport them from the place of shipment; see section 7(2) of the Sale of Goods Act.

4.3 Delivery at a specific place

If delivery at a specific place has been agreed, delivery shall take place at the time of unloading at the reception address and unloading location specified in the contract; see section 7(3) of the Sale of Goods Act.

If installation has also been agreed, delivery shall take place after the installation of the goods has been completed. The same shall apply in the case of agreed part deliveries.

The purchaser shall ensure that there is an access road from the public road to the unloading location, and that there are internal transport roads. The purchaser shall be obliged to give the seller necessary information about the conditions leading up to and at the delivery location in good time prior to delivery. The purchaser shall ensure that the reception conditions are such that the deliveries can be made in the specified manner.

The seller shall in good time give the purchaser necessary information which is important for the reception of the construction products, and about any steps the purchaser must take before delivery.

4.4 Collection sale

If a collection sale has been agreed (see section 6 of the Sale of Goods Act), delivery shall take place when the purchaser has taken possession of the construction products. If free loading has been agreed, delivery shall take place when the construction products have been loaded onto the agreed means of transport.

4.5 The purchaser's duty of notification

If it has been agreed that the seller is to arrange transportation, the purchaser shall inform the seller in good time if transportation cannot be undertaken as specified by the seller. The purchaser shall inform the seller as soon as possible of when and how transportation can be undertaken.

If the purchaser is unable to receive the delivery at the agreed time, it shall inform the seller of this fact without undue delay. The purchaser shall bear the additional costs incurred by the seller as a result of the delay; see section 11 of the Sale of Goods Act.

4.6 The seller's duty of notification

If the seller cannot deliver at the agreed time, it shall immediately inform the purchaser. The seller shall inform the purchaser as soon as possible of when delivery can be made.

4.7 Delivery note

The seller shall ensure that the construction products are accompanied by a delivery note specifying the content of the consignment.

4.8 Documentation required by law

The seller shall ensure that the construction products are accompanied by the documentation which is required by law or regulation, or arrange for the documentation to be made available to the purchaser.

5 Risk

The risk of damage to the construction products shall pass from the seller to the purchaser when the products are delivered; see the provisions in clauses 4.1, 4.2, 4.3 and 4.4.

The passing of risk shall otherwise be regulated by the provisions in Chapter III of the Sale of Goods Act.

6 Requirements relating to the delivery

6.1 Quality requirements

The construction products shall meet the requirements specified in the contract.

If quality requirements are not specified expressly in the contract, such quality requirements shall apply as are normal for construction products used for corresponding purposes.

The construction products shall satisfy the requirements specified in laws and regulations applicable at the time the contract was concluded. The seller shall notify the purchaser of amendments to laws and regulations which it understands to be important for the purchaser.

If requirements in laws and regulations are amended after the conclusion of the contract, the purchaser shall be entitled to demand, before the agreed delivery date, that the delivery be changed in accordance with the new requirements. Both parties shall be entitled to an adjustment of the price in respect of increased costs or savings. The seller shall be entitled to a necessary extension of the delivery deadline.

The construction products shall be packed in a normal or otherwise proper manner, as required to preserve or protect the construction products.

6.2 The seller's duty of disclosure

The seller shall ensure that guidelines on special requirements concerning storage, installation, use, operation and maintenance are made available to the purchaser. The information shall be available in Norwegian.

6.3 The purchaser's specifications

The purchaser shall bear the risk in respect of the consequences of errors in its specifications. It shall also bear the risk in respect of the quality and usability of materials it delivers, in respect of the usability of specified products which it requires to be used, and in respect of other services which it provides or requires to be used in connection with the performance of the contract.

The seller shall inform the purchaser without undue delay if it understands that the specifications do not fit the purchaser's purpose with regard to the construction products. The seller shall have a corresponding duty of notification in respect of deficient quality and usability of materials, specified products and other services which the purchaser provides or which the purchaser requires to be used.

If the seller does not give notice in accordance with the above provision, it shall compensate the purchaser wholly or partly for the direct loss the purchaser would have avoided if the seller had given timely notice.

7 Use of sub-suppliers

Unless otherwise agreed, the seller shall be entitled to delegate the delivery of the construction products to a sub-supplier. The seller's contractual liability to the purchaser shall not be altered when a sub-supplier is used.

If the purchaser so requires, the seller shall state which sub-supplier it intends to use.

8 Price. Payment. Overdue payment. Security

8.1 Price

The agreed price shall be exclusive of value added tax.

8.2 Index-linking

The agreed price shall not be index-linked unless otherwise agreed.

8.3 Invoice

The invoice shall be itemised so that the purchaser can check it, and shall accord with the delivery note.

The seller shall issue its invoice after the construction products have been delivered, unless otherwise agreed.

If part deliveries have been agreed, the seller shall be entitled to issue an invoice after each part delivery.

8.4 Payment deadline

The purchaser shall pay within 28 calendar days of receiving an invoice.

8.5 The purchaser's right of retention

If a daily penalty charge has accrued, or if the purchaser has other claims resulting from breaches of contract by the seller, the purchaser shall be entitled to retain a part of the payment sufficient to cover the specified claim.

The purchaser shall otherwise be obliged to pay undisputed claims by the payment deadlines.

8.6 Penalty interest

In the case of overdue payment, the purchaser shall pay penalty interest pursuant to the Act of 17 December 1976 No. 100 relating to interest on overdue payments.

8.7 Provision of security

The parties may agree that security is to be provided for the performance of the contractual obligations.

9 Timely delivery. Deadline extension

The seller shall deliver the construction products at the agreed time. The same shall apply to part deliveries.

If the seller wishes to claim a deadline extension, it shall notify the purchaser of this fact without undue delay after it has become aware that the change to the delivery may mean that the construction products cannot be delivered at the agreed time. If the seller fails to do so, it shall lose the right to demand a deadline extension.

10 Delay

10.1 The seller's liability in the event of a delay

The seller shall be liable in damages unless it can prove that the delay is due to hindrances outside its control which it could not reasonably have been expected to take into consideration at the time of concluding the contract or whose consequences it could not reasonably have been expected to have overcome (force majeure). The same shall apply in the case of a delayed delivery from a sub-supplier provided that the sub-supplier or another earlier sales link does not prove such a hindrance either.

The purchaser shall take reasonable steps to limit its loss.

The seller's liability in the event of delayed delivery shall be governed by the provisions in sections 22 to 29 of the Sale of Goods Act; see also section 67.

10.2 Daily penalty charge

If the parties have agreed a daily penalty charge, the purchaser shall not be entitled to claim compensation in addition to or instead of the daily penalty charge. The purchaser shall be entitled to claim compensation instead of the daily penalty charge if the seller has caused the delay intentionally or through gross negligence. The provision in clause 10.1, first paragraph, shall apply correspondingly.

The seller's total daily penalty charge liability shall be limited to 10% of the price of the delayed delivery.

Even if a daily penalty charge has been agreed, it shall not constitute any limitation on the purchaser's right to rescind the purchase due to delay in accordance with sections 25 and 26 of the Sale of Goods Act.

11 Defects in construction products. The seller's liability

11.1 Defect

A defect shall exist if, on the delivery date, the construction products do not accord with the requirements relating to type, quantity, quality, other properties and packaging which are specified in the contract, and this is due to circumstances for which the seller is liable.

The seller shall also be liable for any defect which arises later if it is caused by a breach of contract by the seller. The same shall apply if, during a specified period of time after delivery, the construction products do not have the properties which the seller, by guarantee or otherwise, has undertaken that the construction products will have; see section 21(2) of the Sale of Goods Act.

Damage to the construction products that is caused by the seller neglecting its duty of disclosure, see clause 6.2, shall also be regarded as a defect unless the purchaser has acted negligently.

11.2 Liability for defects

The purchaser shall be entitled to assert liability for defects against the seller provided that it has made its claim in good time; see clause 12.

The seller shall be entitled to undertake rectification or the delivery of substitute goods provided that this does not cause the purchaser material inconvenience or present a risk that the purchaser will not have its expenses covered by the seller; see the conditions in section 36 of the Sale of Goods Act.

The purchaser shall be entitled to demand that the seller rectify a defect at its own expense if this can be done without causing the seller to incur unreasonable expense or inconvenience; see the conditions in section 34 of the Sale of Goods Act.

The seller's liability in damages for defects in the construction products shall be governed by the provisions in section 40 of the Sale of Goods Act; see also sections 27 and 67.

11.3 Liability for damage

The seller's liability for damage, in addition to the provisions of clause 11.2, shall not include damage to anything other than the sold construction products, unless the construction products deviate from what the seller has guaranteed or the seller has made errors or omissions; see section 40(3) of the Sale of Goods Act.

The purchaser shall take reasonable steps to limit its loss.

11.4 Recourse claims against the purchaser

If the seller has to pay compensation directly to the purchaser's customer or the client, and this is due to circumstances for which the purchaser is liable, the seller shall be entitled to make a recourse claim against the purchaser.

11.5 Product liability

The provisions in clauses 11.3 and 11.4 shall not limit liability pursuant to the Act of 23 December 1988 No. 104 relating to product liability (the Product Liability Act).

12 Checks upon receipt. Defect notification periods

12.1 The purchaser's checks upon receipt. Notification of defects

Upon receipt of the construction products, the purchaser shall:

- a) check that the construction products received accord with the delivery note;
- b) undertake a reasonably thorough quality check of the construction products.

In addition, the purchaser shall conduct an unpacking check in accordance with good practice for the construction products in question.

Any deviations or visible damage shall, insofar as possible, be noted on the delivery note or consignment note.

The purchaser shall lose its right to invoke a defect if it fails to notify the seller without undue delay of a defect which it has or should have discovered when conducting the check.

12.2 Subsequent notification of defects

The purchaser shall give notice of a defect it discovers within 14 calendar days, at the latest, of the date on which it discovered or should have discovered it, and before the construction products are used. If the purchaser fails to give notice of a defect by this deadline, it shall lose its right to make a claim based on that defect.

The purchaser shall not be entitled to make claims against the seller later than five years after delivery. In the case of part deliveries, the starting date for the period shall be the date on which the final part delivery is made.

12.3 Specification of defects

The purchaser's claim shall specify the nature, scope and consequences of the invoked defects, insofar as this is possible.

12.4 Notice of rectification, delivery of substitute goods or rescission

The purchaser shall lose its entitlement to rectification, the delivery of substitute goods or rescission if it fails to notify the seller of the claim at the same time as it gives notice pursuant to clauses 12.1 or 12.2, or within a reasonable period of time thereafter; see sections 35 and 39(2) of the Sale of Goods Act.

12.5 Exceptions from the rules relating to notification of defects

Irrespective of the aforementioned rules concerning notification of defects, the purchaser shall be entitled to invoke defects if the seller has been grossly negligent or otherwise acted in conflict with honesty and good faith; see section 33 of the Sale of Goods Act.

13 Changes to orders

The parties shall agree changes in writing.

In the case of manufacturing sales, the purchaser shall be entitled to order changes.

If an order is changed, both parties shall be entitled to an adjustment of the price in respect of increased costs or savings. The seller shall be entitled to a necessary extension of the delivery deadline.

14 Cancellation

The purchaser shall be entitled to cancel orders of construction products which are not delivered.

If an order is cancelled, the seller shall be entitled to compensation for the economic loss it suffers as a result of the cancellation; see Chapter X of the Sale of Goods Act.

If the purchaser cancels an order for construction products which are to be manufactured especially for the purchaser, the seller shall not be entitled to uphold the purchase by continuing the manufacturing process, making other preparations for delivery, or demanding payment, unless discontinuance would cause the seller material inconvenience or cause the seller to run the risk of not being compensated for losses caused by the cancellation. If the seller is not entitled to uphold the purchase, the compensation for losses resulting from the cancellation shall be calculated in accordance with the rules in Chapter X of the Sale of Goods Act.

15 Disputes

Insofar as possible, the parties should seek to resolve disputes between them concerning the contractual relationship amicably.

Disputes between the parties concerning the contractual relationship which are not resolved amicably shall be settled by ordinary legal proceedings.

The purchaser's legal venue shall be the legal venue for all legal proceedings originating from the contract.

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