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General delivery regulations for piece work surface treatment services

**Adopted 1994 by the Swedish Electroplaters and Surface Finishers Society
and the Swedish Powder Coating Association
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1 Application

- 1.1 These general delivery regulations shall be applied when the parties, in writing or by other means, have made an agreement thereto. Exemptions from the regulations must be agreed in writing to be valid.

2 Definitions

The following terms have the meaning so stated in these regulations.

2.1 Piece work surface treatment

The surface treatment which the seller carries out on behalf of the buyer, on goods belonging to the buyer or a third party with a contractual relationship to the buyer.

2.2 Seller

The contractual party who is responsible for, and delivers the piece work surface treatment to the buyer.

2.3 Buyer

The contractual party who has made an agreement for piece work surface treatment on goods for his behalf.

2.4 Agreement

The agreements of the parties concerned, with drawings, modifications and additions applicable for one or several deliveries of piece work surface treatment.

2.5 Goods

The parts which shall be surface treated, or have been surface treated.

2.6 Delivery

A separate batch of goods of one or several part types, which on the same occasion are transported to the deliverer for piece work surface treatment. Goods which are back-ordered or otherwise marked in writing as belonging to the batch are included in the delivery.

2.7 Price

The remuneration for the piece work surface treatment which the buyer shall pay to the seller as per the agreement.

3 Product information

- 3.1 Information and data for product or method information, price lists and similar documents, are binding only to the extent that they are specifically referred to in the agreement.

4 Drawings and descriptions

Drawings and technical documents concerning the goods, their manufacture and surface treatment, which are issued by one party to the other, remain the property of the issuing party. Drawings received, technical documents or other technical information, may not without the consent of the other party be used for work other than in connection with the goods. They may not, without the consent of the issuing party, be used, copied, reproduced, issued, or in any other way be brought to the attention of a third party.

5 Requirements

- 5.1 Requirements for piece work surface treatment shall be indicated in the agreement. Standards or the like shall be issued to the seller, if they are not already known to be in his possession.
- 5.2 Surfaces which are not to be coated or otherwise affected shall be clearly defined in the agreement. Unspecified surfaces may, but are not required to be, coated.
- 5.3 The buyer is responsible for material properties and composition, standards, and other for the surface treatment relevant information, being included in the agreement. Unless otherwise specified the national standard in the seller's country is to be applicable for the application which the seller evaluates the goods shall have, and for the surfaces which the seller evaluates to be relevant.

6 Condition of the goods prior to surface treatment

- 6.1 Treatment of the goods by means of the manufacturing operation prior to delivery to the seller shall be indicated, if this can be of importance to the surface treatment.
- 6.2 If the goods material is not specified the seller may assume that it is of a typical quality for the application in question.
- 6.3 Constructional design, dimensions and materials for the goods shall, unless otherwise agreed, facilitate surface treatment as per the given requirements without additional work for the seller in comparison with praxis for the agreed surface treatment method. If this is not the case, the buyer shall without delay be informed and the procedure agreed. If this implies additional work for the seller he is entitled, at his own discretion, to receive reasonable compensation for this or, if the buyer's breach of contract is substantial for the seller, to nullify the agreement, independent of if the buyer understood or should have understood this.
- 6.4 If the goods are sensitive to handling which is normal during surface treatment as per the method in question, this shall be indicated to the seller.
- 6.5 Changes, however small, from agreed conditions with respect to constructional design, choice of materials, condition, or surface impurities on the goods, shall be confirmed to the seller without delay. In the event that additional work is necessary to comply with the requirements the seller is entitled, at this own discretion to receive reasonable compensation for this or, if the buyer's breach of contract is substantial for the seller, to nullify the agreement, independent of if the buyer understood or should have understood this.

7 Deliveries to the seller

- 7.1 The seller shall without delay inform the buyer as to transport damages or other defects discovered in the goods.
- 7.2 If the buyer finds that he cannot keep the agreed delivery date to the seller, or that the volume of goods, or condition of the goods, does not correspond to what has been agreed, the seller shall without delay be informed.
- 7.3 If delivery to the seller does not take place at the right time, in the right volume or condition, he shall be entitled to extend his delivery date within reason with respect to

the work situation, and to receive reasonable compensation for additional work.

- 7.4 The buyer shall ensure that the goods, or goods container, is on delivery to the seller marked in such a way that the seller can without ambiguity read the type of goods, volume, surface treatment to be carried out, and which agreement regulates the delivery.

8 Surface treatment method

- 8.1 The seller shall surface treat the goods as per the requirements and other technical documentation which has been agreed. Exemptions from the requirements shall be confirmed to the buyer without delay, if they cannot without permanent effect on the goods be rectified free of charge by the seller. This is applicable irrespective of how the exemptions were incurred.
- 8.2 The seller has the right to let someone else perform the Piece work surface treatment, provided that the seller can supervise such work and provided that the other provisions in this agreement can be upheld.

9 Checking and testing

- 9.1 The seller shall carry out process and production monitoring and checking of surface treated goods to a sufficient extent to ensure that the requirements are met. Destructive tests on the buyer's goods may only be made on agreement.
- 9.2 Testing in addition to what is stated in item 9.1, including documentation and traceability requirements from the buyer in addition to the normal method at the seller, entitle the seller to reasonable compensation.
- 9.3 The buyer shall for testing indicated in item 9.2, indicate methods, withdrawals, acceptance limits and procedures, in the event of exemptions. If standards, or the like, are referred to these shall be issued to the seller on ordering unless it is known that these are already in his possession.

10 Deliveries to the buyer

- 10.1 If the parties have come to an agreement as to delivery to the buyer within a specific time period, this is to be applicable as of when the goods and complete technical documentation have been delivered to the seller.
- 10.2 If the seller finds that he cannot keep the agreed delivery date, or if a probable delay arises on his part, he shall without delay inform the buyer of this and thereby indicate the reason for the delay, and as far as possible the date when the delivery is expected to take place.
- 10.3 If a delivery delay arises as a result of circumstances indicated in item 14.1, or as a result of any action or negligence on behalf of the buyer. The delivery date shall be extended sufficiently with respect to the circumstances. This is applicable irrespective of whether the reason for the delay occurs prior to, or after, the expiry of the agreed delivery date.
- 10.4 If the seller does not deliver the goods in the correct time the buyer is entitled to a penalty payment as of the delivery should have occurred.

This penalty shall for each week of the delay period consist of 0.5 % of the part of the agreed price which

refers to the part of the goods which as a result of the delay cannot be taken into use. The penalty shall not exceed 7.5 % of this calculation basis. The penalty falls due for payment on written request from the buyer, but not before all goods have been delivered, or at the time for nullification as per item 10.5.

The buyer loses his right to liquidate damages if he has not within six months, after the time delivery should have taken place, lodged a claim for such damages.

- 10.5 If the buyer is entitled to penalty payment as per item 10.4, and the goods have still not been delivered, the buyer is entitled by means of confirmation in writing to request delivery within a final and reasonable period, which shall not be less than one week.

If the seller fails, as a result of some reason for which the buyer is not responsible, to deliver within this final period, the buyer is entitled by means of written confirmation to the seller to nullify the agreement with respect to that part of the goods which could not be taken into use.

Beyond the penalty as per item 10.4 each request from the buyer with respect to the delay of the seller is not valid.

In case of such termination the buyer shall also be entitled to compensation for the loss he suffers because of the seller's delay to the extent that the loss exceeds the maximum of liquidated damages the buyer could have claimed according to clause 10.4.

The compensation shall not exceed 7,5 percent of the above mentioned calculation basis.

Beyond the penalty according to clause 10.4 and damages according to this clause each request from the buyer with respect to the delay of the seller is not valid. This restriction of the seller's responsibility is applicable to the extent that he is not responsible for gross negligence.

- 10.6 The seller shall pack the goods in the same manner as they were delivered to him, unless otherwise agreed. The buyer shall supply packing materials when so required.
- 10.7 Transports from the seller take place at the buyer's risk and expense.
- 10.8 If the buyer finds that he will not be able to receive or collect the goods on the agreed date, or if a delay on his behalf is probable, he shall without delay confirm this to the seller in writing and thereby indicate the reason for the delay, and as far as possible the date at which the reception of the goods can be expected.

If the buyer fails to receive or collect the goods on the agreed date, he remains liable to meet every payment made with respect to the delivery, as if the goods in question had been delivered. The seller shall take care of the storage of the goods at the buyer's risk and expense. On the request of the buyer the seller shall insure the goods at the buyer's cost.

11 Payment

- 11.1 Unless otherwise agreed payment shall be made in cash within 30 days from when the goods are reported ready for delivery, and an invoice as per the agreement is sent to the buyer.
- 11.2 If the buyer does not make payment in the right time the seller is entitled to a delay interest from the day due with

an interest rate which exceeds the bank rate by 8 per cent.

If the buyer does not make payment for invoices due the seller is entitled, on confirmation in writing to the buyer, to take special measures to honour the agreement or to nullify the agreement. The seller is entitled to compensation for the damage he suffers.

Such compensation, however, shall not exceed the agreed price with the addition of the delay interest.

12 Responsibility for faults

- 12.1 The seller is entitled by means of repair surface treatment, re-working or surface treatment of replacement parts, to correct all faults which arise as a result of deficiencies in the surface treatment.
- 12.2 The responsibility of the seller refers only to faults which are detected within six months as of the date the goods were delivered.
- 12.3 The responsibility of the seller does not refer to faults which result from the handling of the goods, from technical documentation provided by the buyer, specifications, standards and the like, or to the failure of the buyer to provide such documentation and specifications.
- 12.4 In accordance with item 12.1, repaired, reworked or parts delivered in exchange, the seller has the same responsibility as for the original goods during a period of three months as of the correction.
- 12.5 The buyer shall complain in writing to the seller for faults without unreasonable delay after the fault is discovered, and in no case more than one week after the expiry of the period of responsibility. The complaint shall contain a description of the fault. If the buyer does not make complaint for the fault within the agreed dates he shall lose the right to make claim for the fault.
- 12.6 If the buyer makes claim for a fault which is not the responsibility of the seller, the seller is entitled to compensation for the work and expenses incurred by the complaint.
- 12.7 Transport of claimed goods to and from the seller shall take place at the buyer's risk and expense, unless otherwise agreed.
- 12.8 If the seller does not correct the fault within a reasonable time the buyer is entitled to issue to him, in writing, a final demand for it. If the seller does not correct the fault within the period of the final demand the buyer is entitled, at his own discretion, to:
- Have repair treatment, re-working or surface treatment, of replacement parts, carried out at the risk and expense of the seller, on the assumption that the buyer proceeds with reason.
 - Claim a price reduction of not more than 15 % of the agreed price.
- If the defect must be considered substantial, the buyer may instead choose to terminate the agreement by written notice to the seller. In case of termination the buyer shall be entitled to compensation for the loss he has suffered, although not more than 15 percent of the agreed price.
- 12.9 Beyond what has been described in items 12.1- 12.8 the seller is not responsible for faults. The seller is not

responsible, on the basis of faults during or in the surface treatment, to provide compensation to the buyer for the scrapping of goods, production loss, loss of profits or other direct, indirect or consequential damages. This restriction of the sellers responsibility is applicable to the extent that he is not responsible for gross negligence.

12.10 The sellers liability for compensation is limited in each case, and irrespective of the degree of the seller's negligence, to the agreed price for piece work surface treatment of the claimed goods and transport costs.

12.11 The seller does not bind oneself to report loss of goods less than 5 % of the total number of the delivery.

12.12 Notwithstanding the provisions above the seller shall have no liability for defects in the goods for more than one year from the day the goods was delivered.

13 Responsibility for material damage resulting from the surface treatment (product liability)

The seller shall under no circumstances be liable for loss of production, loss of profit, consequential economic damage or any other indirect damage.

a) To property or personal property where the damage was incurred when the goods were in the possession of the buyer.

b) To products produced by the buyer, or to products in which these are included, or damage to property or personal property, which these products caused as a result of the goods.

If the seller is imposed with responsibility towards a third party for damages or loss resulting from the goods, the buyer shall refund the seller to the same extent that the seller's responsibility is limited by the previous paragraph to the same extent that the seller's responsibility is limited by the previous paragraphs. The above description as to the limitation of the seller's responsibility is not applicable if he is responsible for gross negligence.

c) On a person, unless it is proved that the damage is caused by negligence of the seller or someone for whom he is responsible.

The seller and the buyer shall be mutually obliged to let themselves be summoned to the court or the arbitral tribunal which examines claims against either of them, if the claim or the loss is based on damage alleged to have been caused by the goods. The liability between the seller and the buyer, shall however always be settled in accordance with clause 15.

14 Exemptions as per force majeure

14.1 The following circumstances provide exemption where they imply that the completion of the agreement is obstructed or unreasonably hindered. Labour conflicts or other circumstances beyond the jurisdiction of the parties, such as fire, war, mobilization or unpredicted military call-up of a similar scope, requisitioning, embargo, currency restrictions, civil disturbance, scarcity of goods and transport, power restrictions, and faults and delivery delays from contractors resulting from such exemptions.

Circumstances taking place on commencement of the agreement provide exemption only to the extent that their effect on the completion of the agreement could not be predicted.

14.2 It is incumbent on the party requesting exemption to inform without delay in writing the other party in this respect, and also in respect of their cessation.

If such exemption obstructs the buyer he shall compensate the seller for those expenses incurred for the safeguarding and protection of the goods.

14.3 If the completion of the agreement is delayed by more than six months as a result of such exemption named in item 14.1, each party is entitled, without otherwise restricting the agreement in respect of its other regulations, to nullify the agreement by written confirmation to the other party.

15 Arbitration, legal praxis

15.1 Dispute with respect to the agreement and such related matters may not be brought before a court of law, but shall be decided by arbitration as per legal praxis in the country of the seller.

15.2 Dispute with respect to the agreement shall be evaluated as per the legal praxis in the land of the seller, unless otherwise specifically agreed.