



## SMP Parts AB – Deviation List to Maskin 21

REF.	DEVIATION
<b>Definitions</b>	<p>The following definitions are added:</p> <p><b>“Contract”</b> means this deviation list to Maskin 21, Maskin 21 and all appendices and schedules to this deviation list, as well as any written Order Confirmations issued by an authorized representative of the Vendor.</p> <p><b>“Defect”</b> means a non-conformity of a Product with the specifications for such Product, as provided by the Vendor to the Purchaser together with the Product, provided that such non-conformity is not insignificant. The term “defect” in Maskin 21 shall refer to Defect, as defined herein.</p> <p><b>“Maskin 21”</b> means the General Provisions for Deliveries of Construction Machinery and Accessories, Equipment etc. for Professional Use (Machine 21).</p> <p><b>“Order Confirmation”</b> means a written confirmation of the Purchaser's order for the Products, issued by an authorized representative of the Vendor. The term “confirmation” in Maskin 21 shall refer to Order Confirmation, as defined herein.</p> <p><b>“Products”</b> means the goods that the Vendor shall deliver under the Contract, as specified in the Vendor's Order Confirmation. The term “goods” in Maskin 21 shall refer to Product, as defined herein.</p> <p><b>“Purchaser”</b> means the person or entity with which the Vendor enters into the Contract.</p> <p><b>“Vendor”</b> means SMP Parts AB, reg. no. 556242-5610.</p>
<b>Interpretation</b>	<p>The Contract shall be interpreted as follows:</p> <p>The appendices to this deviation list form an integral part of the Contract. In case of conflict between the documents forming part of the Contract, this deviation list shall have precedence over the appendices and the appendices shall have precedence in the order that they are numbered (where the lowest numbered appendix has the highest priority). In case of conflict between this deviation list and Maskin 21, this deviation list shall have precedence.</p> <p>If any date specified in the Contract as the last or only day for taking an action falls on a day that is not a business day, then that action may be taken on the next business day. A “business day” is a day other than a Saturday, Sunday or other public holiday in Sweden, where Midsummer's Eve (Sw. <i>midsommarafton</i>), Christmas Eve (Sw. <i>julafton</i>) and New Year's Eve (Sw. <i>nyårsafton</i>) are deemed public holidays despite not being officially recognized as such.</p> <p>English terms and concepts in the Contract are not intended to incorporate any legal standards other than those that would result from translating such terms and concepts into Swedish and interpreting the same in the context of Swedish law.</p>
<b>Intellectual Property Rights</b>	<p>The following wording is added as a new Clause to Maskin 21:</p> <p>“Nothing in the Contract shall be construed as a transfer of any of the Vendor's (including the intellectual property rights of any of the Vendor's licensors) intellectual property rights; and the Vendor and any of its licensors shall retain all ownership and all other rights to any intellectual property rights included in or related to the Products.</p> <p>The Purchaser acknowledges that all software included in or supplied together with the Products is software to which a third party holds the intellectual property rights and that (i) any rights in respect of the software granted to the Purchaser herein are subject to the limitations that may exist between the Vendor and the intellectual property rights holder; and (ii) all such software is provided and licensed solely under the terms</p>



**REF.                      DEVIATION**

and conditions of the respective third-party rights holder for any such software, and that the Purchaser's use of any such software is governed solely by and is subject to the terms and conditions applicable to such software.

Neither the Vendor, nor any of its affiliates, assumes any liability whatsoever for any software included in or supplied together with the Products, or any Defects in the Products, or any other liability of any kind, that may occur as a result of any such software."

**Clause 2**                      The first paragraph of this Clause is deleted in its entirety and replaced with the following:

"All orders from the Purchaser shall be subject to acceptance by an authorized representative of the Vendor by means of an Order Confirmation. An order is binding on the Purchaser when the order has been signed by the Purchaser. The order is binding on the Vendor when it has been accepted by the Vendor and a written Order Confirmation has been sent to the Purchaser."

**Clause 4**                      This Clause is deleted in its entirety.

**Clause 6**                      This Clause is amended as follows:

"Any references to information about the Products in marketing materials (e.g. catalogues, ads, newsletters, etc.), price lists or similar shall not make up part of the specifications for the Products, unless the Vendor has made an express undertaking in this Contract as regards any such information."

**Clause 7**                      The last sentence of this Clause is deleted in its entirety.

**Clause 22**                      The following wording is added to this Clause as a new third paragraph:

"The Vendor's liability for the Products does not cover the access and restoration costs associated with remedying the Products. Thus, the Purchaser shall, at his own expense, provide access to the defective Product and arrange for any intervention in equipment other than the Product, to the extent that this is necessary to remedy a Defect."

**Clause 24**                      The first paragraph of this Clause is deleted in its entirety and replaced with the following:

"If the Vendor (i) fails to remedy a Defect in the Products for which the Vendor is liable in accordance with the Contract, within a reasonable time; or (ii) if a Defect in the Products persists after repeated attempts by the Vendor to remedy the Defect in question, the Purchaser may, by notice in writing to the Vendor, fix a final reasonable period for completion of the Vendor's obligations (which shall not be less than two (2) weeks). If the Vendor fails to fulfil its obligations within such final period, the Purchaser (either itself or through a third party) shall be entitled to either (i) remedy the Defect in the Products in question at the Vendor's expense; or (ii) demand a price reduction corresponding to the Defect."

**Clause 25**                      The following wording is added to this Clause as a new seventh paragraph:

"The Vendor shall not be liable for any damage to persons or property caused by the Products after delivery of the relevant part of the Products to the Purchaser. If the Vendor incurs liability towards any third party for such damage to persons or property as described herein, the Purchaser shall indemnify, defend and hold the Vendor harmless."

**Clause 27**                      The following wording is added to this Clause as a new second paragraph:

**REF.****DEVIATION**

"The Vendor's total and aggregate liability for Defects in the Products shall never exceed the price for the individual Product to which the Defect in question relates."

**Clauses 28, 29 and 30**

These Clauses are deleted in their entirety and replaced with the following:

"A Party shall be relieved from liability for a failure to perform its obligations under the Contract to the extent that the due performance thereof by the Party is prevented by reason of any circumstance beyond the Party's control, which could not reasonably have been foreseen by that Party prior to entering into of the Contract and which could not reasonably have been avoided by such Party, such as war, revolution, civil riot, natural disaster, strike, order of any government, court or regulatory body having jurisdiction, blockade, embargo, riot, civil disorder, shortage of raw materials or material inputs, lack of availability of transportation, extensive operational disruptions in the Party's business or that of the Party's sub-suppliers, or other circumstances of similar importance, (excluding, however, inability to perform financial obligations, such as payment).

If a Party wishes to invoke a circumstance in accordance with the previous paragraph, it shall give notice to the other Party when there is a risk for failure or delay to perform an obligation under the Contract. Failing to give such notice, the Party shall not be discharged from liability for any damage which could have been avoided had notice been given in due time.

The time for performance of the relevant obligations of a Party shall be appropriately extended by the period during which the circumstances in accordance with the first paragraph have continued, provided, however, that if performance of a contractual obligation is prevented by such a circumstance for a period of three (3) months or more, each Party shall be entitled to terminate the Contract subject to three (3) months' prior written notice to the other Party.

The Parties are aware of the risk of shortage of components worldwide for the foreseeable future, as well of market fluctuations in the availability and costs of raw materials, commodities, and other materials and components included in the Products. Therefore, the Vendor shall be entitled to an adjustment of any agreed delivery date or time schedule due to any of the aforementioned events (irrespective of if the event affects the Vendor or any of the Vendor's sub-suppliers), provided that the Vendor has taken reasonable steps to overcome the event giving rise to such right (e.g. by purchasing the components from other sub-suppliers, where applicable). The Vendor shall notify the Purchaser in writing, without delay of any event giving right to an extension of time hereunder. Furthermore, the Vendor shall be entitled to call for immediate renegotiation of any of the prices for the Products by written notice to the Purchaser (and the Purchaser shall be obligated to accept any such request), where the Vendor can show that that there has been an extraordinary cost increase in relation to any Product due to any of the aforementioned events, where "extraordinary cost increase" shall mean that the costs of procuring any component, raw material or commodity used for the manufacturing or assembly of the Product in question has increased by more than [10]% in relation to the corresponding costs applicable at the effective date of the Contract (including, but not limited to, any labor, transportation, materials and currency costs, or other similar costs)."

**Clause 31**

The first and second paragraphs of this Clause are deleted in their entirety and replaced with the following:

"The Contract shall be governed by the substantive laws of Sweden.

Should a dispute arise between the Parties out of the Contract, the Parties shall attempt to resolve the dispute by conducting direct negotiations on the matter at issue. Should this not succeed, the dispute shall be referred to the Board for Complaints, jointly established by The Swedish Association of Heavy Equipment Contractors (Sw: Maskinentreprenörerna) and the Swedish Trade Association for Vendors of Mobile Machines (Sw: MaskinLeverantörerna). If the Parties are unable to resolve the dispute within 30 days after the dispute was submitted for negotiation in



**REF.**

**DEVIATION**

accordance herewith, either Party may submit the dispute for arbitration in accordance with the arbitration clause in the below paragraph.

Any dispute, controversy or claim arising out of or in connection with this Contract, or the breach, termination or invalidity thereof, shall be finally settled by arbitration administered by the Arbitration Institute of the Stockholm Chamber of Commerce (the "SCC"). The Rules for Expedited Arbitrations shall apply, unless the SCC in its discretion determines, taking into account the complexity of the case, the amount in dispute and other circumstances, that the Arbitration Rules shall apply. In the latter case, the SCC shall also decide whether the Arbitral Tribunal shall be composed of one or three arbitrators. The seat of arbitration shall be Stockholm, Sweden. The language to be used in the arbitral proceedings shall be English.

The Parties undertake and agree that all arbitral proceedings conducted with reference to the above arbitration clause will be kept strictly confidential. This confidentiality undertaking shall cover all information disclosed in the course of such arbitral proceedings, as well as any decision or award that is made or declared during the proceedings. Information covered by this confidentiality undertaking may not be disclosed to a third party without the prior consent by the other Party. Exceptions to the foregoing shall only apply to the extent that disclosure may be required of a Party due to mandatory law, an order of a competent court or public authority, or to protect, fulfil or pursue a legitimate legal right or obligation or to enforce or challenge an award."

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