



AGRIFAC

# ORGALIM

TERMS & CONDITIONS

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

Brussels, October 2022

## PREAMBLE

1. These General Conditions shall apply when the parties agree 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** » : a deliberate or reckless failure to take such care as is obviously required in the circumstances to avoid serious consequences for the other party;
  - « **In Writing** » : communication by document signed by both parties or by letter, electronic mail, fax 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;
  - « **Contract Price** » : the agreed price, which shall be either a fixed price or, in case the parties have specifically agreed on a price revision clause, the revised price.

## PRODUCT INFORMATION/INSTRUCTIONS

3. All information and data contained in general product documentation and price lists, regardless of form, shall be binding only to the extent that they are by reference In Writing expressly included in the Contract.
4. 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 as one paper copy of each and also electronically. The Supplier shall not be obliged to provide manufacturing drawings for the Product or for spare parts.

## INTELLECTUAL PROPERTY AND CONFIDENTIALITY

5. All intellectual property rights in the Product, including in any embedded software, and in any technical information relating to the Product, shall rest with the Supplier or, in the appropriate case, with a third party which has licensed the Supplier to sublicense these rights. Subject to any limitations that may have been agreed between the third party and the Supplier, the Purchaser shall acquire a non-exclusive, perpetual and transferable right to use these intellectual property rights, but limited to the extent required by the purpose of the Contract. The Supplier shall not be obliged to provide the Purchaser with the source code or with updates for any embedded software.

This clause shall also apply when the Product and/or software has been specifically developed for the Purchaser, unless otherwise agreed In Writing.

6. Technical, commercial and financial information and information, which has been declared as confidential or which must by its very nature be deemed to be confidential, disclosed In Writing or orally by one party to the other, shall be treated confidentially. The information shall therefore not without the consent of the disclosing party In Writing be used for any other purpose than that for which it was provided. It may not, without the consent of the disclosing party In Writing, be transmitted, communicated or otherwise disclosed to a third party.

## ACCEPTANCE TESTS

7. 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.

8. 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.
9. 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.

10. 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**

11. 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 of manufacture of the Product.

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 nevertheless pass to the Purchaser as soon as the Product is handed over to the first carrier.

Partial delivery shall not be permitted, unless otherwise agreed In Writing.

### **TIME FOR DELIVERY. DELAY**

12. 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 met by the Purchaser have been fulfilled, such as official formalities, payments due at the formation of the Contract and securities.

13. 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.

14. If delay in delivery is caused by any of the circumstances mentioned in Clause 46, by an act or omission on the part of the Purchaser, including suspension under Clauses 22 and 49, 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.

15. 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 Contract Price for each commenced week of delay. The liquidated damages shall not exceed 7.5 per cent of the Contract Price.

If only part of the Product is delayed, the liquidated damages shall be calculated on that part of the Contract 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 16.

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.

16. If the delay in delivery is such that the Purchaser is entitled to maximum liquidated damages under Clause 15 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 15, shall not exceed 15 per cent of that part of the Contract 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 15, 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.

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

18. 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 for a reason which is not attributable to the Supplier, he shall nevertheless pay any part of the Contract 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.

19. Unless the Purchaser's failure to accept delivery is due to any of the circumstances mentioned in Clause 46, the Supplier may by notice In Writing require the Purchaser to accept delivery within a final reasonable period.

If, for a reason which is not attributable to the Supplier and not the result of any of the circumstances mentioned in Clause 46, 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 Contract Price which is attributable to that part of the Product in respect of which the Contract is terminated.

## **PAYMENT**

20. Payment shall be made within thirty days after the date of invoice.

Unless otherwise agreed, the Contract Price shall be invoiced with one third at the formation of the Contract and the remaining part when the Product is delivered.

21. 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.

22. 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 interest rate of the European Central Bank for the main refinancing operations (MRO). 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 or 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 costs and loss he incurs, including indirect and consequential loss.

## **RETENTION OF TITLE**

23. 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 11.

## **LIABILITY FOR DEFECTS**

24. The Product shall be in conformity with the Contract. Pursuant to the provisions of this clause and Clauses 25-44, the Supplier shall remedy any defect in or nonconformity of the Product (hereinafter termed defect) resulting from faulty design, materials or workmanship.

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

26. 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.

27. 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 or incorrect installation, maintenance or repair, or to any alteration, carried out by the Purchaser or by a third party on behalf of the Purchaser. The Supplier shall neither be liable for normal wear and tear nor for deterioration.

28. 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.

29. When a defect in a part of the Product has been remedied, the Supplier shall be liable for defects in the repaired part or in the part in replacement 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 28 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.

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 28 or from the end of any other liability period agreed upon by the parties.

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

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 and any other rights in respect of the defect.

Where the defect is such that it may cause damage, the Purchaser shall immediately notify 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.

31. On receipt of the notice under Clause 30, the Supplier shall at his own cost remedy the defect without undue delay, as stipulated in Clauses 24-44. The time for remedial work shall be chosen in order not to interfere unnecessarily with the Purchaser's activities.

Remedial work 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.

32. 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.

33. 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.

34. 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 place specified in the Contract for putting the Product into service, or if not specified, the place of delivery.

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

36. If the Purchaser has given such notice as mentioned in Clause 30 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.

37. If the Supplier does not fulfil his obligations under Clause 31 or 43, 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 remedial work at the risk and expense of the Supplier, provided the Purchaser or third party does so in a professional manner.

Where successful remedial 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.

38. Where the defect has not been successfully remedied, as stipulated under Clause 37,

a) the Purchaser shall be entitled to a reduction of the Contract Price in proportion to the reduced value of the Product, provided that under no circumstances 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 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 any loss, including any consequential and indirect loss, up to a maximum of 15 per cent of that part of the Contract Price which is attributable to the part of the Product in respect of which the Contract is terminated.
39. Save as stipulated in Clauses 24-38, the Supplier shall not be liable for defects. In consequence, the Supplier shall not be liable for any other 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.

#### **LIABILITY FOR INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS**

40. Unless otherwise agreed, the Supplier shall, in accordance with this clause and Clauses 41 - 44 be liable towards the Purchaser for the Product infringing patents, copyrights or any other intellectual property rights of a third party in the Purchaser's country. The Supplier shall in such case indemnify the Purchaser and hold the Purchaser harmless against claims of third parties, provided that such claims are confirmed as valid by a final award or a settlement approved by the Supplier. The Supplier shall however not be liable for the Purchaser's loss of production, loss of profit, loss of use and loss of contracts, unless the Supplier has been guilty of Gross Negligence.
41. The Supplier shall have no liability for infringement of intellectual property rights arising out of:
- the Product being used elsewhere than in the Purchaser's country;
  - the Product being used otherwise than agreed or in a way the Supplier could not have foreseen;
  - the Product being used together with equipment or software not supplied by the Supplier, or
  - a design or construction stipulated or specified by the Purchaser.
42. The Supplier shall only be liable if the Purchaser notifies the Supplier In Writing without delay of any claim as referred to in Clause 40 which he receives and allows the Supplier to decide how the claim shall be dealt with.

Defence against claims referred to in Clause 40 shall be for the Supplier's account. The Supplier shall compensate the Purchaser for any amounts the latter is obliged to pay under a final award or a settlement approved by the Supplier.

43. Infringement of intellectual property rights shall, at the Supplier's discretion, be remedied by:
- providing the right for the Purchaser to use the Product,
  - adjusting the Product so that the infringement ceases, or
  - by replacing the Product with another product, which can be used without infringing applicable intellectual property rights.
44. If the Supplier fails to remedy the infringement in accordance with Clause 43 without undue delay, Clauses 37, 38 and 39 shall apply.

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

45. 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 51.

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

46. 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 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 import or 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.

47. 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 costs which the Supplier incurs in storing, securing and protecting the Product and avoiding unreasonable interference with his other activities.

48. 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 46 for more than six months.

## ANTICIPATED NON-PERFORMANCE

49. 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

50. Save as otherwise stated in these General Conditions or in case of Gross Negligence 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 and for any other consequential or indirect loss whatsoever, whether the loss was foreseeable or not.

## DISPUTES AND APPLICABLE LAW

51. 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.

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

*Orgalim represents Europe's technology industries, comprised of 770,000 innovative companies spanning the mechanical engineering, electrical engineering, electronics, ICT and metal technology branches. Together they represent the EU's largest manufacturing sector, generating annual turnover of over €2,480 billion, manufacturing one-third of all European exports and providing 10.97 million direct jobs. Orgalim is registered under the European Union Transparency Register – ID number: 20210641335-88.*

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SHAPING A FUTURE THAT'S GOOD

## Introductory note

# Orgalim general conditions for maintenance of mechanical, electrical and electronic equipment - M 17

### SCOPE OF USE

The Orgalim-General Conditions for Maintenance of mechanical, electrical and electronic equipment (M 17) are intended to be used where one company, the customer, employs another company, the contractor, to carry out technical maintenance of the customer's equipment, under a contract which runs for a definite or indefinite period.

The General Conditions divide the services into preventive maintenance, i.e. measures taken in order to ensure the continued functioning of the equipment, and corrective maintenance, i.e. measures taken in order to remedy a defect which has occurred. The contractor's obligations will usually comprise both preventive and corrective maintenance, but the conditions can also be used if only preventive maintenance is included.

The maintenance work performed under Orgalim M 17 mainly consists of traditional technical work. But since computer software today often forms a part of machinery and other industrial equipment, maintenance work may as well partly or solely consist of updating or adapting computer software, at least as far as corrective maintenance is concerned. Such work is also covered by Orgalim M 17.

According to Clause 25 the corrective maintenance shall, unless otherwise agreed, be paid on a time and cost basis. If the parties wish to include the corrective maintenance in a fixed fee, they may want to limit the extent of the corrective maintenance which is included in the fee. This can be done in several ways, for example by specifying the maximum number of hours of work or the maximum number of occasions.

These General Conditions are not intended for situations where no specific maintenance contract exists, i.e. where the contractor accepts to remedy a specific defect on an ad hoc-basis. In such situations the use of the Orgalim-General Conditions for repair - R 17 - is recommended.

Sometimes the contractor assigns to a third party to carry out the contractor's obligations towards the customer. This is explicitly regulated in Clause 42. Such arrangements are fairly common, e.g. when a contractor delivers a product to a purchaser and at the same time enters into a contract with the purchaser to carry out preventive maintenance of the product. If the product, for example, is delivered to a place geographically out of reach of the contractor's normal service organization, the contractor may find it more practical to subcontract the maintenance work to a third party. However, for the contractual relationship between the contractor and this third party, M 17 cannot be used. Neither

can any other standard conditions supplied by Orgalim. For this situation, the parties are instead recommended to draft an individual contract and should for this purpose consider to seek expert legal advice.

### CONTENTS OF THE INDIVIDUAL CONTRACT BETWEEN THE CUSTOMER AND THE CONTRACTOR

The parties must of course specify the extent of their respective obligations. They should do so in a separate written contract. Among the points to be covered are:

- a reference which makes it clear that M 17 apply to the contract;
- a specification of the equipment, which is subject to maintenance;
- whether and to what extent the contractor shall carry out both preventive and corrective maintenance;
- a detailed description of what is comprised in the preventive maintenance (for example the extent of the functional checks) and the time schedule for its performance;
- a list of wear parts, which are included in the preventive maintenance (see Clause 2);
- the number of hours/days within which the contractor shall commence corrective maintenance;
- the extent to which the customer shall keep a log of the operation and care of the equipment (Clause 7);
- technical documentation to be provided by the customer (Clause 18);
- the remuneration for preventive maintenance and the terms for payment (Clauses 24 and 28).

There are sometimes points where the parties may prefer to have a different rule from the one specified in the General Conditions. They may, for example, specify a different amount for the Contractor's maximum liability for damage under Clause 35 or they may agree on a fixed fee to cover both preventive and corrective maintenance.

Amendments should however not be undertaken without expert legal advice.

The contractor is advised to seek adequate insurance to cover his liability.

If the parties have their domicile in the same country, they may consider to have possible disputes arising in connection with the Contract settled by the ordinary courts of their country. Court proceedings may often be cheaper and more practical than arbitration administered by the International Chamber of Commerce. By deleting the first paragraph of Clause 44, arbitration would be excluded in favour of settlement of disputes by the competent national courts. In that case the parties should preferably appoint a specific court.

# General conditions for maintenance of mechanical, electrical and electronic equipment

Brussels, October 2017

## 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 maintenance to be performed by the Contractor and all appendices, including agreed amendments and additions In Writing to the said documents;
  - **“Equipment”**: the specific object (objects), which is (are) subject to maintenance under the Contract;
  - **“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;
  - **“Wear Parts”**: those parts of the Equipment, which shall be replaced under the preventive maintenance. The Contract shall identify the Wear Parts and the intervals at which they shall be replaced.

## Scope of the maintenance

3. The Contractor undertakes to perform preventive and/or corrective maintenance to the Equipment to the extent specified in the Contract. The maintenance work shall, unless otherwise agreed, be performed at the premises of the Customer.

## Preventive maintenance

4. Preventive maintenance shall be undertaken with proper skill and care at the times or at the intervals specified in the Contract. Unless otherwise agreed In Writing the preventive maintenance shall include:
  - checking the condition of the Equipment;
  - functional check;
  - adjustments, where appropriate;
  - provision and replacement of Wear Parts;
  - cleaning and necessary lubrication.

## Corrective maintenance

5. Corrective maintenance shall be undertaken with proper skill and care in order to remedy any functional defects which have arisen in the Equipment. It shall be commenced without undue delay or within the time specified in the Contract. Unless otherwise agreed In Writing the corrective maintenance shall include:
  - fault tracing;
  - remedial work;
  - provision and replacement of spare parts;
  - functional check;
  - assistance at testing.

## Contractor's maintenance report

6. Each time the Contractor has performed maintenance work he shall make a report In Writing containing his observations and measures taken. He

shall provide a copy of the report to the Customer. The report shall, unless otherwise agreed, be in the same language as the Contract.

## Customer's daily care. Log

7. The Customer shall be responsible for the necessary daily care of the Equipment. He shall, if so specified in the Contract, keep a log of the operation and the daily care of the Equipment.

## Use of spare parts

8. Unless otherwise agreed, the Contractor and the Customer shall only use parts of the original brand or parts of equivalent quality when carrying out maintenance and daily care of the Equipment.

## Contractor's exclusive right

9. The Customer shall not without the Contractor's consent In Writing, except as specified in Clauses 23 and 33, carry out or have others carry out the maintenance which under the Contract shall be carried out by the Contractor. If the Customer does so, the Contractor's responsibility for previously performed maintenance shall cease, unless the result of the maintenance is not affected by the Customer's measures.

## Alterations to the equipment

10. The Customer shall without undue delay inform the Contractor by notice In Writing of any alterations in the Equipment or its operation or other measures taken by the Customer which may affect the Contractor's obligations under the Contract.

If such alterations or measures significantly affect the Contractor's obligations, he is entitled to have the Contract amended. If the parties fail to agree on how to amend the Contract in respect thereof, the Contractor may, with immediate effect, terminate the Contract by notice In Writing to the Customer. In the event of such a termination, the Contractor shall also be entitled to compensation for the loss he incurs. The compensation shall be limited to 75 000 EUR or five times the yearly remuneration specified in the Contract, if this is a higher amount.

## Price estimate. Payment in case of non-completion of corrective maintenance

- 11.1 Unless otherwise agreed, the Contractor shall in case of corrective maintenance on a time and cost basis provide the Customer with a price estimate after fault tracing, but before undertaking any remedial or other work. The estimate shall not be binding, but the Contractor shall inform the Customer without undue delay if it becomes apparent that the final price will exceed the estimate by more than 10 per cent.
- 11.2 If the Customer at any stage chooses not to proceed corrective maintenance or if the corrective maintenance work is not carried out or completed due to any other reason than negligence of the Contractor, the Customer shall pay the Contractor for the work he has performed and still has to perform for winding up the maintenance work at the Contractor's current rates, including fault tracing, making the price estimate and any documented costs incurred in performing the work.
- 11.3 If a lump sum has been agreed upon for the corrective maintenance work and if the Customer chooses not to proceed or if the maintenance work is not completed due to any other reason than negligence of the Contractor, the Contractor shall receive the lump sum, after deduction of costs which have not been incurred by the Contractor.
- 11.4 If the Parties have agreed that the Contractor shall carry out the

corrective maintenance work for a lump sum and the Contractor, due to circumstances attributable to him, is not able to complete the work, then the Customer shall only be obliged to pay to the extent that he benefits from the Contractor's work.

### **Preparatory work and working conditions**

12. If the maintenance work is to be carried out at the premises of the Customer, the Customer 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 Customer has been given notice In Writing in reasonable time, corrective maintenance may be performed outside normal working hours to the extent deemed necessary by the Contractor;

— b) he has, in good time before the agreed or notified date for starting the maintenance work, informed the Contractor In Writing of all relevant safety regulations in force at his premises. Maintenance work shall not be carried out in unhealthy or dangerous surroundings. All the necessary safety and precautionary measures shall have been taken before the maintenance work is carried out and shall be maintained.

The Contractor shall inform the Customer of any special hazards that the maintenance work may entail;

— c) the Contractor's personnel are able to obtain suitable and convenient board and lodging in the neighbourhood of the Customer's premises 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 at his premises all necessary cranes, lifting equipment and equipment for transport at the premises, 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 Customer. The Contractor shall specify In Writing his requirements concerning such cranes, lifting equipment, equipment for transport at the Customer's premises and measuring and testing instruments in good time before the agreed or notified date for starting the maintenance work;

— e) he has made available to the Contractor free of charge sufficient offices at his premises, equipped with telephone and access to the Internet;

— f) he has made available to the Contractor free of charge necessary storage facilities, providing protection against theft and deterioration of the tools and equipment required for the maintenance work and the personal effects of the Contractor's personnel;

— g) the access routes to the place where the maintenance is to be carried out are suitable for the required transport of the Contractor's equipment.

13. If the Contractor so requires, the Customer shall give all necessary assistance for the import and re-export of the Contractor's equipment and tools, including assistance with customs formalities. The assistance as such shall be provided free of charge.

14. The Customer shall give all necessary assistance to ensure that the Contractor's personnel obtain, in good time, visas and any official entry, exit or work permits and, if necessary, tax certificates in the Customer's country, as well as access to the premises. The assistance as such shall be provided free of charge.

### **Transport of Equipment and risk of loss and damage to Equipment where maintenance is carried out elsewhere than at the Customer's premises**

15. The risk of loss or damage to Equipment while outside the Customer's premises for the purpose of maintenance shall be borne by the Customer, unless such loss or damage is due to negligence of the Contractor.

16. If not otherwise agreed, the Contractor shall arrange for the transport of the Equipment from and to the Customer's premises. The Contractor shall give appropriate notice In Writing to the Customer about the time and means of transport of the Equipment concerned from and to the Customer's premises.

17. Where the Customer is in delay in taking delivery of the Equipment concerned, the Contractor shall arrange for suitable storage at the Customer's risk and expense.

### **Technical documentation**

18. The Customer shall in good time provide current technical documentation (e.g. drawings, descriptions, charts and instructions) in his possession, which is relevant for carrying out the agreed maintenance. The Customer shall further provide the log referred to in Clause 7. The Contractor may not use such documentation for any other purpose than to fulfil the Contract.

### **Notice of preventive maintenance**

19. Unless the time for preventive maintenance is specified in the Contract, the Contractor shall notify the Customer at least one week in advance of the time when the preventive maintenance will be carried out.

### **Co-ordination of preventive and corrective maintenance**

20. If corrective maintenance is carried out shortly before preventive maintenance is due, the Contractor may, with the Customer's consent In Writing, at the same time carry out the preventive maintenance.

For such co-ordinated maintenance, the Contractor may not charge the Customer for any costs which are already covered by the agreed fee for preventive maintenance.

If the times for preventive maintenance are specified in the Contract, they shall not otherwise be changed as a result of this deviation.

### **Customer's delay**

21. The Customer shall immediately notify the Contractor if he cannot let the Contractor carry out the maintenance at the agreed or notified time. Any agreed time for completion of the maintenance shall then be extended as necessary having regard to all the relevant circumstances.

Regardless of the cause for such delay the Customer shall reimburse the Contractor any additional costs that the latter incurs due to the delay.

### **Testing after corrective maintenance**

22. When the Contractor has completed the corrective maintenance he shall notify the Customer thereof In Writing. The Contractor shall thereafter assist the Customer in carrying out such tests as have been agreed upon or as are reasonably required in order to ascertain that the corrective maintenance work has been successfully completed.

### **Contractor's delay**

23. If the Contractor, due to a lack of proper skill and care or otherwise due to negligence, fails to start or complete the corrective maintenance work at the agreed time, the Customer may by notice In Writing to the Contractor fix a final reasonable period for starting or completing the corrective maintenance work, which period shall not be less than one week.

If the Contractor fails to start or complete the corrective maintenance work within such final period, the Customer may himself undertake or employ a third party to undertake necessary corrective maintenance work.

Where successful corrective maintenance work has been undertaken by the Customer or a third party pursuant to the previous paragraph of this Clause 23, the Customer shall be entitled to compensation by the Contractor of the reasonable costs of such successful corrective maintenance work.

Where corrective maintenance work as stipulated under the previous paragraphs is not successful, the Customer may terminate the Contract by notice In Writing to the Contractor. The Customer shall then be entitled to compensation of the reasonable costs of the corrective maintenance work which was unsuccessfully undertaken by the Customer himself or by a third party employed by the Customer pursuant to the second paragraph of this Clause 23, and in addition to reimbursement of any remuneration which was already paid by the Customer to the Contractor pursuant to Clauses 25-27.

If the Contractor, due to a lack of proper skill and care or otherwise due to negligence, fails to start or complete preventive maintenance work at the agreed time or within the agreed interval, the Customer may by notice In Writing to the Contractor fix a final reasonable period for starting or completing preventive maintenance work, which period shall not be less than one week.

If the Contractor fails to start or complete the preventive maintenance work within such final period, the Customer may terminate the Contract with immediate effect and claim compensation for any additional costs caused by the delay during the period until the earliest date for normal termination of the Contract.

Compensation of costs and reimbursement of the remuneration, as stated in the third and fourth paragraph as regards corrective maintenance work and compensation of additional costs as stated in the previous paragraph as regards preventive maintenance work respectively, shall be the sole remedies available to the Customer in case of a failure of the Contractor to start or complete maintenance work at the agreed time, as referred to in this Clause 23.

### Remuneration for preventive maintenance

24. Unless otherwise agreed, the remuneration for preventive maintenance shall include payment for all work carried out by the Contractor and for Wear Parts, for time and costs for travel, board and lodging and transport costs.

If the Contractor's personnel are required to work outside their normal working hours or to spend time waiting due to circumstances attributable to the Customer, the costs therefor shall be invoiced separately in accordance with the rates currently applied by the Contractor.

The agreed remuneration shall be exclusive of any value added taxes and any other taxes, duties and dues levied on the invoice.

### Remuneration for corrective maintenance

25. Unless otherwise agreed, the corrective maintenance carried out by the Contractor shall be paid on a time and cost basis. The Contractor's invoice for corrective maintenance shall specify the following items separately:

- working time;
- time and costs of travel, board and lodging;
- transport costs;
- costs of spare parts;
- costs of other material which has been used;
- waiting time, overtime and additional costs caused by the Customer;
- other costs, if any.

26. When corrective maintenance is to be carried out for a lump sum, the agreed price shall be deemed to include all items mentioned in Clause 5. If the corrective maintenance is however delayed due to a cause not attributable to the Contractor, the Customer shall compensate the Contractor for:

- waiting time and time spent on extra journeys;
- costs and extra work resulting from the delay, including removing, securing and setting up the Equipment and repair equipment;
- additional costs as a result of the Contractor having to keep his repair equipment at the Customer's premises longer than expected;
- additional costs of journeys and board and lodging for the Contractor's personnel;
- additional financing costs and costs of insurance;
- other documented costs incurred by the Contractor as a result of changes in the maintenance program.

27. The charges for each item shall be in accordance with the rates and price lists currently applied by the Contractor.

The specified amount shall be exclusive of any value added taxes and any other taxes, duties and dues levied on the invoice.

### Payment

28. Unless otherwise agreed, the remuneration for preventive maintenance shall be paid before the start of each contract period.

All payments under the Contract shall be made against invoice within 30 days after the date of the invoice.

### Late payment

29. If the Customer fails to pay at the due date, the Contractor 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.

The Contractor may in addition, after having notified the Customer thereof, suspend his performance of the Contract until he receives payment and, after completion of the maintenance work, retain the Equipment and other equipment of the Customer which may be in his possession, as far as allowed under the relevant law. The Customer shall in case of suspension further compensate the Contractor for any additional costs incurred due to the suspension and resumption of the maintenance work.

### Liability for defects

30. The Contractor shall at his own cost remedy any defects in the maintenance work or in parts he has provided without undue delay after receipt of a notice under Clause 32 or after he himself discovered the defect.

### Liability period

31. Unless otherwise agreed, the Contractor shall be liable for the preventive maintenance work during the currency of the Contract and for a period of twelve months after the Contract has expired. The Contractor shall be liable for corrective maintenance work for a period of twelve months after the work was performed.

The Contractor's liability for parts he has provided under the Contract shall only apply to defects which become apparent within twelve months after delivery to the Customer or – if the Contractor has installed the part(s) concerned during maintenance work – within 12 months after the work was completed.

### Notice of defects

32. The Customer shall without undue delay notify the Contractor In Writing of any defect which appears in the work performed or in the parts provided by the Contractor.

If the Customer fails to give notice of a defect without undue delay he shall lose his rights in respect of the defect, except where the defect is such that it should have been apparent to the Contractor.

### Contractor's failure to remedy defects

33. If the Contractor, due to a lack of proper skill and care, fails to fulfil his obligation under Clause 5 to remedy functional defects which have arisen in the Equipment or his obligation under Clause 30 to remedy defects in the maintenance work or in parts he has provided, the Customer may by notice In Writing to the Contractor fix a final reasonable period for completion of the Contractor's obligations, which period shall not be less than one week.

If the Contractor fails to fulfil his said obligations within such final period, the Customer may himself undertake or employ a third party to undertake necessary remedial work.

Where successful remedial work has been undertaken by the Customer or a third party pursuant to the previous paragraph of this Clause 33, the Customer shall be entitled to compensation by the Contractor of the reasonable costs of such successful remedial work.

Where remedial work as stipulated under the previous paragraphs is not successful, the Customer may terminate the Contract by notice In Writing to the Contractor. The Customer shall then be entitled to compensation of the reasonable costs of the remedial work which was unsuccessfully undertaken by the Customer himself or by a third party employed by the Customer pursuant to the second paragraph of this Clause 33, and in addition to reimbursement of any remuneration which was already paid by

the Customer to the Contractor pursuant to Clauses 25-27.

Compensation of costs of remedial work and reimbursement of the remuneration, as stated in the previous paragraphs, shall be the sole remedies available to the Customer in case of a failure of the Contractor to remedy defects referred to in the first paragraph.

## Measures to prevent damage

34. If defects in the Contractor's work or in parts provided by him may cause damage to the Customer's property, including the Equipment, the Customer shall immediately inform the Contractor In Writing. The Customer shall bear the risk of damage to his property resulting from his failure so to notify. The Customer shall take reasonable measures to minimise damage and shall in that respect comply with instructions of the Contractor. The Contractor shall compensate the Customer for the necessary costs for such measures to the extent that the Contractor would have been liable for the damage.

## Liability for damage to the Customer's property

35. The Contractor shall be liable for damage to the Customer's property, including the Equipment, caused by the Contractor's negligence in connection with the maintenance work under the Contract. The Contractor's liability shall, unless otherwise agreed, for each occurrence be limited to 75 000 EUR or five times the yearly remuneration specified in the Contract, if this is a higher amount.

## Limitation of liability

36. The Contractor's liability under these General Conditions does not cover defects or damage due to circumstances which are not attributable to the Contractor, such as incorrect use of the Equipment, incorrect daily care by the Customer (Clause 7) or incorrect measures under Clause 34. Nor shall the Contractor be liable for normal wear and tear.

Except as explicitly stated otherwise in these General Conditions, the Contractor shall have no liability for defective work, defective parts provided under the Contract or otherwise for his negligence. This applies to any loss, which may be caused in connection therewith, such as loss of production, loss of profit, loss of use, loss of contracts and any other consequential or indirect loss whatsoever. This limitation of the Contractor's liability shall not apply if he has been guilty of Gross Negligence.

If the Contractor incurs liability towards any third party for damage to property arising in connection with performance of the Contract, the Customer shall indemnify, defend and hold the Contractor harmless to the same extent as the Contractor's liability towards the Customer is limited under these General Conditions.

If a claim for loss or 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 Customer 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 Equipment and arising in connection with the maintenance work. The liability between the Contractor and the Customer shall however be settled in accordance with Clause 44.

## Force majeure

37. 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, terrorists acts and defects or delays in deliveries or work 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.

38. 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.
39. 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 37 for more than three months.

## Contract period. Notice of altered remuneration

40. Unless otherwise agreed, the Contract is concluded for a period of one year and shall be extended by one year at a time, unless terminated by notice In Writing at least two months before the expiry of the current Contract period.

Unless the agreed remuneration is to be adjusted according to an index clause, the Contractor may after each year demand an increase of the agreed remuneration, provided that he informs the Customer In Writing of the remuneration he requires for the coming Contract period at least three months before the expiry of the current Contract period. If the Contract, after the Customer had received such information In Writing, is extended for another Contract period, the Customer shall be deemed to have accepted the revised remuneration for that period.

## Termination

41. In addition to what is specified in Clauses 10, 39 and 40, each party may terminate the Contract with immediate effect if the other party commits a serious breach of the Contract and fails to remedy such breach within 30 days after notice In Writing of the breach has been sent. Termination shall be made by notice In Writing.

If the Contract is terminated under this Clause, the party terminating the Contract shall be entitled to compensation for the loss he incurs. Such compensation shall, unless otherwise agreed, be limited to the amounts stated in Clause 35.

## Assignment. Subcontracting

42. Neither party may assign the Contract to a third party. The Contractor may, however, after notifying the Customer thereof In Writing, subcontract performance of the maintenance to a third party. The Customer shall be informed of the identity of the subcontractor. Such subcontracting shall not in any way affect the Contractor's obligations under the Contract.

## Consequential losses

43. 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. Applicable law

44. 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.

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

Orgalim represents Europe's technology industries, comprised of innovative companies spanning the mechanical engineering, electrical engineering, electronics, ICT and metal technology branches. Together they represent the EU's largest manufacturing sector.

# General conditions for the repair of mechanical, electrical and electronic equipment

Brussels, October 2017

## 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 repair work to be performed by the Contractor, and all appendices, including agreed amendments and additions In Writing to the said documents;
  - **“Equipment”**: the specific object (objects), which is (are) subject to repair work under the Contract;
  - **“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.

## Scope of the repair work

3. Repair work shall be undertaken with proper skill and care in order to remedy any functional defects which have arisen in the Equipment. It shall be commenced without undue delay or within the time agreed by the parties. Unless otherwise agreed In Writing the repair work shall include:
  - fault tracing;
  - remedial work;
  - provision and replacement of spare parts;
  - functional check;
  - assistance at testing.

## Price estimate. Payment in case of non-completion

- 4.1. Unless otherwise agreed the Contractor shall, in case of repair work on a time and cost basis, provide the Customer with a price estimate after fault tracing, but before undertaking any remedial or other work. The price estimate shall not be binding, but the Contractor shall inform the Customer without undue delay if it becomes apparent that the final price will exceed the estimate by more than 10 percent.
- 4.2. If the Customer at any stage chooses not to proceed or if the repair work is not carried out or completed due to any other reason than negligence of the Contractor, the Customer shall pay the Contractor for the work he has performed and still has to

perform for winding up the repair work at the Contractor's current rates, including fault tracing, making the price estimate and any documented costs incurred in performing the work.

- 4.3. If a lump sum has been agreed upon and if the Customer chooses not to proceed or if the repair work is not completed due to any other reason than negligence of the Contractor, the Contractor shall receive the lump sum, after deduction of costs which have not been incurred by the Contractor.
- 4.4. If the parties have agreed that the Contractor shall carry out the work for a lump sum and the Contractor, due to circumstances attributable to him, is not able to complete the work, then the Customer shall only be obliged to pay to the extent that he benefits from the Contractor's work.

## Use of spare parts

5. Unless otherwise agreed, the Contractor shall only use parts of the original brand or parts of equivalent quality when carrying out the repair work.

## Preparatory work and working conditions

6. If the repair work is to be carried out at the premises of the Customer, the Customer 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 Customer 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 the agreed date for starting the repair work informed the Contractor In Writing of all relevant safety regulations in force at his premises. Repair work shall not be carried out in unhealthy or dangerous surroundings. All the necessary safety and precautionary measures shall have been taken before the repair work is carried out and shall be maintained.

The Contractor shall inform the Customer of any special hazards that the repair work may entail;

- c) the Contractor's personnel are able to obtain suitable and convenient board and lodging in the neighbourhood of the Customer's premises 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 at his premises all necessary cranes, lifting equipment and equipment for transport at the premises, 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 Customer. The Contractor shall specify In Writing his requirements concerning such cranes,

lifting equipment, equipment for transport on the Customer's premises and measuring and testing instruments in good time before the agreed date for starting the repair work;

— e) he has made available to the Contractor free of charge sufficient offices at his premises, equipped with telephone and access to the Internet;

— f) he has made available to the Contractor free of charge necessary storage facilities, providing protection against theft and deterioration of the tools and equipment required for the repair work and the personal effects of the Contractor's personnel;

— g) the access routes to the place where the repair work is to be carried out are suitable for the required transport of the Contractor's equipment.

7. If the Contractor so requires, the Customer shall give all necessary assistance for the import and re-export of the Contractor's equipment and tools, including assistance with customs formalities. The assistance as such shall be provided free of charge.
8. The Customer shall give all necessary assistance to ensure that the Contractor's personnel obtain, in good time, visas and any official entry, exit or work permits and, if necessary, tax certificates in the Customer's country, as well as access to the premises. The assistance as such shall be provided free of charge.

### **Transport of equipment and risk of loss and damage to equipment where repair is carried out elsewhere than at the customer's premises**

9. The risk of loss or damage to Equipment while outside the Customer's premises for the purpose of repair shall be borne by the Customer, unless such loss or damage is due to negligence of the Contractor.
10. If not otherwise agreed, the Contractor shall arrange for the transport of the Equipment from and to the Customer's premises. The Contractor shall give appropriate notice In Writing to the Customer about the time and means of transport of the Equipment concerned from and to the Customer's premises.
11. Where the Customer is in delay in taking delivery of the repaired Equipment, the Contractor shall arrange for suitable storage at the Customer's risk and expense.

### **Technical documentation**

12. The Customer shall in good time provide current technical documentation (e.g. drawings, descriptions, charts and instructions) in his possession, which is relevant for carrying out the agreed repair work. The Contractor may not use such documentation for any other purpose than to fulfil the Contract.

### **Customer's delay**

13. The Customer shall immediately notify the Contractor if he cannot let the Contractor carry out the repair work at the agreed time. Any agreed time for completion of the repair work shall then be extended as necessary having regard to all relevant circumstances.

Regardless of the cause for such delay the Customer shall reimburse the Contractor for any additional costs that the latter incurs due to the delay.

### **Testing after repair work**

14. When the Contractor has completed the repair work he shall

notify the Customer thereof In Writing. The Contractor shall thereafter assist the Customer in carrying out such tests as have been agreed upon or as are reasonably required in order to ascertain that the repair work has been successfully completed.

### **Contractor's delay**

15. If the Contractor, due to a lack of proper skill and care or otherwise due to negligence, fails to start or complete the repair work at the agreed time, the Customer may by notice In Writing to the Contractor fix a final reasonable period for starting or completing the repair work, which period shall not be less than one week.

If the Contractor fails to start or complete repair work within such final period, the Customer may himself undertake or employ a third party to undertake necessary repair work.

Where successful repair work has been undertaken by the Customer or a third party pursuant to the previous paragraph of this Clause 15, the Customer shall be entitled to compensation by the Contractor of the reasonable costs of such successful repair work.

Where repair work as stipulated under the previous paragraphs is not successful, the Customer may terminate the Contract by notice In Writing to the Contractor. The Customer shall then be entitled to compensation of the reasonable costs of the repair work which was unsuccessfully undertaken by the Customer himself or by a third party employed by the Customer pursuant to the second paragraph of this Clause 15, and in addition to reimbursement of any remuneration which was already paid by the Customer to the Contractor pursuant to Clauses 16-18.

Compensation of costs of repair work and reimbursement of the remuneration, as stated in the previous paragraphs, shall be the sole remedies available to the Customer in case of a failure of the Contractor to start or complete repair work at the agreed time, as referred to in the first paragraph.

### **Remuneration for the repair work**

16. Unless otherwise agreed the repair work carried out by the Contractor shall be paid on a time and cost basis. The Contractor's invoice for the repair work shall specify the following items separately:
  - working time;
  - time and costs of travel, board and lodging;
  - transport costs;
  - costs of spare parts;
  - costs of other material which has been used;
  - waiting time, overtime and additional costs caused by the Customer;
  - other costs, if any.
17. When repair work is to be carried out for a lump sum, the agreed price shall be deemed to include all the items mentioned in Clause 3. If the repair work is however delayed due to a cause not attributable to the Contractor, the Customer shall compensate the Contractor for:
  - waiting time and time spent on extra journeys;
  - costs and extra work resulting from the delay, including removing, securing and setting up the Equipment and repair equipment;
  - additional costs as a result of the Contractor having to keep his repair equipment at the Customer's premises longer than

expected;

- additional costs for journeys and board and lodging for the Contractor's personnel;
- additional financing costs and costs of insurance;
- other documented costs incurred by the Contractor as a result of changes in the repair program.

18. The charges for each item shall be in accordance with the rates and price lists currently applied by the Contractor.

The specified amount shall be exclusive of any value added taxes and any other taxes, duties and dues levied on the invoice.

## Payment

19. All payments under the Contract shall be made against invoice within 30 days after the date of the invoice.

## Late payment

20. If the Customer fails to pay at the due date, the Contractor 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.

The Contractor may in addition, after having notified the Customer thereof, suspend his performance of the Contract until he receives payment, and, after completion of the repair work, retain the Equipment and other property of the Customer which may be in his possession, as far as allowed under the relevant law. The Customer shall in case of suspension compensate the Contractor for any additional costs incurred due to the suspension and resumption of the repair work.

## Liability for defects

21. The Contractor shall at his own cost remedy any defects in the repair work or in parts he has provided without undue delay after receipt of a notice under Clause 23 or after he himself discovered the defect.

## Liability period

22. Unless otherwise agreed, the Contractor shall be liable for the repair work for a period of twelve months after the work was completed.

The Contractor's liability for parts he has provided under the Contract shall only apply to defects which become apparent within twelve months after delivery to the Customer or – if the Contractor has installed the part(s) concerned during repair work – within 12 months after the work was completed.

## Notice of defects

23. The Customer shall without undue delay notify the Contractor In Writing of any defect which appears in the work performed or in the parts provided by the Contractor.

If the Customer fails to give notice of a defect without undue delay he shall lose his rights in respect of the defect, except where the defect is such that it should have been apparent to the Contractor.

## Contractor's failure to remedy defects

24. If the Contractor, due to a lack of proper skill and care, fails to fulfil his obligation under Clause 3 to remedy functional defects which

have arisen in the Equipment or his obligation under Clause 21 to remedy defects in the repair work or in parts he has provided, the Customer may by notice In Writing to the Contractor fix a final reasonable period for completion of the Contractor's obligations, which period shall not be less than one week.

If the Contractor fails to fulfil his said obligations within such final period, the Customer may himself undertake or employ a third party to undertake necessary remedial work.

Where successful remedial work has been undertaken by the Customer or a third party pursuant to the previous paragraph of this Clause 24, the Customer shall be entitled to compensation by the Contractor of the reasonable costs of such successful remedial work.

Where remedial work as stipulated under the previous paragraphs is not successful, the Customer may terminate the Contract by notice In Writing to the Contractor. The Customer shall then be entitled to compensation of the reasonable costs of the remedial work which was unsuccessfully undertaken by the Customer himself or by a third party employed by the Customer pursuant to the second paragraph of this Clause 24, and in addition to reimbursement of any remuneration which was already paid by the Customer to the Contractor pursuant to Clauses 16-18.

Compensation of costs of remedial work and reimbursement of the remuneration, as stated in the previous paragraphs, shall be the sole remedies available to the Customer in case of a failure of the Contractor to remedy defects referred to in the first paragraph.

## Measures to prevent damage

25. If defects in the Contractor's work or parts provided by him may cause damage to the Customer's property, including the Equipment, the Customer shall immediately inform the Contractor In Writing. The Customer shall bear the risk of damage to his property resulting from his failure so to notify. The Customer shall take reasonable measures to minimise damage and shall in that respect comply with instructions of the Contractor. The Contractor shall compensate the Customer for the necessary costs for such measures to the extent that the Contractor would have been liable for the damage.

## Liability for damage to the customer's property

26. The Contractor shall be liable for damage to the Customer's property, including the Equipment, caused by the Contractor's negligence in connection with the repair work under the Contract. The Contractor's liability shall, unless otherwise agreed, for each occurrence be limited to 75 000 EUR.

## Limitation of liability

27. The Contractor's liability under these General Conditions does not cover defects or damage due to circumstances which are not attributable to the Contractor, such as incorrect use of the Equipment, incorrect daily care by the Customer, faulty maintenance by the Customer or incorrect measures under Clause 25. Nor shall the Contractor be liable for normal wear and tear.

Except as explicitly stated otherwise in these General Conditions, the Contractor shall have no liability for defective work, defective parts provided under the Contract or otherwise for his negligence. This applies to any loss which may be caused in connection therewith, such as loss of production, loss of

profit, loss of use, loss of contracts and any other consequential or indirect loss whatsoever. This limitation of the Contractor's liability shall not apply if he has been guilty of Gross Negligence.

If the Contractor incurs liability towards any third party for damage to property arising in connection with the repair work, the Customer shall indemnify, defend and hold the Contractor harmless to the same extent as the Contractor's liability towards the Customer is limited under these General Conditions.

If a claim for loss or 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 Customer 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 Equipment and arising in connection with the repair work. The liability between the Contractor and the Customer shall however be settled in accordance with Clause 33.

### Force majeure

28. 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 mobilisation, insurrection, requisition, seizure, embargo, restrictions in the use of power, currency and export restrictions, epidemics, natural disasters, extreme natural events, terrorists' acts and defects or delays in deliveries or work by subcontractors 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.

29. 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.
30. 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 28 for more than three months.

### Assignment. Subcontracting

31. Neither party may assign the Contract to a third party. The Contractor may, however, after notifying the Customer thereof In Writing, subcontract performance of the repair work to a third party. The Customer shall be informed of the identity of the subcontractor. Such subcontracting shall not in any way affect the Contractor's obligations under the Contract.

### Consequential losses

32. 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. Applicable law

33. 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.

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

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## Appendix attached to the Orgalim General Conditions S 2022 regarding the application of German law

October 2022

Where the Contract is governed by German Law (cf. Clause 52 of the Orgalim Conditions S 2022), the present amendment shall apply jointly with the Orgalim Conditions to pay due regard to the provisions of the German Civil Code BGB concerning standard business conditions.

Furthermore, it should be noted that the Orgalim Conditions S 2022 (cf. Clause 52) may lead to the application of the UN Convention on Contracts for the International Sale of Goods (CISG). 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 8 second sentence (to be replaced by the following):

*"If the Purchaser is not represented through his own fault, the test report shall be sent to the Purchaser and shall be accepted as accurate."*

### regarding Clause 15, para 5:

is deleted

### regarding Clause 17 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 Vertragspflicht"), intent or Gross Negligence."*

### regarding Clause 28 (amendment):

*"Claims for reimbursement of expenses of the Purchaser pursuant to Sec. 445a BGB (recourse of the seller) also become statute barred one year after the beginning of the statutory limitation period, provided that the last contract in the supply chain is not for sale of consumer goods. Suspension of the statute of limitations under Sec. 445b (2) BGB remains unaffected; it shall end, at the latest, five years after the point in time when the Supplier delivered the item to the Purchaser."*

### regarding Clause 31, para 3 second sentence:

is deleted

### regarding Clause 38 b (amendment):

*"The limitation of the Supplier's liability shall not apply if he has been guilty of intent, Gross Negligence 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 contract ("wesentliche Vertragspflicht"). In the case of a slightly negligent breach, the Supplier shall be liable only for reasonably foreseeable damage which is intrinsic to the contract.*

*The said limitation of liability shall also be inapplicable 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. Furthermore, the said limitation of liability shall not apply in cases of defects the Supplier has fraudulently concealed or whose absence he has guaranteed."*

**regarding Clause 39 (to be replaced by the following):**

*"Save as stipulated in Clauses 24-38, 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. The limitation of the Supplier's liability shall not apply if he has been guilty of intent, Gross Negligence 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 contract ("wesentliche Vertragspflicht"). In the case of a slightly negligent breach, the Supplier shall be liable only for reasonably foreseeable damage which is intrinsic to the contract.*

*The said limitation of liability shall also be inapplicable 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. Furthermore, the said limitation of liability shall not apply in cases of defects the Supplier has fraudulently concealed or whose absence he has guaranteed."*

**regarding Clause 40, last sentence (to be replaced by the following):**

*"The Supplier shall however not be liable for the Purchaser's loss of production, loss of profit, loss of use and loss of contract.*

*The exclusion of the Supplier's liability shall not apply if he has been guilty of intent, Gross Negligence or if the Supplier negligently causes damage to life, body or health. Furthermore, it shall not apply in cases of negligent breach of a fundamental condition of contract ("wesentliche Vertragspflicht"). In the case of a slightly negligent breach of a fundamental condition of contract, the Supplier shall, however, be liable only for reasonably foreseeable damage which is intrinsic to the contract.*

*The exclusion of liability shall also be inapplicable 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. Furthermore, it shall not apply in cases of damage attributable to fraudulent concealment or under a specific guarantee granted."*

**regarding Clause 45:**

is deleted

**regarding Clause 50 (amendment):**

*"The exclusion of the Supplier's liability shall not apply if he has been guilty of intent, Gross Negligence or if the Supplier negligently causes damage to life, body or health. Furthermore, it shall not apply in cases of negligent breach of a fundamental condition of contract ("wesentliche Vertragspflicht"). In the case of a slightly negligent breach of a fundamental condition of contract, the Supplier shall, however, be liable only for reasonably foreseeable damage which is intrinsic to the contract.*

*The exclusion of liability shall also be inapplicable 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. Furthermore, it shall not apply in cases of damage attributable to fraudulent concealment or under a specific guarantee granted."*

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SHAPING A FUTURE THAT'S GOOD

## Appendix attached to the Orgalim general conditions M 17 regarding necessary adaptations to German law

October 2017

Where the Contract is governed by German Law (cf. clause 44 of the Orgalim Conditions), the present amendment shall apply jointly with the Orgalim Conditions in order to pay due regard to the provisions of the German Civil Code *BGB* concerning general terms and conditions.

### regarding clause 23, last paragraph (amendment):

"The limitation of liability does not apply in the event of intent or Gross Negligence according to Clause 2 or in the event of a negligent breach of a fundamental condition of the contract ("*wesentliche Vertragspflicht*") of the Contractor. In the latter case, liability for slight negligence shall be limited to reasonably foreseeable damage that is intrinsic to the contract."

### regarding clause 33, last paragraph (amendment):

"This limitation of the Contractor's liability shall not apply if he has been guilty of intent or Gross Negligence according to Clause 2 or where an injury or the death of a person is caused through negligence.

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

The said limitation of liability shall also be inapplicable in the case of strict liability under the Product Liability Act ("*Produkthaftungsgesetz*") for defects 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 35 (amendment):

"This limitation of the Contractor's liability shall not apply if he has been guilty of intent or Gross Negligence according to Clause 2.

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

Nor shall the said limitation of liability apply in the case of strict liability under the Product Liability Act ("*Produkthaftungsgesetz*"). Furthermore, the said limitation shall not apply in the case of damage attributable to fraudulent concealment or under a specific guarantee granted."

### regarding clause 36, second paragraph, last sentence (to be replaced by the following):

"This limitation of the Contractor's liability shall not apply if he has been guilty of intent or Gross Negligence according to Clause 2 or where an injury or the death of a person is caused through negligence.

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

The said limitation of liability shall also be inapplicable in cases of strict liability under the Product Liability Act ("*Produkthaftungsgesetz*") for defects causing death or personal injury, or damage to items of property used privately. Furthermore, the said limitation of liability shall not apply in cases of defects the Contractor has fraudulently concealed or whose absence he has guaranteed."

### regarding 43 (amendment):

"This exclusion of liability shall not apply in cases of intent or Gross Negligence according to Clause 2 or where an injury or the death of a person is caused through negligence.

Furthermore, the exclusion of liability shall not apply in cases of negligent breach of a fundamental condition of contract ("*wesentliche Vertragspflicht*"). In cases of slight negligence, the Contractor shall be liable only for reasonably foreseeable damage that is intrinsic to the contract.

The exclusion of liability shall also be inapplicable in cases of strict liability under the Product Liability Act ("*Produkthaftungsgesetz*") for death or personal injury, or damage to items of property used privately. Furthermore, the said exclusion of liability shall not apply in cases of defects the Contractor has fraudulently concealed or whose absence he has guaranteed."

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## Appendix attached to the ORGALIM GENERAL CONDITIONS R 17 regarding necessary adaptations to German law

October 2017

Where the Contract is governed by German Law (cf. clause 33 of the ORGALIM Conditions), the present amendment shall apply jointly with the ORGALIM Conditions in order to pay due regard to the provisions of the German Civil Code *BGB* concerning general terms and conditions.

### regarding clause 15, last paragraph (amendment):

"The limitation of liability does not apply in cases of intent or Gross Negligence pursuant to Clause 2 or in the event of a negligent breach of a fundamental condition of the contract ("*wesentliche Vertragspflicht*") of the Contractor. In the latter case, liability for slight negligence shall be limited to reasonably foreseeable damage that is intrinsic to the contract."

### regarding clause 24, last paragraph (amendment):

"This limitation of the Contractor's liability shall not apply if he has been guilty of intent or Gross Negligence according to Clause 2 or where an injury or the death of a person is caused through negligence.

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

The said limitation of liability shall also be inapplicable in cases of strict liability under the Product Liability Act ("*Produkthaftungsgesetz*") for death or personal injury, or damage to items of property used privately. Furthermore, the said limitation of liability shall not apply in cases of defects the Contractor has fraudulently concealed or whose absence he has guaranteed."

### regarding clause 26 (amendment):

"This limitation of the Contractor's liability shall not apply if he has been guilty of intent or Gross Negligence according to Clause 2.

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

The said limitation of liability shall also be inapplicable in cases of strict liability under the Product Liability Act ("*Produkthaftungsgesetz*"). Furthermore, the said limitation shall not apply in cases of damage attributable to fraudulent concealment or under a specific guarantee granted."

### regarding clause 27, second paragraph, last sentence (to be replaced by the following):

"This limitation of the Contractor's liability shall not apply if he has been guilty of intent or Gross Negligence according to Clause 2 or where an injury or the death of a person is caused through negligence.

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

The said limitation of liability shall also be inapplicable in cases of strict liability under the Product Liability Act ("*Produkthaftungsgesetz*") for death or personal injury, or damage to items of property used privately. Furthermore, the said limitation of liability shall not apply in cases of defects the Contractor has fraudulently concealed or whose absence he has guaranteed."

### regarding clause 32 (amendment):

"This exclusion of liability shall not apply in cases of intent or Gross Negligence according to Clause 2 or where an injury or the death of a person is caused through negligence.

Furthermore, the exclusion of liability shall not apply in cases of negligent breach of a fundamental condition of contract ("*wesentliche Vertragspflicht*"). In cases of slight negligence, the Contractor shall be liable only for reasonably foreseeable damage that is intrinsic to the contract.

The exclusion of liability shall also be inapplicable in cases of strict liability under the Product Liability Act ("*Produkthaftungsgesetz*") for death or personal injury, or damage to items of property used privately. Furthermore, the said exclusion of liability shall not apply in cases of defects the Contractor has fraudulently concealed or whose absence he has guaranteed."

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