



ORGALIME

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## GENERAL CONDITIONS FOR THE SUPPLY AND ERECTION OF MECHANICAL, ELECTRICAL AND ELECTRONIC PRODUCTS

Brussels, September 2001

### PREAMBLE

1. These General Conditions shall apply when the parties agree In Writing or otherwise thereto. When the General Conditions apply to a specific contract, modifications of or deviations from them must be agreed In Writing.

### DEFINITIONS

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

- "**Contract**" shall mean the written agreement between the parties concerning performance of the Works, and all appendices, including agreed amendments and additions to the said documents.

- "**Contract Price**" shall mean the payment to be made for the Works. If erection is to be carried out on a time basis and has not been completed, the Contract Price for the purposes of Clauses 17, 40, 41 and 47 shall be the price for the Plant with the addition of 10 per cent or of any other percentage that may have been agreed by the parties.

- "**Gross Negligence**" shall mean 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 act or omission.

- "**In Writing**" shall mean communication by document signed by the parties, or by letter, fax, electronic mail and by such other means as are agreed by the parties.

- "**Plant**" shall mean all machinery, apparatus, materials and articles to be supplied by the Contractor under the Contract.

- "**Site**" shall mean the place where the Plant is to be erected, including as much of the surrounding area as is necessary for unloading, storage and internal transport of the Plant and erection equipment.

- "**Works**" shall mean the Plant including the erection and other work to be carried out by the Contractor under the Contract. If the Works according to the Contract shall be taken over by separate sections intended to be used independently from each other, these Conditions shall apply to each section separately. The term "Works" shall then refer to the section in question.

### PRODUCT INFORMATION

3. All information and data contained in general product documentation and price lists, whether in electronic or any other form, are binding only to the extent that they are by reference expressly included in the Contract.

### DRAWINGS AND DESCRIPTIONS

4. All drawings and technical documents relating to the Works 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 Contractor shall, not later than at the date of taking-over, provide free of charge information and drawings which are necessary to permit the Purchaser to commission, operate and maintain the Works. Such information and drawings shall be supplied in the number of copies agreed upon or at least one copy of each. The Contractor shall not be obliged to provide manufacturing drawings for the Plant or for spare parts.

### TESTS BEFORE SHIPMENT

6. If tests before shipment are provided for in the Contract they 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 Contractor shall notify the Purchaser In Writing of these 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 tests show the Plant not to be in accordance with the Contract, the Contractor shall without delay remedy any deficiencies in order to ensure that the Plant complies with the Contract. New tests shall then be carried out at the Purchaser's request, unless the deficiency was insignificant.

9. The Contractor shall bear all costs for 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.

## PREPARATORY WORK AND WORKING CONDITIONS

10. The Contractor shall provide in good time drawings showing the manner in which the Plant is to be erected, together with all information required for preparing suitable foundations, for providing access for the Plant and any necessary equipment to the point where the Plant is to be erected, and for making all necessary connections to the Works.

11. The Purchaser shall provide in good time all installations, and ensure that the conditions necessary for the erection of the Plant and for the correct operation of the Works are fulfilled. This shall not apply to preparatory work which according to the Contract shall be performed by the Contractor.

12. The preparatory work shall be carried out by the Purchaser in accordance with the drawings and information provided by the Contractor under Clause 10. The work shall be completed in good time. In any case the Purchaser shall ensure that the foundations are structurally sound. If the Purchaser is responsible for transporting the Plant to the Site, he shall ensure that the Plant is on the Site in good time.

13. If an error or omission in the drawings or information referred to in Clause 10 is discovered by the Contractor or notified to him In Writing before expiry of the period referred to in Clause 52, the cost of any necessary remedial work shall be borne by the Contractor.

14. The Purchaser shall ensure that:

a) the Contractor's personnel are able to start work in accordance with the agreed time schedule and to work during normal working hours. Provided that the Purchaser has been given notice In Writing in reasonable time, work may be performed outside normal working hours to the extent deemed necessary by the Contractor.

b) he has, in good time before erection is started, informed the Contractor In Writing of all relevant safety regulations in force at the Site. The erection shall not be carried out in unhealthy or dangerous surroundings. All the necessary safety and precautionary measures shall have been taken before erection is started and shall be maintained.

c) the Contractor's personnel are able to obtain suitable and convenient board and lodging in the neighbourhood of the Site and have access to internationally acceptable hygiene facilities and medical services.

d) he has made available to the Contractor free of charge at the proper time on the Site all necessary cranes, lifting equipment and equipment for transport on the Site, auxiliary tools, machinery, materials and supplies (including fuel, oils, grease and other materials, gas, water, electricity, steam, compressed air, heating, lighting, etc...), as well as the measuring and testing instruments of the Purchaser available on the Site. The Contractor shall specify In Writing his requirements concerning such cranes, lifting equipment, measuring and testing instruments and equipment for transport on the Site at the latest one month before the start of the erection.

e) he has made available to the Contractor free of charge necessary storage facilities, providing protection against theft and deterioration of the Plant, the tools and equipment required for erection, and the personal effects of the Contractor's personnel.

f) the access routes to the Site are suitable for the required transport of the Plant and the Contractor's equipment.

## PURCHASER'S DEFAULT

15. If the Purchaser anticipates that he will be unable to carry out in time his obligations necessary for completion of the Works, including complying with the conditions specified in Clauses 11, 12 and 14, he shall forthwith notify the Contractor In Writing, stating the reason and, if possible, the time when he will be able to comply with his obligations.

16. Without prejudice to the Contractor's rights under Clause 17, if the Purchaser fails to fulfil, correctly and in time, his obligations necessary for completion of the Works, including to comply with the conditions specified in Clauses 11, 12 and 14, the following shall apply:

a) the Contractor may at his own discretion choose to carry out or employ a third party to carry out the Purchaser's obligations, or otherwise take such measures as under the circumstances are appropriate in order to avoid or alleviate the effects of the Purchaser's default.

b) the Contractor may suspend in whole or in part his performance of the Contract. He shall forthwith notify the Purchaser In Writing of the suspension.

c) if the Plant has not been delivered to the Site, the Contractor shall arrange for storage of the Plant at the Purchaser's risk. The Contractor shall also, if the Purchaser so requires, insure the Plant.

d) if performance of the Contract is delayed by the Purchaser's default, he shall nevertheless pay any part of the Contract Price which, but for such delay, had become due.

e) the Purchaser shall reimburse the Contractor for any costs not covered by Clause 44 or 45, which are reasonably incurred by the Contractor as a result of measures under a), b) or c) of this Clause.

17. If completion of the Works is prevented by the Purchaser's default as referred to in Clause 16, and this is not due to any such circumstance as mentioned in Clause 67, the Contractor may also by notice In Writing require the Purchaser to remedy his default within a final reasonable period.

If, for any reason for which the Contractor is not responsible, the Purchaser fails to remedy his default within such period, the Contractor may by notice In Writing terminate the Contract.

The Contractor shall then be entitled to compensation for the loss he suffers because of the Purchaser's default. The compensation shall not exceed the Contract Price.

## LOCAL LAWS AND REGULATIONS

18. The Contractor shall ensure that the Works are carried out and are in accordance with any laws, regulations and rules which are applicable to the Works. If required by the Contractor, the Purchaser shall provide the relevant information on these laws, regulations and rules In Writing.

19. The Contractor shall carry out any variation work caused by changes in laws, regulations and rules referred to in Clause 18, or in their generally accepted interpretation, occurring between the dates of submission of the tender and taking-over. The Purchaser shall bear the extra costs and other consequences resulting from such changes, including variation work.

20. If the parties are unable to agree on the extra costs and other consequences of changes in laws, regulations and rules, referred to in Clause 18, the Contractor shall be compensated on a time basis for any variation work until the dispute has been settled in accordance with Clause 72.

## VARIATIONS

21. Subject to the provisions of Clause 25, the Purchaser is entitled to require variations to the scope, design and construction of the Works until the Works have been taken over. The Contractor may suggest such variations In Writing.

22. Requests for variations shall be submitted to the Contractor In Writing and shall contain an exact description of the variation required.

23. As soon as possible after receipt of a request for a variation or after having himself made a proposal for a variation, the Contractor shall notify the Purchaser In Writing whether and how the variation can be carried out, stating the resulting alteration to the Contract Price, the time for completion and other terms of the Contract.

The Contractor shall also give such notice to the Purchaser when variations are required as a result of changes in laws, regulations and rules referred to in Clause 18.

24. If completion of the Works is delayed as a result of disagreement between the parties on the consequences of variations, the Purchaser shall pay any part of the Contract Price which would have become due if the Works had not been delayed.

25. Save as provided in Clause 19, the Contractor shall not be obliged to carry out variations required by the Purchaser until either the parties have agreed on how the variations will affect the Contract Price, the time for completion and other terms of the Contract, or the dispute has been settled in accordance with Clause 72.

## PASSING OF RISK

26. The risk of loss of or damage to the Plant shall pass to the Purchaser in accordance with any agreed trade term, which shall be construed in accordance with the INCOTERMS in force at the date of formation of the Contract.

If no trade term is specifically agreed, delivery of the Plant shall be Ex works (EXW).

Any risk of loss or damage to the Works not covered by the first paragraph of this Clause shall pass to the Purchaser on taking-over of the Works.

Any loss or damage to the Plant and Works after the risk has passed to the Purchaser shall be at the risk of the Purchaser, unless such loss or damage results from the Contractor's negligence.

## TAKING-OVER TESTS

27. When erection has been completed taking-over tests shall, unless otherwise agreed, be carried out to determine whether the Works are as required for taking-over according to the Contract.

The Contractor shall notify the Purchaser In Writing that the Works are ready for taking-over. He shall in this notice give a date for taking-over tests, giving the Purchaser sufficient time to prepare for and be represented at these tests.

The Purchaser shall bear all costs of taking-over tests. The Contractor shall, however, bear all costs relating to his personnel and his other representatives.

28. The Purchaser shall provide free of charge any power, lubricants, water, fuel, raw materials and other materials required for the taking-over tests and for final adjustments in preparing for these tests. He shall also install free of charge any equipment and provide any labour or other assistance necessary for carrying out the taking-over tests.

29. If, after having been notified in accordance with Clause 27, the Purchaser fails to fulfil his obligations under Clause 28 or otherwise prevents the taking-over tests from being carried out, the tests shall be regarded as having been satisfactorily completed at the date for taking-over tests stated in the Contractor's notice.

30. The taking-over tests shall be carried out 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 Purchaser's country.

31. The Contractor shall prepare a test-report of the taking-over tests. This report shall be sent to the Purchaser. If the Purchaser has not been represented at the taking-over tests after having been notified in accordance with Clause 27, the test report shall be accepted as accurate.

32. If the taking-over tests show the Works not to be in accordance with the Contract, the Contractor shall without delay remedy the deficiencies. If the Purchaser so requires In Writing without undue delay, new tests shall be carried out in accordance with Clauses 27-31. This shall not apply when the deficiency was insignificant.

## TAKING-OVER

33. Taking-over of the Works takes place :

a) when the taking-over tests have been satisfactorily completed or are regarded under Clause 29 as having been satisfactorily completed, or

b) where the parties have agreed not to carry out taking-over tests, when the Purchaser has received a Contractor's notice In Writing that the Works have been completed, provided that the Works are as required for taking-over according to the Contract.

Minor deficiencies which do not affect the efficiency of the Works shall not prevent taking-over.

34. The Purchaser is not entitled to use the Works or any part thereof before taking-over. If the Purchaser does so without the Contractor's consent In Writing, he shall be deemed to have taken over the Works. The Contractor shall then be relieved of his duty to carry out taking-over tests.

35. As soon as the Works have been taken over in accordance with Clause 33 or 34, the period, referred to in Clause 52, shall start to run. The Purchaser shall, at the Contractor's request In Writing, issue a certificate stipulating when the Works have been taken over. The Purchaser's failure to issue a certificate shall not affect taking-over according to Clauses 33 and 34.

## COMPLETION. CONTRACTOR'S DELAY

36. The Works shall be considered as completed when they are taken over in accordance with Clause 33 or 34.

37. If the parties instead of specifying the date for completion, have specified a period of time on the expiry of which taking-over shall take place, such period shall start to run as soon as the Contract is entered into, all official formalities have been completed, payments due at the formation of the Contract have been made, any agreed securities have been given and any other preconditions have been fulfilled.

38. If the Contractor anticipates that he will not be able to comply with his obligations within the times specified in the Contract, he shall forthwith notify the Purchaser thereof In Writing, stating the reason, and, if possible, when compliance can be expected. If the Contractor 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.

39. The Contractor shall be entitled to an extension of the time for completion if delay occurs :

- a) because of any of the circumstances referred to in Clause 67, or
- b) as a result of variation work under Clause 19, or
- c) as a result of variations under Clauses 21-25, or
- d) as a result of suspension under Clauses 16, 47 or 70, or
- e) by an act or omission on the part of the Purchaser.

The extension shall be reasonable having regard to all the circumstances. This provision applies regardless of whether the reason for the delay occurs before or after the agreed time for completion.

40. The Contractor is in delay when the Works are not completed at the time for completion as defined in Clauses 36, 37 and 39. The Contractor's delay entitles the Purchaser to liquidated damages from the date on which the Works should have been completed.

The liquidated damages shall be payable at a rate of 0.5 per cent of the Contract Price for each completed week of delay. The liquidated damages shall not exceed 7.5 per cent of the Contract Price.

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

The liquidated damages become due at the Purchaser's request In Writing but not before taking-over or termination of the Contract under Clause 41.

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 completion should have taken place.

41. If the Contractor's delay is such that the Purchaser has become entitled to the maximum liquidated damages under Clause 40 and the Works are still not completed, the Purchaser may demand In Writing completion within a final reasonable period which shall not be less than one week.

If the Contractor does not complete the Works within such final period and this is not due to any circumstance for which the Purchaser is responsible, then the Purchaser may by notice In Writing to the Contractor terminate the Contract in respect of such part of the Works which, due to the Contractor's failure, cannot be used as intended by the parties.

If the Purchaser terminates the Contract he shall be entitled to compensation for the loss he has suffered as a result of the Contractor's delay. The total compensation, including the liquidated damages which are payable under Clause 40, shall not exceed 15 per cent of that part of the Contract Price which is attributable to the part of the Works 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 Contractor, if it is clear from the circumstances that there will occur a delay in completion of the Works which, under Clause 40 would entitle the Purchaser to maximum liquidated damages.

In case of termination on this ground, the Purchaser shall be entitled to maximum liquidated damages and compensation under the third paragraph of this Clause 41.

42. Liquidated damages under Clause 40 and termination of the Contract with limited compensation under Clause 41 are the only remedies available to the Purchaser in case of delay on the part of the Contractor. All other claims against the Contractor based on such delay shall be excluded, except where the Contractor has been guilty of Gross Negligence.

## PAYMENT

43. Unless otherwise agreed, payment shall be made within 30 days from the date of the invoice as follows:

- a) when erection is carried out on a time basis :
- one third of the agreed price for the Plant at the formation of the Contract,
  - one third when the Contractor notifies the Purchaser that the Plant, or the essential part of it, is ready for dispatch from the place of manufacture and
  - the final third on arrival of the Plant at the Site.

Payment for erection shall be made against monthly invoices

- b) when erection is included in the lump sum Contract Price :
- 30 per cent of the Contract Price at the formation of the Contract,
  - 30 per cent when the Contractor notifies the Purchaser that the Plant, or the essential part of it, is ready for dispatch from the place of manufacture,
  - 30 per cent on arrival of the Plant at the Site,
  - the remaining part of the Contract Price on taking-over.

44. When erection is carried out on a time basis the following items shall be separately charged :

a) all travelling expenses incurred by the Contractor in respect of his personnel and the transport of their equipment and personal effects (within reasonable limits) in accordance with the specified method and class of travel where these are specified in the Contract.

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

c) the time worked, which shall be calculated by reference to the number of hours certified as worked in the time-sheets signed by the Purchaser. Overtime and work on Sundays, holidays and at night will be charged at special rates. The rates shall be as agreed in the Contract, or, failing agreement, as normally charged by the Contractor. Save as otherwise provided, the hourly rates cover the wear and tear of the Contractor's tools and light equipment.

- d) time necessarily spent on :
- preparation and formalities incidental to the outward and homeward journeys,
  - the outward and homeward journeys and other journeys to which the personnel are entitled in accordance with current law, regulations or collective agreements in the Contractor's country,

- daily travel between lodgings and the Site, if it exceeds half an hour each way and there are no suitable lodgings closer to the Site,
- waiting when work is prevented by circumstances for which the Contractor is not responsible under the Contract,

all at the same rates as referred to in c).

e) any expenses incurred by the Contractor in accordance with the Contract, in connection with the provision of equipment by him, including where appropriate a charge for the use of the Contractor's own heavy equipment.

f) any taxes or dues levied on the invoice and payable by the Contractor in the country where erection takes place.

45. When erection is to be carried out for a lump sum, the quoted price shall be deemed to include all the items mentioned in Clause 44, a) through e). If the erection is delayed due to a cause for which the responsibility rests with the Purchaser or any of his contractors other than the Contractor, the Purchaser shall compensate the Contractor for :

- a) waiting time and time spent on extra journeys.
- b) costs and extra work resulting from the delay, including removing, securing and setting up erection equipment.
- c) additional costs, including costs as a result of the Contractor 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 Contractor's personnel.
- e) additional financing costs and costs of insurance.
- f) other documented costs incurred by the Contractor as a result of changes in the erection programme.

46. Whatever the means of payment used, payment shall not be deemed to have been effected before the Contractor's account has been fully and irrevocably credited.

47. If the Purchaser fails to pay by a stipulated date, the Contractor shall be entitled to interest from the day on which payment was due. The rate of interest shall be as agreed between the parties. If the parties have not agreed on the rate of interest, it shall be 8 percentage points above the rate of the main refinancing facility of the European Central Bank in force on the due date of payment.

In case of late payment the Contractor may, after having notified the Purchaser In Writing, suspend his performance of the Contract until he receives payment.

If the Purchaser has not paid the amount due within three months, the Contractor shall be entitled to terminate the Contract by notice In Writing to the Purchaser and to claim compensation for the loss he has incurred. The compensation shall not exceed the Contract Price.

## RETENTION OF TITLE

48. The Plant shall remain the property of the Contractor until paid for in full, including payment for the erection of the Plant, to the extent that such retention of title is valid under the applicable law.

The Purchaser shall at the request of the Contractor assist him in taking any measures necessary to protect the Contractor's title to the Plant in the country concerned.

The retention of title shall not affect the passing of risk under Clause 26.

## **LIABILITY FOR DAMAGE TO PROPERTY BEFORE TAKING-OVER**

49. The Contractor shall be liable for any damage to the Works which occurs before the risk has passed to the Purchaser. This applies irrespective of the cause of the damage, unless the damage has been caused by the Purchaser or anyone for whom he is responsible in connection with performance of the Contract. Even if the Contractor is not liable for the damage to the Works in accordance with this Clause, the Purchaser may require the Contractor to remedy the damage at the Purchaser's cost.

50. The Contractor shall be liable for damage to the Purchaser's property occurring before taking-over of the Works only if it is proved that such damage was caused by negligence on the part of the Contractor or anyone for whom he is responsible in connection with the performance of the Contract. The Contractor shall however under no circumstances be liable for loss of production, loss of profit or any other consequential economic loss.

## **LIABILITY FOR DEFECTS**

51. Pursuant to the provisions of Clauses 52-65 inclusive, the Contractor shall remedy any defect or non-conformity (hereinafter termed defect(s)) in the Works resulting from faulty design, materials or workmanship.

52. The Contractor's liability is limited to defects in the Works which appear within a period of one year from taking-over. If the daily use of the Works exceeds that which is agreed, this period shall be reduced proportionately. If taking-over has been delayed for reasons for which the Purchaser is responsible, the Contractor's liability for defects shall not, except as stated in Clause 53, be extended beyond 18 months after delivery of the Plant.

53. When a defect in a part of the Works has been remedied, the Contractor shall be liable for defects in the repaired or replaced part under the same terms and conditions as those applicable to the original Works for a period of one year. For the remaining parts of the Works the period mentioned in Clause 52 shall be extended only by a period equal to the period during which the Works have been out of operation as a result of the defect.

54. The Purchaser shall without undue delay notify the Contractor In Writing of any defect which appears. Such notice shall under no circumstance be given later than two weeks after the expiry of the period given in Clause 52.

The notice shall contain a description of the defect.

If the Purchaser fails to notify the Contractor In Writing of a defect within the time-limits set forth in this Clause, he loses his right to have the defect remedied.

Where the defect is such that it may cause damage, the Purchaser shall immediately inform the Contractor In Writing. The Purchaser shall bear the risk of damage resulting from his failure so to notify.

55. On receipt of the notice under Clause 54, the Contractor shall remedy the defect without undue delay and at his own cost as stipulated in Clauses 51-65 inclusive.

Repair shall be carried out at the Site, unless the Contractor deems it appropriate that the defective part or the Plant is returned to him for repair or replacement.

Where remedial work is carried out at the Site, Clauses 14 and 50 shall apply correspondingly.

The Contractor is obliged to dismantle the Works to the extent necessary and to re-assemble the Works if this requires special knowledge. If such special knowledge is not required, the Contractor has fulfilled his obligations in respect of the defect when he delivers to the Purchaser a duly repaired or replaced part.

56. If the Purchaser has given such notice as mentioned in Clause 54, and no defect is found for which the Contractor is liable, the Contractor shall be entitled to compensation for the costs he has incurred as a result of the notice.

57. The Purchaser shall at his own expense arrange for any dismantling and reassembly of equipment other than the Works, to the extent that this is necessary to remedy the defect.

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

If the Works are not at the Site, the Purchaser shall bear any resulting additional costs incurred by the Contractor when remedying defects.

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

60. If, within a reasonable time, the Contractor does not fulfil his obligations under Clause 55, the Purchaser may, by notice In Writing, fix a final time for completion of the Contractor's obligations.

If the Contractor fails to fulfil his obligations within such final time, the Purchaser may himself undertake or employ a third party to undertake necessary remedial works at the risk and expense of the Contractor.

Where successful remedial works have been undertaken by the Purchaser or a third party, reimbursement by the Contractor of reasonable costs incurred by the Purchaser shall be in full settlement of the Contractor's liabilities for the said defect.

61. Where the defect has not been successfully remedied as stipulated under Clause 60 :

a) the Purchaser is entitled to a reduction of the Contract Price in proportion to the reduced value of the Works, provided that under no circumstance shall such reduction exceed 15 per cent of the Contract Price, or

b) where the defect is so substantial as to significantly deprive the Purchaser of the benefit of the Contract, the Purchaser may terminate the Contract by notice In Writing to the Contractor. The Purchaser is then entitled to compensation for the loss he has suffered up to a maximum of 15 per cent of the Contract Price.

**62.** The Contractor is not liable for defects arising out of materials provided, or a design stipulated or specified by the Purchaser.

**63.** The Contractor is liable only for defects which appear under the conditions of operation provided for in the Contract and under proper use of the Works.

The Contractor's liability does not cover defects which are caused by faulty maintenance or faulty repair by the Purchaser, or by alterations carried out without the Contractor's consent In Writing.

Finally the Contractor's liability does not cover normal wear and tear or deterioration.

**64.** Notwithstanding the provisions of Clauses 51-65 the Contractor shall not be liable for defects in any part of the Works for more than two years from taking-over. If taking over has been delayed for reasons for which the Purchaser is responsible, the Contractor's liability for defects shall not be extended beyond 30 months after delivery of the Plant.

**65.** Save as stipulated in Clauses 51-64, the Contractor 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 Contractor's liability shall not apply if he has been guilty of Gross Negligence.

#### **ALLOCATION OF LIABILITY FOR DAMAGE CAUSED BY THE WORKS**

**66.** The Contractor shall not be liable for any damage to property caused by the Works after completion and whilst in the possession of the Purchaser. Nor shall the Contractor 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 Contractor 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 Contractor 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 Contractor 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 Works.

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

#### **FORCE MAJEURE**

**67.** 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 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 and defects or delays in deliveries by sub-contractors caused by any such circumstance as 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.

**68.** 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 Force Majeure prevents the Purchaser from fulfilling his obligations, he shall compensate the Contractor for expenses incurred in securing and protecting the Works.

**69.** 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 67 for more than six months.

#### **ANTICIPATED NON-PERFORMANCE**

**70.** 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 will not be able to perform his obligations. A party suspending his performance of the Contract shall forthwith notify the other party thereof In Writing.

#### **CONSEQUENTIAL LOSSES**

**71.** 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**

72. 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.

73. The Contract shall be governed by the substantive law of the Contractor's country.

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Editeur responsable : Adrian Harris, Secretary General  
ORGALIME - The European Engineering Industries Association  
"Diamant Building", Bld A Reyers 80, B-1030, Brussels

Tel: + (32).(2).706.82.35 - Fax: +(32).(2).706.82.50  
secretariat@orgalime.org – www.orgalime.org – <http://licensing.orgalime.org>





## Appendix attached to the ORGALIME General Conditions SE 01

Where the Contract is governed by German Law (cf. clause 73 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 40, para 5:**

is deleted

### **regarding clause 42 second sentence (to be replaced by the following) :**

"All other claims against the Contractor based on such delay shall be excluded, except where the Contractor has been guilty of a breach of a condition which goes to the root of the contract ("wesentliche Vertragspflichten"), intent or gross negligence as defined in Clause 2."

### **regarding clause 65 (to be replaced by the following):**

"Save as stipulated in Clauses 51-64, the Contractor 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 Contractor's liability shall not apply if he has been guilty of intent or gross negligence as defined in Clause 2 or if he negligently causes damage to life, body or health.

Furthermore, the limitation of liability shall not apply in cases of negligent breach of a condition which goes to the root of the contract ("wesentliche Vertragspflichten"). In the case of slight negligence the Contractor 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 Works 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 Contractor has fraudulently concealed or whose absence he has guaranteed."

### **regarding clause 66:**

is deleted

### **regarding clause 71 (amendment):**

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

Nor shall the exclusion of liability apply in the cases of strict liability under the Product Liability Act ("Produkthaftungsgesetz"), for defects of the Works 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 despite specific guarantees."