



## GENERAL CONDITIONS FOR SALE AND DELIVERY

### **1. Scope**

- 1.1. This contract is entered into between Volvo Entreprenørmaskiner A/S (Seller) and a commercial enterprise (Buyer).
- 1.2. These General Conditions for Sale and Delivery, including terms and conditions for the factory warranty, extended warranty and spare parts, apply to all Seller's agreements concerning sale of Seller's machinery, tools, implements, equipment, spare parts and other components and devices, unless otherwise agreed in writing. To this should be added the data processor agreement which Buyer enters into separately concerning use of the GPS functionalities, see clause 9 below.
- 1.3. **Please note that we regularly update customer and credit information by registering and obtaining information from CPR / CVR as well as credit information agencies approved by the Danish Data Protection Agency.**
- 1.4. Buyer must present any objections to the contents of the order confirmation at the latest two weekdays after having received the order confirmation; although not later than upon delivery.
- 1.5. Any modifications of the order confirmation made at a later point in time are only binding provided both parties have accepted these in writing.

### **2. Offer, acceptance and order confirmation**

- 2.1. All offers made by Seller are binding for thirty days (unless otherwise stated). Sales contracts are not binding until Seller has received a copy of Seller's written order confirmation signed by Buyer. In the event that Buyer makes additions to or otherwise modifies an order confirmation, Seller is entitled to reject such additions or modifications or cancel the order. If Seller accepts such additions or modifications, Seller can alter the time of delivery and the price accordingly; Buyer has the duty to accept these alterations.
- 2.2. Seller retains the right to sell the goods to a third party until the signed and unmodified order confirmation reaches Seller; any such sale will not in any way entitle Buyer to raise a claim against Seller.
- 2.3. In the event of tax increases, price changes from Volvo's suppliers, exchange rate fluctuations, changes in customs duties or other such changes affecting the price agreed for the goods, Seller is entitled to raise the price accordingly.

### **3. Terms of payment**

- 3.1. The purchase sum, including any and all duties, fees and costs, is payable in cash to Seller upon delivery, unless otherwise agreed.
- 3.2. Late payment will incur an interest of 1.5 per cent per month and a fee of DKK 300 per written reminder.

### **4. Retention of title**

- 4.1. The parties to this contract agree prior to delivery that Seller, or whoever Seller may have assigned his rights to, retains the title in the sold goods until the purchase sum including interest, costs and other sums payable have been paid in full.
- 4.2. Buyer has the duty to take out the requisite liability insurance, comprehensive insurance and fire insurance and has a duty to verify whenever requested compliance with this by presenting policies and receipts for paid premiums until the purchased goods are paid in full. Buyer must provide security to Seller by way of an insurance sum, if any, until the goods are paid in full. This insurance sum will serve as advance satisfaction of Seller's claim in so far as it is not used to repair the purchased goods.
- 4.3. Buyer is to maintain the goods in safe and proper condition and must allow Seller access to inspect the purchased goods during the period of retention of title.
- 4.4. Buyer has no right to sell, pledge or otherwise dispose of the purchased goods in such a manner that a third party acquires a right in the goods. If the purchased goods are rented or lent to a third party, Buyer has a duty to take out the requisite, extended insurances.
- 4.5. Buyer may not, without prior written consent from Seller, leave the purchased goods in the care of a third party for repair, unless such repair is paid in cash.
- 4.6. In the event of a permanent change of address, Buyer must notify Seller immediately.
- 4.7. Legal registration of retention of title is to be paid by Buyer.

### **5. Delivery and risk**

- 5.1. Buyer is to organise transport and insurance of the sold goods from Seller's premises, unless otherwise agreed. The risk in the goods passes to Buyer when Seller makes the sold goods available to Buyer in due course (for example Ex Works).
- 5.2. Should the parties to this contract have agreed on a delivery clause, this clause will be interpreted according to the Incoterms applicable at the time of concluding this contract.

### **6. Time of delivery, delay**

- 6.1. The times of delivery stated by Seller are indicative until Seller confirms the final time of delivery. Delays, if applicable, will not entitle Buyer to cancel the contract, unless the delay exceeds a period of **60 days**. Is late delivery caused by force majeure or an act or omission on the part of Buyer, the time of delivery shall be reasonably extended.
- 6.2. Is Seller unable to deliver on time or does delay on the part of Seller seem likely, Seller must notify Buyer to this effect stating the cause for the delay and, to the extent possible, the time when delivery is expected to take place.
- 6.3. Seller is not liable for any contractual penalty or loss of operation, loss of time, loss of profit, loss of earnings or any other indirect losses resulting from the delay. Further to this, Seller's liability to pay damages for any other losses resulting from the delay can total no more than **15 per cent** of the agreed purchase sum.
- 6.4. Should Buyer fail to receive the sold goods on the agreed date, he has a duty to settle the payment as if delivery was effected. Seller must then see to it that the sold goods are stored on Buyer's account and risk.

### **7. Liability for Defects**

- 7.1. Immediately upon receipt and before the purchased goods is put into use, Buyer must inspect the delivered goods in order to ensure that it is not defective. Claims about defects that are or should have been found during such inspection must be put to Seller in writing no later than eight days after delivery. If Buyer fails to observe this deadline, he cannot raise a claim for liability against the Seller.
- 7.2. Buyer has a duty to carefully follow the instructions provided by Seller's documentation, including brochures, instructions for use or any other written or oral instructions or information offered by Seller on the use, maintenance and storage of the purchased goods.
- 7.3. Seller's liability for the quality of the goods at the time of delivery covers defects in materials or craftsmanship of work carried before delivery. The liability does not cover defects resulting from Buyer's use/maintenance/storage/repair/modification and other actions if Buyer has not followed Seller's instructions (see clause 7.2); if it is normal wear and tear; if spare parts other than genuine parts or parts instructed by Seller are used; or if the repair was carried by a third party outside of the repair centres or

workshops approved by Seller or if the modification resulted in structural alterations of the goods, modification inconsistent with the basic specifications of the machine, for instance liquid or similar filled onto the wheels, or in the sold goods no longer complying with statutory requirements, certificates or CE certification, including emission requirements.

#### Sale of new products

- 7.4. Seller must be notified in writing of defects claims at the first of, 1) **12 months** from the date when the Volvo machinery is delivered by Volvo Entreprenørmaskiner A/S to the first end user; or 2) **2500 operating hours**. For any other aspects reference is made to Volvo's general conditions for factory warranties, cf. also below.

#### Sale of new spare parts

- 7.5. Seller must be notified in writing of any defects claims within **12 months** following delivery. For any other issues, reference is made to Volvo's general conditions for spare parts, below.

#### Sale of used products, including used spare parts

- 7.6. Used products are purchased as found and inspected with no liability on the part of Seller, unless otherwise agreed. Used goods, including machinery, spare parts and other items, are sold or exchanged as found and inspected with no liability on Seller's part and with no right to raise a claim; subject, however, to the below terms.
- 7.7. If the selling party disregards his duty to loyally disclose all material facts or if the condition of the machine and other goods is considerably poorer than could reasonably be expected in consideration of the price and the general circumstances, clause 7.6 does not apply.
- 7.8. However, for sold or exchanged used goods Buyer's right to raise a claim is limited to **four months** after delivery, whereas Seller has a similar right to raise a claim for a period of **six months**.

- 7.9. Unless otherwise agreed, Buyer warrants for the mileage/operational hours, service inspections of the sold/exchanged machine and that the machine is free from any charges or encumbrances, complies with applicable regulations and CE certification, including emission requirements, and is fit for purpose and in a clean state.

#### Remedies for breach of contract and limitation of damage

- 7.10. If Buyer raises a claim, Seller has the right to inspect the sold goods immediately, before any remedial action is taken. Should Buyer fail to observe this obligation, he forfeits his remedies for breach of contract.
- 7.11. In the event of a defect in the sold goods, the Seller will at his own option remedy the defect, redeliver the goods, or grant a proportional discount. Should Seller decide to take remedial action or make a redelivery, Buyer is barred from claiming other remedies for breach of contract, including terminate the contract, claim a discount on the purchase sum or claim compensation.
- 7.12. If Buyer can prove that a defect is a major deficiency, Buyer may instead terminate the contract by written notice to Seller.
- 7.13. Seller is not liable for loss of operation, loss of time, loss of profit, loss of earnings or any other indirect losses resulting from the defect. Further to this, Seller's liability to pay damages for any other losses resulting from the defect can total no more than **15 per cent** of the agreed purchase sum.

### **8. Warranties**

#### For new products

- 8.1. Seller issues a warranty for new construction equipment (CE) in accordance with Volvo's producer warranty as well as an additional guarantee from Seller. Prior to entering into this contract, Buyer has been informed of the scope of the warranties and have when entering into this agreement received in writing the producer guarantee and the additional guarantee.

#### For used products

- 8.2. Seller issues no warranties for used goods sold, nor for the number of operational hours. However, a separate service agreement between Seller and Buyer may be entered into for specific, used products.

#### For spare parts

- 8.3. Seller issues a limited spare parts warranty as specified in the general conditions for sale of spare parts and the warranty conditions issued by Volvo Entreprenørmaskiner A/S.

### **9. GPS, data processor agreement and personal data**

An integral component of many CE machines is a GPS transmitter which records the number of operational hours of the machine and its location. If the sold machine features GPS functionality, Seller will on a regular basis through his supplier receive information via the transmitter; this includes information about machine model and serial number, geographic location, operational hours and owner's name. Consequently, Seller processes personal data on behalf of Buyer. It is a requirement for such data processing that Buyer enters a data processing agreement with Volvo Entreprenørmaskiner A/S, before Buyer puts the GPS functionality into use. Buyer has been furnished with an appropriate data processing agreement, either upon creation of the account or upon conclusion of the sales contract. General information about how Seller processes personal data can be found at the website of Volvo Entreprenørmaskiner A/S.

### **10. Product liability**

- 10.1. Seller assumes no liability for injuries to people or damage to goods beyond the mandatory provisions of Danish law which applies to Seller in Denmark. Seller is only liable for damage to commercial property owned by Buyer or a third party resulting from defects in Seller's goods, provided it can be proved that the damage is attributable to error or neglect on the part of Seller or his assignees and if the damage is attributable to this within the first year. Seller is not liable for indirect damage or losses, see the clause above on such damage and losses.
- 10.2. Seller's liability for defects in the goods can never exceed the coverage of Seller's product liability insurance. If Seller is found to be liable vis-à-vis a third party due to Buyer's use, amendment, modification, scrapping, disposing, sale, lending, rental, leasing or other forms of disposal of the purchased goods, Buyer shall hold Seller harmless. Buyer must accept that claims will be heard by the same court of law that hears claims for compensation against Seller concerning the sold goods.

### **11. Choice of law and venue**

- 11.1. These General Conditions for Sale and Delivery, including terms and conditions for the factory warranty and spare parts, apply to all disputes that may arise between the parties to this contract; however, for any matters not addressed by the Terms of Delivery, NL 92 will apply for

Buyer's residing in Scandinavia, for all other matters the Danish Sale of Goods Act (Act no. 120 of 6 April 1906) with amendments will apply.

- 11.2. Disputes arising out of or in connection with this contract will be settled according to Danish law (although the parties to this contract waive the right to apply CISG) at the normal court of law in Seller's judicial district.