

# NAVEKSA GENERAL TERMS AND CONDITIONS OF SALE AND DELIVERY

## 1. Scope and validity

These General Conditions of Sale and Delivery (August 2002) for NAVEKSA A/S ("NAVEKSA") apply to the sale of any products and services delivered by NAVEKSA, unless an express deviation or modification is made by way of another written agreement. The Client's stipulation of special or general conditions in his tender materials, order, acceptance, terms and conditions of purchase etc. will not be regarded as a deviation from these terms and conditions unless NAVEKSA has accepted such terms and conditions in writing.

## 2. Technical information, instructions etc.

Product information, illustrations, drawings and information about technical data, such as volume, loading capacity, performance, up time, response time and similar in brochures, PowerPoint presentations etc. on NAVEKSA's or the manufacturer's website are only provided for informative purposes. Information provided by NAVEKSA is only binding to the extent that a separate written guarantee has been issued covering such information as part of the agreement. The Client is solely responsible for selecting the products and services; this also means that it is the Client's sole responsibility that the expected results and functionalities can be achieved and that the products and services can work in the Client's current or envisaged operational environment.

## 3. Delivery and time of delivery

It is NAVEKSA's responsibility to deliver the specified products and services, cf. separate agreement for this purpose (the "Agreement"). Delivery will be effected Ex Works NAVEKSA (INCOTERMS 2000) unless otherwise agreed in writing on a case by case basis. If delivery cannot be effected due to circumstances under the Client's control, the goods will be stored at NAVEKSA's warehouse for the Client's account and risk. NAVEKSA is entitled to full remuneration of any costs incurred by this and can also charge a storage fee etc. Times of delivery stated by NAVEKSA are best estimates and are not binding on NAVEKSA, unless expressly provided in the Agreement that a fixed time of delivery applies to the full service or parts thereof. Should the Agreement concern a fixed time of delivery, NAVEKSA is entitled to extend this by up to ten (10) working days from expiry of the fixed time of delivery. Should NAVEKSA exceed the extended time of delivery, the Client is entitled to compensation by way of an agreed penalty from expiry of the extended time of delivery. The agreed penalty will constitute 0.5 per cent of the share of the agreed purchase sum applicable to the products and services affected by the delay for each full week said delay lasts. The agreed penalty cannot total more than ten (10)

per cent of the agreed purchase sum of the delayed products and services. Should NAVEKSA exceed the extended time of delivery by more than forty-five (45) working days, the Client is entitled to terminate the Agreement.

Should the Client choose to terminate the Agreement, the Client is exclusively entitled to a refund of any payments made for the delayed products and services but not payments for any other products and services. The Client cannot invoke any other remedies for breach by reason of said delay and hence is barred from making any claims for compensation of any kind, including compensation for loss of profit, consequential losses or any other indirect losses. Should NAVEKSA's delay be caused by circumstances for which the Client is responsible, for example the Client's change of the configuration or the requirements specification, late issue of technical specifications or other information or replacement of an authorised key person with the Client, NAVEKSA's time of delivery will be extended by a number of days equivalent to the delay that has arisen. Should NAVEKSA as a result of the Client's delay be unable to allocate in-house resources as assumed, NAVEKSA is entitled to claim compensation for any employees who had been allocated to the performance of the service and for any extraordinary resources that NAVEKSA would have had to apply as a consequence of the delay.

## 4. Payment

The purchase sum is due for payment upon delivery and the latest due payment day is fourteen days following delivery. In the event that the due date is exceeded, the Client pays two (2) per cent interest for each month commenced on the due balance from the due date and until the sum has been credited to NAVEKSA's account at NAVEKSA's banker. The Client may not offset any claims from other legal matters against the purchase sum, and the Client may not excise a lien or reject payment due to delay, complaint or counter claims concerning the supply in question.

## 5. Retention of title

NAVEKSA has the title to all products and supplies until the purchase sum plus interests and expenses have been settled in full.

## 6. Guarantee

NAVEKSA offers no guarantees unless expressly agreed in writing.

## 7. Complaints and defects

Any claims of defects, irrespective of the nature of such defects, must be made within 12 months following the time of delivery. Should the Client fail to do so the Client may not later invoke the defect.

NAVEKSA's liability for defects is at all times limited at NAVEKSA's option to effect a new delivery, remedy the defect or offer the Client a proportional discount as determined by NAVEKSA. The Client may not invoke any other claims of defects.

## 8. Product liability

As regards product liability, NAVEKSA is liable in accordance with the provisions of the law of product liability that cannot be derogated from by agreement. NAVEKSA disclaims any liability for injuries or damage caused by a defective product on any other grounds whatsoever.

The Client has a duty without undue delay to notify NAVEKSA in writing if the Client learns that the purchased products or services have caused injury or damage, that a third party claims that such injury or damage has arisen or that it is likely that such injury or damage will arise.

To the extent NAVEKSA may be held liable vis-à-vis a third party, the Client has a duty to indemnify NAVEKSA to the same extent as NAVEKSA's liability is restricted by this provision.

## 9. Limited liability

Notwithstanding the basis on which a claim is made or the degree of negligence, NAVEKSA is not liable for indirect losses or consequential losses such as loss of operation, loss of profit, loss of data or any expenses incurred as a result of re-establishment, loss of goodwill, distortion of notices, loss of expected savings and similar. NAVEKSA's liability for any losses or damage is restricted to a sum total of 25 per cent of the sum paid by the Client for the products and services (or lack thereof) on which the claim rests. Notwithstanding the size of the payment for the products and services NAVEKSA's total liability for damages is restricted to the sum of DKK 100,000.

## 10. Personal Data protection Act according to Danish Law

The Customer is responsible for data and NAVEKSA the data processor. NAVEKSA acts only on instruction from the Customer.

NAVEKSA takes the necessary technical and organisational safety precautions against information being destroyed accidentally or illegally, being lost or deteriorated, being unlawfully disclosed to unauthorized persons, misused or otherwise handled in violation with regulations associated with processing personal data. NAVEKSA will, upon request of the customer, provide the customer with sufficient information to ensure that those technical and organisational safety precautions are taken.

## 11. Special conditions for software

### Special licence conditions

If special licence conditions apply to the delivered software, these take precedence over this Clause 10. This applies whether or not the licence conditions originate from a third party or NAVEKSA.

### Right of use

The Client acquires a non-exclusive, non-transferable right of use for the agreed number of users and/or the agreed number of licences in the delivered software with modules, if any, and written documentation. The Client has the right to install the delivered software on the hardware to which licence is granted. If not otherwise agreed, the licence covers only the number of employees and the hardware that the Client had at the time of concluding the Agreement.

### Software copies

The Client may not copy the software or parts thereof, apart from any copying rendered necessary in connection with the installation process. The Client may, however, produce copies of the delivered software for backup or filing purposes if this is necessary to be able to use the supply. The terms of licence laid down in this Agreement also apply to copies produced for backup or filing purposes.

### Modifications

The Client may not make any modifications to the software and he may not carry out or ask a third party to carry out reverse engineering or decompilation of the software beyond what may be permitted pursuant to legislation which cannot be dispensed with as applicable to this legal matter. In the event that the Client or a third party makes any interventions in or modifications to the software, NAVEKSA's obligations as set out in these terms and conditions lapse with no notice and NAVEKSA disclaims any liability for the consequences of such interventions or modifications. NAVEKSA's remedies for breach remain unaltered.

### Transfer

The Client may not sell, lease, lend, permit the use or in any other way transfer or assign the right of use in the software to a third party. The software may not be used in connection with facility management, outsourcing, hosting or similar activities without express agreement with NAVEKSA to this effect.

### Intellectual property rights

NAVEKSA owns the copyright and any other rights in the delivered software or is entitled to sublicense this on behalf of a third party. The Client must respect the rights of NAVEKSA/a third party and the Client is liable for disregarding said rights, including transfer of the software to a third party.

The Client may not break or change any security codes and likewise the Client may not change or remove indications in the software, or on the media on which the software is filed, concerning ownership, trademarks etc.

The Client has a duty to ensure that the software is stored in

a manner inaccessible to third parties and that the software does not come into the possession of third parties.

#### **Remedy of original defects in the software**

The Client has a duty to review and test the software immediately after delivery. NAVEKSA has a duty to deliver a new copy of the software within thirty (30) calendar days after delivery of the software if it is not possible to read a medium (for example a CD-ROM).

The software may - like any other software - contain inefficient features or minor defects. Such minor defects and inefficient features do not entitle the Client to remedial action or any other remedies for breach. NAVEKSA will make an effort to ensure that all defects and inefficient features are remedied in subsequent versions of the software. Should the Client document in writing that the software contains an original error that impacts on the functionality of the software as such or prevents its use, NAVEKSA has a duty until six months following delivery of the software to, at option, deliver a new version of the software without the error free of charge, remedy the error free of charge, terminate the Agreement fully or in part and refund the payment for the software fully or in part against return of all of the Client's versions and copies of the software, manuals, relevant documentation etc. Equivalent to remedial action is description of work flows or uses (workarounds) that will ensure that the error does not significantly impact on the Client's use of the software. The Client may not invoke any other claims or claims of defects against NAVEKSA. Use of the software as is and with no other warranties, obligations to offer remedial action or any remedies for breach than the above is granted by way of a licence. Consequently, NAVEKSA issues no guarantees that operation and use of the software will take place without interruptions and in a flawless manner or that software errors can or will be remedied. To the extent that the provisions of Clause 7 about defects are not expressly deviated from in Clause 10, the provisions of Clause 7 also apply to defects in the licensed software.

#### **Violation of third party rights**

NAVEKSA is responsible for ensuring vis-à-vis the Client that the software does not violate third party intellectual property rights. Should claims be made against the Client according to which such violation exists, the Client has a duty to notify NAVEKSA forthwith of this. In this event, NAVEKSA or the third party from whom NAVEKSA has licensed the software will then take over the matter and any associated costs, and NAVEKSA will have an irrevocable authority to carry out legal proceeding or make a settlement concerning the alleged violations for NAVEKSA's own account.

Should a final and inappellable verdict be passed on the allegation of the third party concerned, NAVEKSA may at option ensure the Client's right to continued use of the software or put a stop to the violation by modifying or replacing the software by another piece of software with essentially the same functionality as the software or terminate the Agreement with immediate effect against repayment of the sum paid by the Client. If so, the Client can make no further claims against NAVEKSA.

#### **11. Circumstances beyond NAVEKSA's control**

NAVEKSA is not liable to the Client if the following circumstances arise after conclusion of the Agreement and these circumstances obstruct or postpone fulfilment of the Agreement: war and mobilisation, civil unrest and troubles, acts of terror, natural disasters, strikes and lockouts, scarcity of goods and commodities, defects in or delays of supplies from sub-suppliers, fire, lacking means of transport, currency restrictions, import and export restrictions, death, illness or resignation of key individuals, computer viruses and other circumstances beyond NAVEKSA's immediate control. In such cases, NAVEKSA is entitled to postpone delivery until the obstruction to fulfil has come to an end or as an alternative NAVEKSA may cancel the Agreement fully or in part without incurring any liability.

#### **12. Governing law and jurisdiction**

Any disputes between NAVEKSA and the Client must be settled according to Danish law. This choice-of-law clause does not, however, include the international private law provisions of Danish law. At NAVEKSA's option, disputes may be settled at Horsens District Court as the proper jurisdiction or by arbitration at the Danish Institute of Arbitration in compliance with the Institute's "Rules of Arbitration Procedure". The arbitration tribunal will sit in Horsens. Notwithstanding the above, NAVEKSA may always decide to sue the Client at his home court.

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