



GENERAL CONDITIONS for the SUPPLY OF MECHANICAL, ELECTRICAL AND ELECTRONIC PRODUCTS

Brussels, March 2012

PREAMBLE

1. These General Conditions shall apply when the parties agree In Writing or otherwise thereto. Any modifications of or deviations from them must be agreed In Writing.

DEFINITIONS

2. In these General Conditions the following terms shall have the meanings hereunder assigned to them:

- **“Contract”**: the agreement In Writing between the parties concerning supply of the Product and all appendices, including agreed amendments and additions In Writing to the said documents;

- **“Gross Negligence”**: an act or omission implying either a failure to pay due regard to serious consequences, which a conscientious contracting party would normally foresee as likely to ensue, or a deliberate disregard of the consequences of such an act or omission;

- **“In Writing”**: communication by document signed by both parties or by letter, fax, electronic mail and by such other means as are agreed by the parties;

- **“the Product”**: the object(s) to be supplied under the Contract, including software and documentation.

PRODUCT INFORMATION

3. All information and data contained in general product documentation and price lists shall be binding only to the extent that they are by reference In Writing expressly included in the Contract.

DRAWINGS AND TECHNICAL INFORMATION

4. All drawings and technical documents relating to the Product or its manufacture submitted by one party to the other, prior or subsequent to the formation of the Contract, shall remain the property of the submitting party.

Drawings, technical documents or other technical information received by one party shall not, without the consent of the other party, be used for any other purpose than that for which they were provided. They may not, without the consent of the submitting party, otherwise be used or copied, reproduced, transmitted or communicated to a third party.

5. The Supplier shall, not later than at the date of delivery, provide free of charge information and drawings which are necessary to permit the Purchaser to install, commission, operate and maintain the Product. Such information and drawings shall be supplied in the number of copies agreed upon or at least one copy of each. The Supplier shall not be obliged to provide manufacturing drawings for the Product or for spare parts.

ACCEPTANCE TESTS

6. Acceptance tests provided for in the Contract shall, unless otherwise agreed, be carried out at the place of manufacture during normal working hours.

If the Contract does not specify the technical requirements, the tests shall be carried out in accordance with general practice in the appropriate branch of industry concerned in the country of manufacture.

7. The Supplier shall notify the Purchaser In Writing of the acceptance tests in sufficient time to permit the Purchaser to be represented at the tests. If the Purchaser is not represented, the test report shall be sent to the Purchaser and shall be accepted as accurate.

8. If the acceptance tests show the Product not to be in accordance with the Contract, the Supplier shall without delay remedy any deficiencies in order to ensure that the Product complies with the Contract. New tests shall then be carried out at the Purchaser's request, unless the deficiency was insignificant.

9. The Supplier shall bear all costs for acceptance tests carried out at the place of manufacture. The Purchaser shall however bear all travelling and living expenses for his representatives in connection with such tests.

DELIVERY. PASSING OF RISK

10. Any agreed trade term shall be construed in accordance with the INCOTERMS® in force at the formation of the Contract.

If no trade term has been specifically agreed, the delivery shall be Free Carrier (FCA) at the place named by the Supplier.

If, in the case of delivery Free Carrier, the Supplier, at the request of the Purchaser, undertakes to send the Product to its destination, the risk will pass not later than when the Product is handed over to the first carrier.

Partial delivery shall not be permitted, unless otherwise agreed.

TIME FOR DELIVERY. DELAY

11. If the parties, instead of specifying the date for delivery, have specified a period of time within which delivery shall take place, such period shall start to run as soon as the Contract is entered into and all agreed preconditions to be fulfilled by the Purchaser have been satisfied, such as official formalities, payments due at the formation of the Contract and securities.

12. If the Supplier anticipates that he will not be able to deliver the Product at the time for delivery, he shall forthwith notify the

Purchaser thereof In Writing, stating the reason and, if possible, the time when delivery can be expected.

If the Supplier fails to give such notice, the Purchaser shall be entitled to compensation for any additional costs which he incurs and which he could have avoided had he received such notice.

13. If delay in delivery is caused by any of the circumstances mentioned in Clause 41, by an act or omission on the part of the Purchaser, including suspension under Clauses 21 and 44, or any other circumstances attributable to the Purchaser, the Supplier shall be entitled to extend the time for delivery by a period which is necessary having regard to all the circumstances of the case. This provision shall apply regardless of whether the reason for the delay occurs before or after the agreed time for delivery.

14. If the Product is not delivered at the time for delivery, the Purchaser shall be entitled to liquidated damages from the date on which delivery should have taken place.

The liquidated damages shall be payable at a rate of 0.5 per cent of the purchase price for each commenced week of delay. The liquidated damages shall not exceed 7.5 per cent of the purchase price.

If only part of the Product is delayed, the liquidated damages shall be calculated on that part of the purchase price which is attributable to such part of the Product as cannot in consequence of the delay be used as intended by the parties.

The liquidated damages shall become due at the Purchaser's demand In Writing but not before delivery has been completed or the Contract is terminated under Clause 15.

The Purchaser shall forfeit his right to liquidated damages if he has not lodged a claim In Writing for such damages within six months after the time when delivery should have taken place.

15. If the delay in delivery is such that the Purchaser is entitled to maximum liquidated damages under Clause 14 and if the Product is still not delivered, the Purchaser may In Writing demand delivery within a final reasonable period which shall not be less than one week.

If the Supplier does not deliver within such final period and this is not due to any circumstances which are attributable to the Purchaser, then the Purchaser may by notice In Writing to the Supplier terminate the Contract in respect of such part of the Product as cannot in consequence of the Supplier's failure to deliver be used as intended by the parties.

If the Purchaser terminates the Contract he shall be entitled to compensation for the loss he suffers as a result of the Supplier's delay, including any consequential and indirect loss. The total compensation, including the liquidated damages which are payable under Clause 14, shall not exceed 15 per cent of that part of the purchase price which is attributable to the part of the Product in respect of which the Contract is terminated.

The Purchaser shall also have the right to terminate the Contract by notice In Writing to the Supplier, if it is clear from the circumstances that there will occur a delay in delivery which, under Clause 14, would entitle the Purchaser to maximum liquidated damages. In case of termination for this reason, the Purchaser shall be entitled to maximum liquidated damages and compensation under the third paragraph of this Clause 15.

16. Liquidated damages under Clause 14 and termination of the Contract with limited compensation under Clause 15 shall

be the only remedies available to the Purchaser in case of delay on the part of the Supplier. All other claims against the Supplier based on such delay shall be excluded, except where the Supplier has been guilty of Gross Negligence.

17. If the Purchaser anticipates that he will be unable to accept delivery of the Product at the time for delivery, he shall forthwith notify the Supplier In Writing thereof, stating the reason and, if possible, the time when he will be able to accept delivery.

If the Purchaser fails to accept delivery at the time for delivery, he shall nevertheless pay any part of the purchase price which becomes due at the time for delivery, as if delivery had taken place at the time for delivery. The Supplier shall arrange for storage of the Product at the risk and expense of the Purchaser. The Supplier shall also, if the Purchaser so requires, insure the Product at the Purchaser's expense.

18. Unless the Purchaser's failure to accept delivery is due to any such circumstance as mentioned in Clause 41, the Supplier may by notice In Writing require the Purchaser to accept delivery within a final reasonable period.

If, for any reason which is not attributable to the Supplier, the Purchaser fails to accept delivery within such period, the Supplier may by notice In Writing terminate the Contract in whole or in part. The Supplier shall then be entitled to compensation for the loss he suffers by reason of the Purchaser's default, including any consequential and indirect loss. The compensation shall not exceed that part of the purchase price which is attributable to that part of the Product in respect of which the Contract is terminated.

PAYMENT

19. Payment shall be made within 30 days after the date of invoice.

Unless otherwise agreed, the purchase price shall be paid with one third at the formation of the Contract and one third when the Supplier notifies the Purchaser that the Product, or the essential part of it, is ready for delivery. The remaining part of the purchase price shall be paid when the entire Product is delivered.

20. Whatever the means of payment used, payment shall not be deemed to have been effected before the Supplier's account has been irrevocably credited for the amount due.

21. If the Purchaser fails to pay by the stipulated date, the Supplier shall be entitled to interest from the day on which payment was due and to compensation for recovery costs. The rate of interest shall be as agreed between the parties or otherwise 8 percentage points above the rate of the main refinancing facility of the European Central Bank. The compensation for recovery costs shall be 1 per cent of the amount for which interest for late payment becomes due.

In case of late payment and in case the Purchaser fails to give an agreed security by the stipulated date the Supplier may, after having notified the Purchaser In Writing, suspend his performance of the Contract until he receives payment or, where appropriate, until the Purchaser gives the agreed security.

If the Purchaser has not paid the amount due within three months the Supplier shall be entitled to terminate the Contract by notice In Writing to the Purchaser and, in addition to the interest and compensation for recovery costs according to this Clause, to claim compensation for the loss he incurs. Such compensation shall not exceed the agreed purchase price.

RETENTION OF TITLE

22. The Product shall remain the property of the Supplier until paid for in full to the extent that such retention of title is valid under the relevant law.

The Purchaser shall at the request of the Supplier assist him in taking any measures necessary to protect the Supplier's title to the Product.

The retention of title shall not affect the passing of risk under Clause 10.

LIABILITY FOR DEFECTS

23. Pursuant to the provisions of Clauses 24-39, the Supplier shall remedy any defect or nonconformity (hereinafter termed defect(s)) resulting from faulty design, materials or workmanship.

24. The Supplier shall not be liable for defects arising out of materials provided or a design stipulated or specified by the Purchaser.

25. The Supplier shall only be liable for defects which appear under the conditions of operation provided for in the Contract and under proper use of the Product.

26. The Supplier shall not be liable for defects caused by circumstances, which arise after the risk has passed to the Purchaser, e.g. defects due to faulty maintenance, incorrect installation or faulty repair by the Purchaser or to alterations carried out without the Supplier's consent In Writing. The Supplier shall neither be liable for normal wear and tear nor for deterioration.

27. The Supplier's liability shall be limited to defects which appear within a period of one year from delivery. If the use of the Product exceeds that which is agreed, this period shall be reduced proportionately.

28. When a defect in a part of the Product has been remedied, the Supplier shall be liable for defects in the repaired or replaced part under the same terms and conditions as those applicable to the original Product for a period of one year. For the remaining parts of the Product the period mentioned in Clause 27 shall be extended only by a period equal to the period during which and to the extent that the Product could not be used as a result of the defect.

29. The Purchaser shall without undue delay notify the Supplier In Writing of any defect which appears. Such notice shall under no circumstances be given later than two weeks after the expiry of the period given in Clause 27 or the extended period(s) under Clause 28, where applicable.

The notice shall contain a description of the defect.

If the Purchaser fails to notify the Supplier In Writing of a defect within the time limits set forth in the first paragraph of this Clause, he shall lose his right to have the defect remedied.

Where the defect is such that it may cause damage, the Purchaser shall immediately inform the Supplier In Writing. The Purchaser shall bear the risk of damage to the Product resulting from his failure so to notify. The Purchaser shall take reasonable measures to minimise damage and shall in that respect comply with instructions of the Supplier.

30. On receipt of the notice under Clause 29 the Supplier shall at his own cost remedy the defect without undue delay, as

stipulated in Clauses 23-39. The time for remedial work shall be chosen in order not to interfere unnecessarily with the Purchaser's activities.

Repair shall be carried out at the place where the Product is located unless the Supplier deems it more appropriate that the Product is sent to him or a destination specified by him.

If the defect can be remedied by replacement or repair of a defective part and if dismantling and re-installation of the part do not require special knowledge, the Supplier may demand that the defective part is sent to him or a destination specified by him. In such case the Supplier shall have fulfilled his obligations in respect of the defect when he delivers a duly repaired part or a part in replacement to the Purchaser.

31. The Purchaser shall at his own expense provide access to the Product and arrange for any intervention in equipment other than the Product, to the extent that this is necessary to remedy the defect.

32. Unless otherwise agreed, necessary transport of the Product or parts thereof to and from the Supplier in connection with the remedying of defects for which the Supplier is liable shall be at the risk and expense of the Supplier. The Purchaser shall follow the Supplier's instructions regarding such transport.

33. Unless otherwise agreed, the Purchaser shall bear any additional costs which the Supplier incurs for remedying the defect caused by the Product being located in a place other than the destination stated at the formation of the Contract for the Supplier's delivery to the Purchaser or – if no destination has been stated – the place of delivery.

34. Defective parts which have been replaced shall be made available to the Supplier and shall be his property.

35. If the Purchaser has given such notice as mentioned in Clause 29 and no defect is found for which the Supplier is liable, the Supplier shall be entitled to compensation for the costs he incurs as a result of the notice.

36. If the Supplier does not fulfil his obligations under Clause 30, the Purchaser may by notice In Writing fix a final reasonable period for completion of the Supplier's obligations, which shall not be less than one week.

If the Supplier fails to fulfil his obligations within such final period, the Purchaser may himself undertake or employ a third party to undertake necessary repair work at the risk and expense of the Supplier.

Where successful repair work has been undertaken by the Purchaser or a third party, reimbursement by the Supplier of reasonable costs incurred by the Purchaser shall be in full settlement of the Supplier's liabilities for the said defect.

37. Where the Product has not been successfully repaired, as stipulated under Clause 36,

a) the Purchaser shall be entitled to a reduction of the purchase price in proportion to the reduced value of the Product, provided that under no circumstances shall such reduction exceed 15 per cent of the purchase price, or

b) where the defect is so substantial as to significantly deprive the Purchaser of the benefit of the Contract as regards the Product or a substantial part of it, the Purchaser may terminate

the Contract by notice In Writing to the Supplier in respect of such part of the Product as cannot in consequence of the defect be used as intended by the parties. The Purchaser shall then be entitled to compensation for his loss, costs and damages up to a maximum of 15 per cent of that part of the purchase price which is attributable to the part of the Product in respect of which the Contract is terminated.

38. Notwithstanding the provisions of Clauses 23-37 the Supplier shall not be liable for defects in any part of the Product for more than one year from the end of the liability period referred to in Clause 27 or from the end of any other liability period agreed upon by the parties.

39. Save as stipulated in Clauses 23-38, the Supplier shall not be liable for defects. This applies to any loss the defect may cause including loss of production, loss of profit and other indirect loss. This limitation of the Supplier's liability shall not apply if he has been guilty of Gross Negligence.

ALLOCATION OF LIABILITY FOR DAMAGE CAUSED BY THE PRODUCT

40. The Supplier shall not be liable for any damage to property caused by the Product after it has been delivered and whilst it is in the possession of the Purchaser. Nor shall the Supplier be liable for any damage to products manufactured by the Purchaser or to products of which the Purchaser's products form a part.

If the Supplier incurs liability towards any third party for such damage to property as described in the preceding paragraph, the Purchaser shall indemnify, defend and hold the Supplier harmless.

If a claim for damage as described in this Clause is lodged by a third party against one of the parties, the latter party shall forthwith inform the other party thereof In Writing.

The Supplier and the Purchaser shall be mutually obliged to let themselves be summoned to the court or arbitral tribunal examining claims for damages lodged against one of them on the basis of damage allegedly caused by the Product. The liability between the Supplier and the Purchaser shall however be settled in accordance with Clause 46.

The limitation of the Supplier's liability in the first paragraph of this Clause shall not apply where the Supplier has been guilty of Gross Negligence.

FORCE MAJEURE

41. Either party shall be entitled to suspend performance of his obligations under the Contract to the extent that such performance is impeded or made unreasonably onerous by Force Majeure, meaning any of the following circumstances: industrial disputes and any other circumstance beyond the control of the parties

such as fire, war, extensive military mobilization, insurrection, requisition, seizure, embargo, restrictions in the use of power, currency and export restrictions, epidemics, natural disasters, extreme natural events, terrorist acts and defects or delays in deliveries by sub-contractors caused by any such circumstance referred to in this Clause.

A circumstance referred to in this Clause whether occurring prior to or after the formation of the Contract shall give a right to suspension only if its effect on the performance of the Contract could not be foreseen at the time of the formation of the Contract.

42. The party claiming to be affected by Force Majeure shall notify the other party In Writing without delay on the intervention and on the cessation of such circumstance. If a party fails to give such notice, the other party shall be entitled to compensation for any additional costs which he incurs and which he could have avoided had he received such notice.

If Force Majeure prevents the Purchaser from fulfilling his obligations, he shall compensate the Supplier for expenses incurred in securing and protecting the Product.

43. Regardless of what might otherwise follow from these General Conditions, either party shall be entitled to terminate the Contract by notice In Writing to the other party if performance of the Contract is suspended under Clause 41 for more than six months.

ANTICIPATED NON-PERFORMANCE

44. Notwithstanding other provisions in these General Conditions regarding suspension, each party shall be entitled to suspend the performance of his obligations under the Contract, where it is clear from the circumstances that the other party is not going to perform his obligations. A party suspending his performance of the Contract shall forthwith notify the other party thereof In Writing.

CONSEQUENTIAL LOSSES

45. Save as otherwise stated in these General Conditions there shall be no liability for either party towards the other party for loss of production, loss of profit, loss of use, loss of contracts or for any other consequential or indirect loss whatsoever.

DISPUTES AND APPLICABLE LAW

46. All disputes arising out of or in connection with the Contract shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules.

47. The Contract shall be governed by the substantive law of the Supplier's country.

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SUPPLEMENTARY CONDITIONS FOR THE SUPERVISION OF ERECTION OF MECHANICAL, ELECTRICAL AND ELECTRONIC PRODUCTS

DELIVERED IN ACCORDANCE WITH S 2000
Brussels, August 2000

PREAMBLE

1. These Supplementary Conditions shall supplement the Orgalime S 2000 General Conditions when the parties agree in writing or otherwise thereto.

THE SUPPLIER'S OBLIGATIONS

2. The Supplier shall, upon notification in accordance with Clause 4 from the Purchaser, provide the services of one or more competent supervisors

a) to give to the Purchaser or his site representative mentioned in Clause 12 of these Supplementary Conditions the necessary instructions for the erection of the Product and, if provided in the contract, for its commissioning by the Purchaser;

and

b) to supervise the manner in which the Supplier's instructions are carried out.

The number and qualifications of the Supplier's staff, and the estimated duration of erection, shall be agreed separately.

The Supplier's obligation ceases if he has not received such notification from the Purchaser within one year of delivery according to S 2000.

THE PURCHASER'S OBLIGATIONS

3. Erection will be carried out by the Purchaser, who shall, at his own expense, provide the skilled and unskilled labour, all equipment and everything necessary for the erection of the Product.

NOTIFICATION OF READINESS OF THE SITE

4. The Purchaser shall give the Supplier at least one month's notice of the date at which the site will be ready for the work and the commencement of supervision.

LOCAL LAWS AND REGULATIONS

5. The Purchaser shall in due time provide the Supplier with such information concerning local laws and regulations as is necessary for the proper execution of the Supplier's obligations.

The Supplier shall ensure that his staff complies with these laws and regulations.

WORKING CONDITIONS

6. The Purchaser shall ensure that the following conditions are satisfied:

a) The supervision shall not be carried out in unhealthy or dangerous surroundings. All the necessary safety and precautionary measures shall have been taken before supervision is started and shall be maintained during the time of supervision.

b) The Supplier's staff shall be able to obtain suitable and convenient board and lodging in the neighbourhood of the site and shall have access to canteen facilities, internationally acceptable hygiene facilities and medical services.

c) The Purchaser shall make available to the Supplier free of charge necessary storage facilities, providing protection against theft and deterioration of the personal effects of the Supplier's staff.

d) The Purchaser shall make available to the Supplier sufficient offices on the site, equipped with telephone and fax facilities.

SAFETY REGULATIONS

7. Before commencement of supervision, the Purchaser shall notify the Supplier of all relevant safety regulations in force at the site and the Supplier shall secure the observance of such safety regulations by his staff.

8. If a breach of these regulations by the Supplier's staff come to the notice of the Purchaser, he may require them to be noted forthwith in the site register which the Supplier is obliged to keep in accordance with Clause 12.

9. The Supplier shall inform the Purchaser of any special risks which the execution of the erection may entail.

SUPERVISION PAID FOR ON A TIME BASIS

10. Where the Parties have agreed that supervision shall be paid for on a time basis, the following shall apply:

10.1. The rates to be paid by the Purchaser are those stipulated in the contract. These rates shall be paid from the date of departure from the Supplier's premises until the date of return, including non-working days and for the time needed for preparation and formalities incidental to the outward and homeward journeys.

10.2. Payment shall be made against monthly invoices concerning the supervision carried out. Payment shall be made within 30 days from the date of the invoice.

10.3. The following items shall be separately charged:

a) All travelling expenses incurred by the Supplier in respect of his staff and the transport of their equipment and personal effects using the means and class of travel specified in the contract.

b) Cost of board and lodging and other living expenses, including any appropriate allowances, of the Supplier's staff for each day's absence from their homes, including non-working days.

c) Overtime and work on locally recognised days of rest and local public holidays and outside normal working hours will be charged at special rates. The rates shall be as agreed in the contract, or, failing agreement, as normally charged by the Supplier.

d) Time necessarily spent on daily travel between lodgings and the site if it exceeds half an hour each way.

e) Any costs incurred by the Supplier in accordance with the contract, in connection with the provision of equipment by him, including where appropriate a charge for the use of the Supplier's own heavy equipment.

f) Any taxes or dues levied on the invoice and payable by the Supplier or his staff in the country where supervision takes place.

SUPERVISION PAID FOR BY A LUMP SUM

11. Where the Parties have agreed that the supervision shall be paid for on the basis of a lump sum, and the lump sum is not included in the price for the Product, the following shall apply :

11.1. The payment shall be made against invoices: of 10% at the signature of the contract, of 30% at the notification according to Clause 4, and the remaining part when the supervision has been finished.

11.2. If the lump sum is included in the price for the Product, Clause 18 of S 2000 shall apply unless otherwise agreed.

11.3. The quoted lump sum price shall be deemed to include all the items mentioned in Clause 10.3. a) to d). If the supervision is delayed due to a cause for which the Purchaser or any contractor other than the Supplier is responsible, the Purchaser shall compensate the Supplier for:

- a) extra work resulting from the delay,
- b) waiting time and time spent on extra journeys to and from the site;
- c) costs as a result of the Supplier having to keep his equipment at the site for a longer time than expected;
- d) additional costs for journeys and board and lodging for the Supplier's staff;
- e) other documented costs incurred by the Supplier as a result of changes in the supervision programme.

SITE REPRESENTATIVES AND SITE REGISTER

12. Each of the parties shall by written notice appoint a representative to act on their behalf during the supervision. Such appointment shall be made at the latest on the date of notification under Clause 4.

Unless otherwise specified in the contract, they shall be authorised to act on behalf of their respective parties in all matters concerning the erection work and the supervision.

Wherever these Supplementary Conditions stipulate that written notice shall be given, the representative shall be authorised to receive such notice on behalf of the party he represents.

The Supplier shall keep a site register in which he shall note all works carried out and problems encountered. This site register will be completed and signed daily by the representatives of the parties.

The representatives shall be authorised to sign the site register.

WORK NOT COVERED BY THE CONTRACT

13. The Purchaser shall not be entitled to use the Supplier's staff to perform any work not covered by the contract without the previous written consent of the Supplier.

SUSPENSION OF SUPERVISION

14. The Supplier shall be entitled without prior notice, to suspend the supervision and withdraw his staff, if an invoice is not paid at the due date.

15. If the erection work is suspended for a cause for which the Supplier is not responsible:

- a) the Purchaser is entitled to send home the Supplier's staff, provided he pays the expenses resulting therefrom;
- b) the Supplier is entitled to recall his staff at the expense of the Purchaser if the suspension of erection work exceeds a period of one month.

If the Supplier's staff is sent home or recalled, the contract is not terminated and its performance is merely suspended until the Purchaser has required the return of the Supplier's staff to the site by giving at least one month's notice or as may be agreed.

If the suspension of the erection work last longer than three months the Supplier is entitled to terminate the supervision contract.

SUPPLIER'S LIABILITY

16. Defects in the Product and damage to property caused by the Products shall be regulated according to the provisions of Clauses 22-38 of the S 2000 Conditions, even if such defects or damage is caused by the Supplier during the supervision.

17. If it is shown by the notices in the site register or otherwise proved by the Purchaser that the Supplier has failed, to perform his obligations in accordance with Clause 2, or has failed to use proper skill, care and diligence in carrying out the said obligations, thereby causing the cost of erection to be increased, the Purchaser shall be entitled to claim compensation for such extra cost.

18. The Supplier shall make good any damage to the Product occurring during supervision and erection. The Supplier shall be reimbursed the costs thereof unless the damage is caused by his negligence.

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ORGALIME

Appendix attached to the ORGALIME GENERAL CONDITIONS S 2012 regarding the application of German law

Where the Contract is governed by German Law (cf. clause 47 of the ORGALIME Conditions), the present Amendment shall apply jointly with the ORGALIME Conditions in order to pay due regard to the provisions of the German Civil Code BGB concerning standard business conditions.

Note: The "Convention on Contracts for the International Sale of Goods" - usually named as Vienna Convention of April 11th 1980 - might be applied to the Contract. If this is not the intention of the Parties, a stipulation to the contrary will have to be expressly mentioned and agreed upon.

regarding clause 14, para 5:

is deleted

regarding clause 16 second sentence (to be replaced by the following) :

"All other claims against the Supplier based on such delay shall be excluded, except where the Supplier has been guilty of a negligent breach of a fundamental condition of the contract ("wesentliche Vertragspflichten"), intent or Gross Negligence according to Clause 2."

regarding clause 39 (to be replaced by the following):

"Save as stipulated in Clauses 23-38, the Supplier shall not be liable for defects. This applies to any loss the defect may cause including loss of production, loss of profit and other indirect loss. This limitation of the Supplier's liability shall not apply if he has been guilty of intent or Gross Negligence as defined in Clause 2 or if the Supplier negligently causes damage to life, body or health.

Furthermore, the limitation of liability shall not apply in cases of negligent breach of a fundamental condition of the contract ("wesentliche Vertragspflichten"). In the case of slight negligence the Supplier shall be liable only for reasonably foreseeable damage which is intrinsic to the contract.

Nor shall the said limitation of liability apply in the cases of strict liability under the Product Liability Act ("Produkthaftungsgesetz"), for defects of the Product causing death or personal injury, or damage to items of property used privately. Furthermore, the said limitation of liability shall not apply in the case of defects the Supplier has fraudulently concealed or whose absence he has guaranteed."

regarding clause 40:

is deleted

regarding clause 45 (amendment):

"The said exclusion of liability shall not apply in the case of intent or Gross Negligence under Clause 2 or if the Supplier negligently causes damage to life, body or health. Furthermore, the exclusion of liability shall not apply in cases of negligent breach of a fundamental condition of the contract ("wesentliche Vertragspflichten"). In the case of a slightly negligent breach of a fundamental condition of the contract, the Supplier shall be liable only for reasonably foreseeable damage which is intrinsic to the contract.

Nor shall the exclusion of liability apply in cases of strict liability under the Product Liability Act ("Produkthaftungsgesetz"), for defects of the Product causing death or personal injury, or damage to items of property used privately. Neither does the said exclusion apply in the case of damage attributable to fraudulent concealment or under a specific guarantee granted."

March 2012



General Conditions for Computer Software

Supplement to ORGALIME S 2000 or ORGALIME SE 01

This supplement contains conditions which regulate the rights and obligations in respect of computer software, which is included in respectively the Product or the Works (in this supplement referred to as the Product). The supplement complements the conditions in Orgalime S 2000 or Orgalime SE 01 respectively and shall apply when the parties agree thereto in writing or otherwise. The term Supplier, which is used hereinafter, shall, when Orgalime SE 01 apply, refer to the Contractor.

Types of computer software

1. Computer software which is covered by these supplementary conditions is referred to as follows:

1.1. The *Computer Software* is the computer software which is included in the Product, and consists of Supplier's Software and/or Sublicensed Software

1.2. The *Supplier's Software* is computer software to which the Supplier holds the intellectual property rights.

1.3. *Sublicensed Software* is computer software to which a third party holds the intellectual property rights and to which the Supplier, with the property right holder's permission, grants a right of use.

The Purchaser's right to use the Computer Software

2. Unless otherwise agreed in writing, the following shall apply in respect of the Purchaser's right to use the Computer Software:

2.1. *Supplier's Software*

The Purchaser acquires the non-exclusive right to use the Supplier's Software only in the use of the Product. The Purchaser may transfer this right of use to subsequent owners or leaseholders of the Product. The Supplier retains the intellectual property rights to the Supplier's Software even when such software has been produced specially for the Purchaser.

The Purchaser shall be entitled, at his own responsibility, to make changes to the Supplier's Software to the extent that they are consistent with the general purpose for which the Product is intended and with the requirements of the applicable safety regulations.

The Supplier shall not be obliged to provide the source code for the Supplier's Software.

2.2. *Sublicensed Software*

Subject to any limitations, which have been agreed between the Supplier and the holder of the intellectual property rights, the Purchaser acquires the non-exclusive right to use the Sublicensed Software only in the use of the Product and to transfer this right of use to subsequent owners or leaseholders of the Product. The Supplier shall inform the Purchaser in writing of any such limitations, before the agreement regarding delivery of the Product is entered into.

Updating the Computer Software

3. Unless otherwise agreed in writing, the Supplier shall not be obliged to provide the Purchaser with updated versions of the Computer Software.

Infringement of intellectual property rights

4. The Supplier shall, in accordance with clauses 5-9, hold the Purchaser harmless against any claim from a third party, which is based on infringement of copyright or other intellectual property rights existing at the time of delivery, resulting from the Purchaser's use of the Computer Software.

5. The Supplier shall not, however, be liable for any claim in respect of infringement which is based on:

- use of the Computer Software by the Purchaser in a manner or place which has not been agreed and which the Supplier should not reasonably have foreseen, or
- changes to the Computer Software undertaken by the Purchaser.

6. Defence against claims of infringement referred to in Clause 4 shall be for the Supplier's account. He shall indemnify the Purchaser against such amounts as the latter is obliged to pay under a settlement approved by the Supplier or a final award.

The Supplier shall only be liable, however, if the Purchaser without delay notifies the Supplier in writing of any claim which he receives and lets the Supplier decide how the claim shall be dealt with in litigation and out of court negotiations.

7. If an infringement of intellectual property rights occurs and the conditions under Clause 6, second paragraph, are fulfilled, the Supplier shall, within a reasonable time, at his option:

- provide for the Purchaser the right to continue to use the Computer Software,
- change the Computer Software so that the infringement ceases, or
- replace the Computer Software with other software with an equivalent function, the use of which does not result in an infringement.

8. If the Supplier fails to rectify the infringement in due time as described in Clause 7, Clauses 32, 33 and 37 in Orgalime S 2000 or Clauses 60, 61 and 65 in Orgalime SE 01 respectively, as the case may be, shall apply.

9. Except as specified in Clauses 4-8, the Supplier shall have no liability towards the Purchaser for any infringement of third parties' rights caused by the Purchaser's use of the Computer Software. This limitation of the Supplier's liability shall, however, not apply if he has been guilty of gross negligence.

Other defects in the Computer Software

10. In case of other defects in the Computer Software than those causing infringement of copyright or industrial property rights, Clauses 22-37 in Orgalime S 2000 or Clauses 51-65 in Orgalime SE 01 respectively, as the case may be, shall apply.

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