

# CONSEQUENCES RESULTING FROM CONTRACTUAL DEFAULTS

## CONTENTS

1. INTRODUCTION
2. DEFAULTS ON AGREEMENT
3. CONTRACTUAL REQUIREMENTS
4. LEGAL CONSEQUENCES

### **1. Introduction.**

The agreement between the pump supplier/vendor and the customer/purchaser determines the contractual requirements covering the completion of delivery and conditions of payment. In the contractual negotiations there is normally a tendency on the part of the customer to present demands for compensation for delay in delivery or in respect of contractual penalties. The supplier should therefore be aware of the possible consequences resulting from such agreements as, if unfavourable, losses can ensue.

### **2. Defaults on agreement.**

There are three main groups of relevant defaults:

- Non-fulfilment due to an inability to supply.
- Delay: the supplier delivers the pump too late.
- Poor fulfilment: the supplier delivers the pump on time, but with faults.

In detail, the consequences are determined in accordance with the contractual agreement concluded by the parties. If no special arrangements have been made, the existing pertinent regulations will apply.

### **3. Contractual requirement.**

The customer and the supplier can themselves formulate the contract for the delivery of a pump, but where possible relevant standard conditions should be utilized.

They should determine as clearly as possible the full contractual requirement, including the time of delivery and the penalties for non-observance of the contractual obligations.

However, the contract should not be encumbered with superfluous details or regulations which will make its application difficult as regards individual points.

When determining the requirements it is essential for the pump supplier to ensure that all factors relevant to his interest have been included.

3.1 In particular, the time of delivery by the supplier to the customer must be carefully defined. In this respect the total schedule of delivery and details of the requirement should be fixed as precisely as possible from a point of view. The commencement of the time for delivery can be dependent on many conditions falling within the field of responsibility of the supplier, e.g.

- the issue of licenses by the authorities
- provisions and examination of export insurances
- procurement of bank guarantees

Other conditions for the commencement of the time of delivery, falling within the field of responsibility of the customer would include:

- stage payments
- import licences
- acceptance of bank guarantees
- letter of credit
- installation and dimensional plans for equipment to be supplied by the customer
- equipment supplied by the customer
- shipping and packing instructions
- paint finish and preservation instructions
- fixing the time for the acceptance test
- clarification of type and extent of acceptance test
- fixing the time for the return of documents which must be made available by the supplier and approved by the customer.

Additional common factors effecting both supplier and customer can be agreed upon which extensions will be granted e.g.:

- force majeure
- work stoppages
- traffic interruptions
- strikes/lock-outs
- parts being rejected, which are subject to long delivery by a third party
- changes in deliveries from sub-contractors

The parties should stipulate that in the event of non-fulfilment of relevant conditions the commencement of the time of delivery may be delayed or the schedule may be changed accordingly and the necessary provisions to do must be included.

### 3.2 Penalties

In addition to the claims for damages, contractual defaults may result in a penalty (contractual fine).

#### 3.2.1 Claims for damages

Claims for damages (compensation) are only valid when actual financial loss can be proved, due to contractual default by the other party.

The making good of damages consists normally on restoring the status quo. However, in business practice it may be covered by payment of a monetary sum. Not only is direct damage to be considered, but sometimes consequential damages may also be raised. Many suppliers endeavour to limit such claims to specific percentage of contract value.

#### 3.2.2 Contractual fines

The contractual fine presupposes a contractual default. The supplier and the customer can, however, agree to accept a fine for default on the contractual requirements without the question of any damages being raised. The essential difference compared to the compensation for damages lies in that the contractual fine will be payable independent of whether or not damage has occurred to the customer.

## 4. Legal

If there are no agreed contractual conditions, the application of existing law and other regulations may result in extremely arduous conditions being imposed.