

# Jørgensen Appliance A/S

(Jørgensen Appliance A/S - VAT no. 27554342 )  
DK-4000 Roskilde

## SALES AND DELIVERY TERMS (2004)

### I. PREAMBLE

1. These general Conditions shall apply as far as they are not deviated from on written agreement by the parties.
2. The term "Unit" hereinafter refers to any product for sale by the Seller.

### II. DRAWINGS, SPECIFICATIONS, SAMPLES ETC.

1. All specifications and information concerning price, weight, dimensions, performance, properties, construction, technical and other data, illustrations and price lists etc. are approximate and only intended as a guide. The information, which may be changed by the Seller at any time and without notice, is only binding to the extent that is expressly represented in the contract.
2. All drawings and technical documents regarding the delivery or parts thereof submitted to the Purchaser, prior or subsequent to the signing of the contract, shall remain the property of the Seller. They may not, without the consent of the Seller, be used for any purpose other than the operation and maintenance of the item delivered and may not be copied, reproduced, transferred or otherwise communicated to a third party by the Purchaser.
3. The Seller shall, at the Purchaser's request, provide free of charge one copy of the relevant manual, operating instructions or installation instructions.
4. In the event of the construction or specifications of a unit provided by the Seller being altered prior to the time of delivery, the Seller is entitled to deliver the unit in its henceforth existing construction and specifications etc. provided the unit – according to objective evaluation - has not deteriorated. The same applies regarding the exterior of the unit, including colour.
5. The Purchaser shall – and at his own expense – handle regulatory applications, although subject to agreement in each particular case the Seller may assist the Purchaser in this.
6. All the samples delivered by the Seller are to be regarded solely as type samples, so the Seller is not responsible for the delivered units being equivalent to the samples unless this is expressly stipulated in the contract. With regard to samples, the conditions stated in Clause II.1 also apply.

### III. TERMS OF DELIVERY ETC.

1. Unless stated otherwise in the Seller's offer, these terms are binding for 30 days from the date of the offer. If the date of delivery detailed in the Seller's offer is in excess of 3 months after the date of the offer, the quotation is in all respects subject to confirmation and may later be altered.
2. All prices quoted in the Seller's written material, including the confirmation of order and the offer, are exclude of VAT, duty and any other government tax.
3. All prices quoted in the Seller's offer or confirmation of order are based on the exchange rate anticipated by the Seller. In the event of exchange rate alterations etc. the Seller reserves the right to alter the price if the exchange rate at the settlement day has altered in excess of +/- 0.25 % compared to the first mentioned exchange rate.
4. The place of delivery is the Seller's address in Denmark. Delivery terms are ex works. The method of conveyance will be determined by the Seller but with no liability in this regard.
5. Additional expenses in connection with a non-agreed partial delivery, requested by the Purchaser, will be charged to him.
6. The Purchaser may not return any supplies from the Seller, unless this has been agreed in each particular case.

### IV. INSURANCE

1. Carriage will be insured by the Seller alone to the extent stated in Point III. 4.
2. Any damage or missing parts of the delivery must be reported in writing to the Seller immediately after the Purchaser has become aware of it, and under all circumstances immediately after the goods have been received, accompanied by a declaration to this effect for the transport company.

### V. PACKAGING

1. Unless otherwise agreed, prices stated in offers and agreements include expenses for such packaging or other protection as is required under normal transport conditions to prevent damage or deterioration of the item delivered, until it reaches the destination stated in the agreement.
2. If the Purchaser desires packaging other than that stated in Point V. 1., due, for example, to anticipated sea transport, repeated reloading, export or outdoor storage of the goods, such packaging will only be supplied after special agreements have been made with the Seller in this regard, and the Purchaser will be invoiced for all costs relating to it.
3. The packing material is not to be returned to the Seller and no reimbursement will be made.

### VI. DELIVERY TEST

1. The Seller guarantees only the specifications of the delivered unit according to expressed agreement (see Point II.1. and 6). If the Purchaser wishes the unit's specifications to be tested, he must give the Seller notification of this, so that a representative of the Seller can be present at the test, and prior to implementation of the test the Seller must have the opportunity to examine the unit for the purpose of verifying that it is in good condition, as contracted. The Seller ask call for the test to take place at his premises at no expense to himself.
2. If, on testing, the delivery does not conform to what was expressly agreed, the Seller must ensure that the delivery is brought into line with the agreement as quickly as possible. Deviations within the tolerances, standard-regulated areas, and otherwise within +/- 10% of agreed specifications are regarded as correct and contractual fulfilment.
3. The Purchaser will bear all costs related to the test, unless it is hereby ascertained that the unit delivered does not conform to the agreement, see point VI.2.

### VII. TIME FOR DELIVERY

1. A delivery time specified in the agreement is reckoned from the latest of the following dates:
  - a) the date the agreement is entered into,
  - b) the date the Seller receives a pledge of security or payment approved in the agreement that must be provided before the delivery,
  - c) the date the Seller has received from the Purchaser all the information necessary for fulfilment of the delivery.
2. If the Purchaser fails to fulfil his obligation to furnish security or his payment obligation, fails to provide the information necessary for fulfilment of the agreement, changes the order or in some other way delays the delivery or implementation thereof, the Seller is entitled to extend the delivery time to the extent deemed reasonable according to the circumstances.
3. The delivery time will also be extended by the period necessary for the Seller and any subcontractors if he/they, before or after the signing of the agreement, are completely or partially prevented from punctual completion as a result of industrial dispute or any other circumstance, such as government intervention or measures, fire, war, mobilisation or unforeseen military call-up of a similar scale, requisitioning, embargo, currency restrictions, import restrictions, riots and civil commotion, lack of transportation, general scarcity of goods, cancellation of major projects and restrictions of driving force, and in addition - irrespective of whether this is due to any of the aforementioned circumstances - in the event of shortage of manpower, stoppage or difficulties obtaining materials or other items and similar on the part of the Seller or his suppliers or sub suppliers, deficiencies in deliveries from suppliers or sub suppliers or delays with such deliveries, provided the said conditions cannot be blamed on the Seller and were not known to the Seller, at the time the agreement was entered into with the Purchaser.
4. It is incumbent on the party that wishes to cite any of the aforementioned circumstances to inform the other party promptly in writing of its commencement and cessation.
5. If the Seller exceeds the delivery time by more than 3 months - without such conditions as mentioned in point VII.3. being in existence - the Purchaser is entitled to cancel the agreement, if, despite a submitted written request after the end of the aforesaid 3 months, the Seller does not subsequently deliver within a reasonable deadline. Whether the Purchaser cancels or retains the agreement, he is **not** entitled to compensation for either direct or indirect losses.
6. If the Seller postpones the delivery time by more than 3 months due to such conditions as mentioned in point VII.3., both parties are entitled to cancel the deal, but cannot demand any form of compensation beyond this for either direct or indirect losses.
7. If the delivery time is exceeded by more than 3 months due to such circumstances as named in point VII.2., the Seller is entitled to cancel the agreement. In addition to this, the Seller can demand compensation, irrespective of whether the agreement is cancelled or retained, according to the standard provisions of Danish law.
8. With regard to waived orders the Purchaser must buy everything covered by the sales agreement within the time limit agreed herein. If such a time limit has not been agreed, a deadline of 3 months applies. After the expiry of the deadline or the aforesaid 3 months the Seller is entitled to invoice everything covered by the sales agreement and not yet invoiced, and, at the Seller's discretion, to forward the missing items or to charge and invoice the Purchaser for appropriate storage costs.

### VIII. RIGHTS OF OWNERSHIP ETC.

1. Right of ownership for the delivered units and all accessories remains with the Seller, or the party to whom he has assigned his right, until the entire purchase sum, including interest and expenses, has been paid in full to the Seller or the party to whom he has assigned his right, to the extent such reservation of ownership can otherwise be made.
2. The following apply as long as the reservation of ownership exists:
  - a) The Purchaser is not entitled, without the Seller's consent, to pledge, subject to a proviso or in any similar way dispose of the delivered items.
  - b) The Purchaser is under an obligation to handle the delivery carefully and keep it in good and reasonable condition, and the Seller is entitled to satisfy himself of this at any time.
  - c) If the Purchaser moves address, he must notify the Seller of this promptly and in writing.
- d) The Purchaser is under an obligation, from delivery until final transfer of right of ownership, to keep the delivered items and all accessories insured against damage caused by fire, water, theft, malicious damage or loss during transport etc. for a sum that covers the current market value and is at least equivalent to the Seller's existing outstanding balance.

### IX. PAYMENT

1. Unless otherwise agreed, the Seller's terms of payment are 30 days net. Any later payment will be regarded as overdue payment. However, for sales to non-businessmen the terms of payment are net cash.
2. Money orders, cheques and bills of exchange are not regarded as payment, until full redemption thereof has taken place.
3. For any overdue payment, including granted extensions, the Seller is entitled to charge penalty interest from the date of invoice at the rate currently determined by the Seller for this,

- at present 1.4% for each month or part month.
- If the Purchaser fails to take delivery of consignments ready for delivery on the agreed date, he is nevertheless liable to pay any payments conditional on delivery as if delivery had taken place. The Seller shall ensure that the delivery is stored at the Purchaser's account and risk. At the request of the Purchaser, the Seller shall insure the delivery at the Purchaser's expense.
  - The Purchaser is not entitled to any form of offset or retention, including withholding part of the purchase sum as security for discharge of any obligation pursuant to point X. A delay with a negligible portion of the delivery does not entitle the Purchaser to omit to disburse the full payment pursuant to the settled agreements.
  - The entire currently existing outstanding debt with possible interest and expenses etc. is immediately due for payment in full if the Purchaser fails to fulfil any obligations incumbent on him pursuant to the present sales and delivery terms or if the Purchaser ceases his payments, enters into negotiations on contract, moratorium or other standard credit arrangement or files a petition in bankruptcy or if the Purchaser ends up in the hands of the Official Receiver or goes into liquidation, or if the Purchaser's situation in other respects, irrespective of the reason for this, is or develops in such a way that there is an obvious possibility that the Seller will not receive the agreed provisions of security or payments at the agreed due dates.

## **X. RIGHTS OF REMEDY/GROUNDS FOR RELIEF**

### **1. For new units the following applies:**

- If within 12 months of the delivery date faults owing to material or manufacturing defects are found in the delivered new units, the Seller undertakes, solely at his own discretion, to either grant a proportional discount on the purchase price or as quickly as possible, at the Seller's or his supplier's factory, remedy this fault for the Purchaser, solely at the Seller's discretion, by either supplying a new component, causing repairs to be performed or undertaking replacement delivery. Any expenditure connected with dismantling of a defective part or the entire unit, forwarding of this to and from the Seller and installation of the new or repaired part is exclusively at the Purchaser's expense. Any expenditure on duties is also at the Purchaser's expense.
- As far as regards units or unit components not produced by the Seller, however, the Seller grants no other or further right to remedy, including as regards time specifications, than that granted by the Seller's supplier, and the Seller's obligations and responsibility to the Purchaser with regard to the supplied items is subject to the same limitations as the Seller's supplier's right to remedy provisions.
- Beyond the right to proportional discount, at the Seller's discretion, or the aforementioned right to remedy, the Purchaser has no other actions for breach of contract. Thus the Purchaser can never cancel the deal, demand proportional discount beyond this or compensation for either direct or indirect losses as a result of defects in the supplied item. The Seller is thus liable for neither operating loss, loss of profits or other indirect losses.
- The Seller's obligation to grant proportional discount or corrective action only covers faults that arise under the operating conditions presupposed in the agreement and with correct installation and application, and thus does not cover faults caused by incorrect or inappropriate use, overloading, fire, overheating, frost, lightning or the after-effects of these, inadequate maintenance, insufficient lubrication, damage from water and damp, e.g. in connection with cleaning, incorrect siting or alterations, intervention, installation or repairs, undertaken without the Seller's written consent or by parties other than the Seller, normal wear or deterioration, including ordinary corrosion, natural disasters and faults that can be attributed to other causes outside the Seller's control, or that can otherwise be attributed to circumstances that cannot reasonably be blamed on the Seller. Furthermore, the Seller's obligation to grant proportional discount and the obligation to remedy defects become void definitively, if the Purchaser defaults on his obligations, including the obligation of prompt payment.
- On discovery of any fault that the Purchaser wishes to claim against the Seller, the Purchaser must immediately give the Seller written notification of this. If the complaint is not received by the Seller within 14 days of the date when it was possible for the Purchaser to ascertain the fault, the Purchaser's claims based on defects as stated in point X.1. a and b and any liability at all of the Seller are forfeit.
- The right to remedy of defects presupposes, if necessary (see point X. 1. a), that the Purchaser forward the defective item(s) to the Seller post free. Within normal working hours the aforementioned corrective action takes place at no expense to the Purchaser. For corrective action carried out outside normal working hours at the Purchaser's request, additional expenditure for this will be at the expense of the Purchaser. All replaced parts belong to the Seller.
- If, solely at the Seller's discretion, for practical reasons it will not be reasonable to request the delivery be returned to the Seller for corrective action, this action will take place at the place of application. In this instance the Purchaser will be invoiced for transport costs in accordance with the Seller's normal rates, while the corrective action will in other respects proceed according to the rules stated in point f).
- With regard to the corrective action supplied by the Seller, the original making-good period applies, irrespective of when herein the corrective action takes place.

### **2. For used units the following applies:**

- The Seller takes no responsibility whatsoever regarding used units supplied; these are taken over in all respects in the condition in which they are found, as seen and inspected by the Purchaser, including any hidden errors or faults, as the Purchaser has no claim for proportional discounts, compensation or cancellation of the purchase.

## **XI. PRODUCT LIABILITY**

- To the extent this can be legally approved, the limitations in product responsibility for the Seller apply as stated in Point XI, 2. If one or more of the aforementioned limitations cannot legally be approved, this does not affect the validity of the remaining terms. If one or more of the limitations is too extensively in favour of the Seller, but could legally be approved with a less extensive content, then the limitation concerned shall be reduced to what could legally be approved.
- The Seller is responsible, for 12 months after actual delivery, for any injury proven to be caused by the delivered units to a Purchaser's person or property, if the Purchaser produces evidence that the injury is due to gross negligence on the part of the Seller. The Seller is, however, never responsible for operating losses, loss of profits or any other indirect losses. The Seller's total responsibility over a 12-month period can never exceed 25% of the unit's invoice price. The Seller renounces any product responsibility for used units.
- To the extent the Seller may be held additionally responsible, including in connection with the use the Purchaser or any customers of his/hers may make of the unit(s) in question, including resale, the Purchaser is obliged to compensate the Seller for any responsibility that has been placed upon him/her.
- The Purchaser is always obliged to allow him/herself to be sued at the same court that deals with compensation claims against the Seller.

## **XII. ADVICE, INSTRUCTION AND SERVICE**

- If the Seller, irrespective of whether or not payment is made for this, provides technical advice, guidance or service to the Purchaser, regardless of the nature of it, the Seller is not responsible for any such advice, guidance and service or for any consequences thereof.
- The above also applies in the case of advice, guidance or service provided, for example, with reference to operational problems, errors or faults, and if the Purchaser as a consequence of this has the Seller or a third party purchase and install other products, spare parts, equipment and/or accessories or has particular repair work done.

## **XIII. TRANSFER OF RIGHTS**

- The Seller is entitled to transfer all rights pursuant to the existing agreement to a third party, whether for ownership or for security.

## **XIV. ADDITIONAL CONDITIONS**

- The Seller is not aware, that the seller/the sold unit, to the sale to the Purchaser are causing the infringement of the patent, trademark, design or other rights of any third party by the Seller or the unit sold. However, the Seller is not responsible if this does nevertheless prove to be the case, or if such an infringement is presumed to exist on purchase or resale by the Purchaser of the unit sold, or by the use the Purchaser or his/her customers make of it. If the Seller should nevertheless be held responsible for such an infringement, the Purchaser is obliged, immediately after the claim, to exempt the Seller from any consequence of this, including any court costs.
- The terms in these "Sales and Delivery Terms" apply to any sales from the Seller.** They also apply even if the Purchaser cites other conditions for the purchase during the purchase negotiations or in the Purchaser's tender documents or in the Purchaser's confirmation of the purchase to the Seller, as all such conditions will be viewed as no longer applying on the Seller's final acceptance of the purchase, unless the Seller expressly repeats herein the individual terms that impose upon the Seller other or differently formulated conditions, which are actually worse for the Seller than those stated in these "Sales and Delivery Terms".
- Any errors, including typographical errors in the Seller's written materials, including correspondence, order confirmations, invoices and the materials named in Point II.1 are not binding for the Seller and cannot be invoked.
- Regardless of the provisions of the purchase agreement, the following conditions apply:
  - Minor deviations with regard to materials, colour or suchlike do not entitle the Purchaser to make any claims on the Seller; similarly, the Purchaser can make no claims in connection with the unit sold having been cracked, scratched or dented etc., perhaps during handling by the Seller or during transportation.
  - The Seller is not responsible for the degree of suitability of the purchased item, whether it be new units, component parts or used units, for the use the Purchaser proposes to make of it, including whether the purchased item can be incorporated into or used together with machines and other goods, units, systems or technical equipment generally, that do not originate from the Seller, unless otherwise expressly guaranteed by the Seller in the purchase agreement.

## **XV. VENUE**

- Any disputes in connection with the purchase agreement and the terms added to it, as well as disputes concerning legal matters discussed herein or resulting from this, and the consequences thereof, shall be decided at either the Maritime and Commercial Court in Copenhagen or at the Seller's local court, according to the Seller's choice.
- The Seller is, however, always entitled to file a suit at the Purchaser's usual court.
- Danish law alone will be applied.